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*Attorney for Plaintiff Brownstone, LLC*

7 **UNITED STATES DISTRICT COURT**  
8 **CENTRAL DISTRICT OF CALIFORNIA**

9 BROWNSTONE, LLC, ) Case No.:  
10 )  
11 )

v. )  
12 )

13 BIG SANDY RANCHERIA OF )  
14 WESTERN MONO INDIANS; and the )  
15 BIG SANDY RANCHERIA )  
16 ENTERTAINMENT AUTHORITY )  
17 )

Defendants. )  
18 )  
19 )

20 **I. JURISDICTION**

21 1. This Court has jurisdiction over the subject matter of this Claim under 28 U.S.C. §  
22 1331(a) (federal question) in that this is a civil action arising under the Constitution and  
23 laws of the United States and involves federal question under the Indian Gaming  
24 Regulatory Act , 25 U.S.C. §2701 et. Seq. (hereinafter “IGRA”).

25 **II. INTRODUCTION**

26 2. In 2007, Plaintiff Brownstone, LLC (“Brownstone”) and Defendants Big Sandy  
27 Rancheria of Western Mono Indians (“Tribe”) and Big Sandy Rancheria Entertainment  
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1 Authority (collectively, the “Tribal Parties”) entered into a series of agreements as part of  
2 a project for the Tribe to develop, construct and open a large casino and resort complex in  
3 Fresno County, California (the “Project”). The Tribe had been operating the small Mono  
4 Wind Casino for a number of years but lacked experience in developing a gaming  
5 operation of the size and scope of the Project. After a rigorous selection process, the  
6 Tribal Parties picked Brownstone as the Project developer to supply the needed expertise.

7  
8 3. The Project was to proceed in phases with contracts tailored to each phase. After  
9 entering into an initial Memorandum of Understanding (“MOU”) outline the Project  
10 agreements to come, on or about March 25, 2007, the Tribal Parties and Brownstone  
11 entered into a Credit Agreement under which Brownstone advanced initial funds to the  
12 Tribe for non-gaming purposes to be repaid when further financing was obtained. On or  
13 about the same date, the Tribal Parties and Brownstone entered into a Development  
14 Agreement under which Brownstone was to assist in arranging the Project financing and  
15 provide multiple other services to develop and construct the Project. The Development  
16 Agreement provided that Brownstone was to be paid fees at various states of the  
17 development process, plus a completion bonus, as well as reimbursed for its costs.  
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20  
21 4. Both the Credit Agreement and Development Agreement provide that Brownstone  
22 need not obtain a gaming license to advance funds or provide services under these initial  
23 stage agreements. The Tribe offers the public slot machine and other types of gaming  
24 (referred to as “Class III” gaming) under a 1999 Tribal-State Compact with the State of  
25 California (the “Compact”) that requires the Tribe to license certain individuals and  
26 entities providing services to a Class III gaming operation. However, since the Credit  
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1 Agreement and Development Agreement pertain to stages of the Project prior to any  
2 gaming operations being conducted, the Tribal Parties and Brownstone agreed that a  
3 tribal license was not required, and the Tribal Parties expressly warranted that no such  
4 licenses were required. The parties contemplated entering into a subsequent Consulting  
5 Agreement when the Project was complete and gaming operations commenced. At that  
6 stage, the parties agreed that the Tribal parties would license Brownstone.  
7

8 5. Some two-and-a-half years later, in December 2009, the Tribal Parties announced  
9 that they did not have to fulfill their obligations under the Credit Agreement or  
10 Development Agreement because they had not licensed Brownstone. On that pretextual  
11 basis, the Tribal Parties declared these agreements to be void and refused to repay the  
12 funds advanced by Brownstone, the fees due to Brownstone, or the expenses incurred by  
13 Brownstone in reliance on the agreements. Now therefore, Brownstone alleges on  
14 personal knowledge as to itself and otherwise on information belief as follows:  
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### 18 **III. PARTIES**

19 6. Plaintiff Brownstone, LLC is a Nevada limited liability corporation, and a  
20 subsidiary of American Vantage Companies, Inc., a Nevada corporation that has operated  
21 in the gaming, hospitality and management industry for thirty years.  
22

23 7. Defendant Big Sandy Rancheria of Western Mono Indians is a federally  
24 recognized Indian tribe.  
25

26 8. Defendant Big Sandy Rancheria Entertainment Authority (“Authority”) is a  
27 wholly-owned instrumentality of the Tribe.  
28

1 9. The Tribal Parties have expressly waived their sovereign immunity for purposes of  
2 this lawsuit and have consented to the jurisdiction of this Court. Such waiver and  
3 consent were actually authorized by the Tribal body having the authority to do so,  
4 specifically, the Tribal Council, either directly or by delegation to an authorized agent of  
5 the Tribe.  
6

#### 7 **IV. VENUE**

8  
9 10. By Order of the United States District Court for the Eastern District of California,  
10 this case was previously transferred to this Court pursuant to forum selection clauses in  
11 the parties' agreements.  
12

#### 13 **V. GENERAL ALLEGATIONS**

##### 14 **A. The Tribe's 2006 Selection of Brownstone as Project Developer**

15 11. In 2006, the Tribe issued a Request for Proposal to develop a 413,000 square-foot  
16 destination resort, which was to include a 300-room hotel, a 185,000 square-foot casino  
17 with 2,000 state-of-the art Class III electronic gaming devices, table games, a poker  
18 room, various restaurants, a convention center, a vehicle parking structure, RV parking  
19 and other related amenities (the "Project").  
20

21 12. The five-month selection process began with approximately 20 bidders and  
22 included two separate presentations to the Tribal Council. Ultimately, the Tribe selected  
23 Brownstone as the Tribe's Project Developer.  
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**B. The MOU, Credit Agreement, and Development Agreement**

13. The Tribe and its legal counsel, Holland & Knight LLP, and Brownstone and its legal counsel, Akin Gump Strauss Hauer & Feld LLP, proceeded to negotiate the Project agreements. On or about January 16, 2007, the Tribe and Brownstone executed the MOU, which confirmed the parties' intent and understanding that they would enter into separate agreements for the development/financing and consulting phases of the Project, and that Brownstone would provide some initial financing to the Tribe for its own use under a credit agreement. The MOU also contemplated that the Project would obtain financing from outside lenders, i.e., (i) bridge financing to fund pre-development activities followed by (ii) permanent financing in an amount necessary to fund the cost to construct and open the Project.

14. On or about March 25, 2007, Brownstone and the Tribal Parties executed the Credit Agreement contemplated in the MOU. In the Credit Agreement, Brownstone agreed to advance \$500,000 to the Tribe (which could be increased by mutual agreement). The contract specified that the Tribe would use this money only for Tribal matters unrelated to Class III gaming.

15. Between January 2007 and May 2007, Brownstone advanced the full \$500,000 to the Tribe, thereby fulfilling its obligations under the Credit Agreement.

16. Between May 2007 and September 2007, the Tribe requested several additional advances totaling \$555,000, which Brownstone also funded. This resulted in total aggregate advances of \$1,055,000 under the Credit Agreement.

1 17. The Credit Agreement provides for repayment of the Brownstone advances and  
2 accrued interest on the date that is the earlier of: (a) the Tribe's entering into a bridge  
3 financing arrangement; (b) the Tribe's entering into an agreement with someone other  
4 than Brownstone providing for the development, financing or construction of the Project;  
5 or (c) March 25, 2010.  
6

7 18. On or about March 25, 2007, Brownstone and the Tribal Parties executed the  
8 Development Agreement.  
9

10 19. Under the Development Agreement, Brownstone was to provide multiple services  
11 to the Tribe, including: (i) assistance in arranging sources of bridge and permanent  
12 financing; (ii) making recommendations with respect to federal and state regulatory  
13 matters including in connection with compact negotiations the State of California; (iii)  
14 recommending and negotiating contracts with architects, contractors, consultants and  
15 other professionals; (iv) preparation of project budgets, financial forecasts and an initial  
16 business plan; (v) regular status updates to Tribal representatives; and (vi) assistance with  
17 the implementation of insurance for all aspects of the Project, as well as many other  
18 services.  
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21 20. In return for these services, the Development Agreement provides that  
22 Brownstone would receive certain fees:  
23

24 a. A financing structuring fee equal to 2.5% of the gross amount that  
25 Brownstone initially advanced, and of the bridge and permanent financings, which were  
26 anticipated to exceed \$440,000,000 for the Project. This fee was payable on the close of  
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28

1 each such financing, except that payment of the initial Brownstone financing was not due  
2 until the close of the bridge financing.

3           b.       A development fee equal to 6% of the Project costs for developing,  
4 constructing, equipping and opening the hotel and casino resort. Such aggregate costs  
5 were estimated to exceed \$400,000,000. This fee was payable at various stages in the  
6 Project: (i) \$500,000 at the close of bridge financing; (ii) \$1,000,000 at the close of the  
7 permanent financing; (iii) \$100,000 (or a higher amount negotiated with the lenders of  
8 the permanent financing) on the first day of each quarter after the close of permanent  
9 financing; and (iv) all remaining amounts on the Project opening date.  
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11  
12           c.       A \$2,500,000 million bonus if the Project opening date occurred  
13 within 24 months of the close of the permanent financing.  
14

15           d.       The Tribal Parties also agreed to reimburse Brownstone's out-of-  
16 pocket expenses incurred in connection with the Project.  
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### 18       **C. Project Bridge Financing**

19       21.       During 2007, Brownstone introduced Credit Suisse Securities (USA) LLC  
20 ("Credit Suisse") to the Tribe as a potential investment banking partner. Public markets  
21 reported that Credit Suisse had provided investment banking services resulting in several  
22 successful Tribal and non-Tribal gaming finance offerings (ranging up to \$3,500,000,00  
23 for the Tropicana, Kerzner (Atlantis), Hard Rock, Aladdin, Borgata, Isle of Capri  
24 Blackhawk, Buena Vista Rancheria, River Cree and River Rock gaming properties in  
25 various locations throughout the world.  
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1 22. On or about April 2, 2007, the Tribal Parties decided to retain Credit Suisse.

2 Credit Suisse then circulated a private placement offering to various financial institutions  
3 for the funding of preconstruction bridge financing.

4 23. Prior to mid-2007, comparable bridge and permanent financings to Tribal  
5 communities had generally been successful. However, by August of 2007, such  
6 financings become nearly nonexistent. As a result, although Credit Suisse had identified  
7 various parties who had initially expressed interest in the bridge financing, by August of  
8 2007, only Guggenheim Partners, LLC ("Guggenheim") continued to negotiate and  
9 conduct due diligence for a potential bridge financing with the Tribe.  
10

11 24. In October 2007, the Tribe secured a \$39,935,000 bridge financing agreement with  
12 Guggenheim. The bridge financing was to be released in multiple phases.  
13

14 25. At the close of the bridge financing, Guggenheim released \$3,028,000 directly to  
15 the Tribe. Brownstone received \$750,000 as partial reimbursement of funds advanced  
16 under the Credit Agreement and \$200,000 for services to date and additional  
17 predevelopment services to be performed.  
18

19 26. The sum of \$3,420,000 of bridge financing funds was released for amended  
20 compact negotiations and an environmental impact study. Under the Indian Gaming  
21 Regulatory Act, 25 U.S.C. § 2701 et seq., an Indian tribe may operate Class III  
22 machines only under the terms of a tribal-state compact with the state in which the  
23 tribe is located. Bridge financing funds were allocated to cover Holland & Knight's  
24 estimated fees in negotiating an amended gaming compact to increase the number of  
25 machines the Tribe could operate. Funds were also allocated to cover the fees of an  
26  
27  
28



1 environmental consulting firm, Jones & Stokes, for the Project environmental impact  
2 study.

3 **D. Bridge Financing Milestones**  
4

5 27. The Tribe's contract with Guggenheim called for additional releases of bridge  
6 financing funds upon approval of the amended compact and environmental impact  
7 study. Moreover, upon completion of all the milestones in the Guggenheim  
8 contract, another release of funds would provide some 80% of the money needed to  
9 complete the engineering and architectural drawings needed to calculate the total  
10 project price. At that point, Credit Suisse could begin the permanent financing  
11 process.  
12

13  
14 28. Brownstone, however, was not subject to the schedule in the Guggenheim  
15 contract. For example, as alleged above, the Credit Agreement required payment of  
16 all funds advanced at the close of bridge financing. The obligations of the Tribal  
17 Parties under this contract were not conditioned on the fulfillment of the  
18 Guggenheim milestones, and Brownstone did not agree to waive its rights to  
19 payments due at the close of bridge financing.  
20

21  
22 29. In any event, the Tribe did not complete the initial Guggenheim milestones  
23 despite Brownstone's efforts to assist the Tribe to do so. To begin with, the Tribe  
24 and Holland & Knight engaged in negotiations with the California Governor's office  
25 to amend the Compact through 2008 with little success.  
26

27 30. The environmental impact study was slowed by, among other things,  
28

1 allegations that a culturally sensitive area was or would be disturbed on the Project  
2 site and that the tiger salamander, once thought extinct, was rumored to have been  
3 seen on site. The property also had to be resurveyed because of a dispute  
4 concerning encroachment on lands neighboring the site.  
5

6 31. Water resource problems also arose, despite the Tribe's representation to  
7 Brownstone at the inception of the Project that there were no water issues related to  
8 the environmental impact study. The Tribe had communicated to Brownstone that  
9 water rights were available from the City of Clovis that would adequately meet  
10 requirements. However, Clovis thereafter indicated that it did not have available  
11 water reserves for itself and was pursuing other water sources. Moreover, as part of  
12 the environmental impact study, the Bureau of Indian Affairs required the Tribe to  
13 provide an actual contract for water with a proven potable water source, not just  
14 identify a potential water source.  
15  
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18 32. To assist the Tribe in resolving the water issues, in April 2008, Brownstone  
19 agreed to purchase water rights from an independent third party. In May 2008,  
20 Brownstone transferred the water rights to the Tribe for \$10.  
21

22 33. Despite these efforts, by the end of 2008, the first two milestones had not  
23 been completed by Holland & Knight and Jones & Stokes to trigger release of  
24 funds for the predevelopment activities necessary to accomplish the remaining  
25 milestones. As a result, Guggenheim indicated that it would no longer provide  
26 bridge financing for the Project predevelopment.  
27  
28

**E. Change of Tribal Leadership, Consulting Agreement, and Other Prospective Financings.**

34. In the meantime, the Tribe underwent a change of leadership that affected the Consulting Agreement, the third agreement contemplated by the MOU between the Tribe and Brownstone. Throughout 2007 and into 2008, the parties had negotiated a final draft of the Consulting Agreement as anticipated in the MOU. Since the Consulting Agreement concerned services to be provided during actual casino operations, the draft Consulting Agreement provided that Brownstone would obtain applicable gaming licenses.

35. However, during 2008, Connie Lewis, the Tribal Chairperson who signed the Credit Agreement and Development Agreement on behalf of the Tribe, required surgery necessitating a temporary leave of absence. At her request - as well as the request of the Tribal Council - Brownstone agreed to temporarily suspend final execution of the Consulting Agreement until Chairperson Lewis's return from her medical absence. Upon Chairperson Lewis's return, the Tribal Council again requested that Brownstone defer final execution of the Consulting Agreement until the conclusion of the September 2008 Tribal Council elections. The election also resulted in the Tribe's naming a new chairperson, Elizabeth D. Kipp. Thereafter, the Tribal Parties refused to execute the Consulting Agreement.

36. Nonetheless, Brownstone continued to meet with various potential financing sources in California, New York and Canada to assist the Tribe in furthering the Project. For example, during the November 2009 Global Gaming Expo in Las Vegas,

1 Brownstone introduced a representative of a financial group to Chairperson Kipp. Based  
2 on their conversation, Chairperson Kipp expressed interest in pursuing a potential  
3 financing opportunity with this group. However, upon her return to California,  
4 Chairperson Kipp broke off further communications with this representative.  
5

6 **F. The Tribe's Efforts to Avoid Its Contractual Obligation**

7 37. Shortly thereafter, the Tribal Parties began their concerted effort to avoid their  
8 contractual obligations to Brownstone by advancing the pretextual claim that their failure  
9 to license Brownstone mean that the contracts were void. On or about December 9, 2010,  
10 the Big Sandy Rancheria Gaming Commission ("Gaming Commission"), an  
11 instrumentality of the Tribal Parties, lobbed the first such volley by sending a letter to  
12 Brownstone stating that the Gaming Commission "has received information of your  
13 company doing business related to Gaming with Big Sandy Rancheria and therefore the  
14 Big Sandy Rancheria Gaming Commission is requiring an application to be on file with  
15 the Gaming Commission." The letter demanded that Brownstone apply for a license  
16 within ten days.  
17  
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20 38. On or about January 21, 2010, Brownstone responded by pointing out that the  
21 parties' agreements expressly provide that neither approval of the Gaming Commission  
22 nor any tribal license is required for Brownstone to perform its part of these agreements.  
23 In that regard, both agreements provide that "it is not necessary under the Tribal Law  
24 that Developer be licensed, qualified or entitled to carry on business in any jurisdiction  
25 by reason of the execution, delivery, performance or enforcement of this Agreement.  
26  
27 Neither the Tribal Parties or any Related Party of the Tribe (including any Gaming  
28

1 Regulatory Authority of the Tribe) have adopted any law, rule, regulation, ordinance or  
2 resolution which requires Developer to be licensed, including any law, rule, regulation,  
3 ordinance or resolution pursuant to Sections 6.4.5 or 6.4.6 of the Compact or otherwise."

4  
5 39. On or about February 9, 2010, the Tribe's Gaming Commission sent another letter  
6 to Brownstone asserting that it was deeming Brownstone's failure to submit an  
7 application to constitute "noncompliance" with the Compact. The letter further asserted  
8 that "based upon the above determination of non-compliance, Brownstone, LLC is to  
9 refrain from further contact with the Big Sandy Tribal Council or the Big Sandy Tribal  
10 Entertainment Authority in regard to discussions concerning the above-mentioned  
11 Development and Credit Agreement."

12  
13  
14 40. On or about February 11, 2010, Chairperson Kipp wrote to Brownstone that  
15 "[b]ased on the Gaming Commission's directive and upon the advice of our counsel,  
16 we will not discuss with Brownstone issues concerning the Development Agreement  
17 or Credit Agreement until the Gaming Commission informs us the regulatory issues  
18 are resolved."

19  
20 41. Brownstone is informed and believes and thereon alleges that the Tribe's  
21 Gaming Commission demanded that Brownstone apply for a license – nearly three  
22 years after the Tribe signed the MOU and contrary to the express terms of the  
23 parties' agreements -with the intent and purpose to attempt to justify the Tribal  
24 Parties' repudiation of those agreements and their defaults on their obligations under  
25 them.  
26

27 42. The Tribe did not limit its efforts to avoid its obligations under the  
28

1 parties' agreements to the putative licensing issue. It also attempted to induce the  
2 National Indian Gaming Commission ("NIGC") to declare the agreements to be  
3 Indian casino "management contracts." Under NIGC regulations, such contracts  
4 are void if not approved by the NIGC's Chairperson. Thus, on or about March 9,  
5 2010, the Tribe's Gaming Commission sent a letter to the NIGC's General  
6 Counsel, Penny Coleman, requesting an opinion that the parties' agreements are  
7 "management contracts."  
8  
9

10 43. Brownstone is informed and believes and thereon alleges that the Tribe and  
11 its Gaming Commission sought this opinion with the intent and purpose to use it as  
12 a further pretextual basis to justify the Tribe's repudiation of these agreements and  
13 its defaults under them.  
14

15 44. On or about July 2, 2010, Ms. Coleman sent a letter to the Tribe opining that  
16 none of the agreements constituted management contracts under IGRA.  
17

18 45. Although the Tribe may or may not have requested Ms. Coleman to opine on the  
19 licensing issue, Ms. Coleman proceeded to offer one. Her letter again noted that the  
20 Development Agreement and Credit Agreement provide that Brownstone need not be  
21 licensed to perform these agreements. However, Ms. Coleman opined that the Tribe's  
22 Compact required Brownstone to be licensed by the Tribe and that therefore the Tribe's  
23 Gaming Ordinance required Brownstone to be licensed.  
24

25 46. The opinions expressed by Ms. Coleman on these licensing issues were not  
26 within the jurisdiction and authority of the NIGC. Neither IGRA nor the NIGC's  
27 implementing regulations provide for review and interpretation of tribal- state gaming  
28

1 compacts regarding such licensing requirements. IGRA and the NIGC's implementing  
2 regulations do not require a tribal gaming ordinance to provide for licensing any person  
3 or entity other than employees and primary management officials of a tribal gaming  
4 operation and the tribal gaming facility itself. In short, IGRA and NIGC regulations do  
5 not impose licensing requirements for any of the services to be provided by Brownstone,  
6 and Ms. Coleman's letter does not change that.  
7

8  
9 47. On or about July 13, 2010, the Tribe's Gaming Commission sent a letter to the  
10 Tribe and Ms. Kipp as Tribal Chairperson stating its "findings" that the agreements with  
11 Brownstone were "null and void" because the Tribe had never licensed Brownstone.

12  
13 48. Three days later, on or about July 16, 2010, the Tribe sent a letter to Brownstone  
14 asserting that the agreements "are void and unenforceable" because the Tribe's Gaming  
15 Commission had not reviewed them prior to their execution, even though the Tribe  
16 expressly warranted under the agreements that they do not require approval of "any  
17 Gaming Regulatory Authority." The Tribe's July 16, 2010 letter concluded with the  
18 assertion that "[a]s a result, all parties are relieved of any duties or obligations arising  
19 from each of these agreements."  
20

21  
22 49. Brownstone is informed and believes and thereon alleges that, on or about  
23 January 31, 2011, the Tribe announced that it had signed up with a new development  
24 partner other than Brownstone. Brownstone is further informed that the Tribe promised  
25 to publicly identify its new partner within a few weeks but to date has not done so.  
26 Brownstone is informed and believes and thereon alleges that any new development  
27 partner identified by the Tribe would be subject to liability for interference with  
28

1 Brownstone's existing contracts with the Tribe.

2 50. On February 3, 2011, the Tribe and the Authority filed the complaint in this  
3 action seeking a declaration that the Development Agreement and Credit Agreement are  
4 null and void.  
5

6 51. Brownstone is informed and believes and thereon alleges that, beginning in or  
7 about December 2009, the Tribe and Authority devised and implemented a scheme to  
8 avoid their obligations under the Development Agreement and Credit Agreement by  
9 purporting to assert that the agreements are null and void based on the spurious  
10 contentions outlined above. The Tribe and the Authority took the position that the  
11 agreements required Brownstone to be licensed, in direct contravention of the express  
12 terms of the agreements, and attempted to obtain an opinion from an NIGC lawyer that  
13 the agreements are unapproved management contracts, also in direct contravention of the  
14 agreements, solely to further this strategy.  
15  
16  
17

18 52. On February 3, 2011 the Tribal Parties, anticipating a lawsuit by Brownstone,  
19 filed an action styled *Big Sandy Rancheria of Western Mono Indians v Brownstone, LLC*  
20 subsequently transferred to this Court under a forum selection clause and commenced in  
21 this Court under case No. 2:11-cv-3495 CAS (AGRx).  
22

23 53. On June 11, 2012, the parties entered into a stipulation to dismiss that action  
24 without prejudice in order to facilitate possible settlement. The parties also stipulated  
25 and agreed to extend applicable statute of limitations for four years. Settlement did not  
26 occur and Brownstone files this action to preserve and enforce its rights. Case No. 2:11-  
27 cv-3495 CAS (AGRx).  
28



**FIRST CAUSE OF ACTION**

**(Breach of Contract)**

54. Brownstone incorporates and realleges Paragraphs 1 through 53 of the Counterclaim as though fully set forth herein.

55. The Credit Agreement is a valid and binding contract. The amount outstanding and owed thereunder as of March 21, 2011 is approximately \$572,699 with interest accrued and accruing at a rate per annum of 18.5% compounded daily.

56. Since the parties entered into the Credit Agreement, the Tribal Parties have repudiated the agreement and failed and refused to pay the outstanding principal and interest due and owing.

57. At all material times, Brownstone has performed all of the conditions and things on its part to be done and performed.

58. As a result of the Tribal Parties' breach of contract, Brownstone has suffered damages in an amount to be proven at trial, but exceeding \$572,699.

**SECOND CAUSE OF ACTION**

**(Money Had and Received Against All Defendants)**

59. Brownstone incorporates and realleges Paragraphs 1 through 58 of the Counterclaim as though fully set forth herein.

60. Brownstone transferred over a million dollars to the Tribal Parties under the Credit Agreement.

61. The Tribal Parties are currently obligated to repay all the monies transferred to

1 them.

2 62. The Tribal Parties have failed and refused to repay Brownstone all the monies  
3 transferred to them.

4  
5 63. The Tribal Parties are now in possession of money received from Brownstone,  
6 which in equity and good conscience, should be paid over to Brownstone, in an amount  
7 to be proven at trial.

8  
9 **THIRD CAUSE OF ACTION**

10 **(Conversion Against All Defendants)**

11 64. Brownstone incorporates and realleges Paragraphs 1 through 63 of the Complaint  
12 as though fully set forth herein.

13  
14 65. Brownstone transferred over a million dollars to the Tribal Parties under the  
15 Credit Agreement.

16  
17 66. The Tribal Parties are currently obligated to repay all the monies transferred to  
18 them.

19 67. The Tribal Parties have failed and refused to repay Brownstone all the monies  
20 transferred to them.

21  
22 68. The Tribal Parties have exercised dominion wrongfully over an ascertainable  
23 amount of money rightfully belonging to Brownstone. The precise amount, constituting  
24 principal and interest, can and will be proven at trial.  
25  
26  
27  
28

**FOURTH CAUSE OF ACTION**

**(Open Book Account Against All Defendants)**

69. Brownstone incorporates and realleges Paragraphs 1 through 68 of the Complaint as though fully set forth herein.

70. Brownstone and the Tribal Parties entered into a series of financial transactions.

71. Brownstone kept an account of the debits and credits involved in the transactions.

72. The Tribal Parties owe Brownstone money on account, in a sum of more than \$572,699, including principal and interest.

**FIFTH CAUSE OF ACTION**

**(Declaratory Relief Against all Defendants)**

73. Brownstone incorporates and realleges Paragraphs 1 through 72 of the Complaint as though fully set forth herein.

74. The Tribal Parties claim that Brownstone has no right to repayment of any of the funds advanced under the Credit Agreement.

75. The Tribal Parties' position creates an actual controversy between Brownstone and the Tribal Parties concerning their respective rights and duties under the Credit Agreement. The Tribal Parties claim they owe Brownstone nothing, and Brownstone contends that it is entitled to repayment of all outstanding funds advanced, with interest, as well as attorney's fees and other costs associated with obtaining repayment of the funds and interest.

76. Brownstone desires a judicial determination of its rights and duties under the

1 Credit Agreement, including a determination that the Tribal Parties are required to repay  
2 all outstanding funds advanced by Brownstone to the Tribal Parties, with interest, as  
3 well as attorney's fees and other costs associated with obtaining repayment of the funds  
4 and interest.  
5

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Brownstone prays for judgment against the Tribal Parties, and  
8 each of them, as follows:  
9

- 10 1. For compensatory damages consisting of principal and interest due, in a sum  
11 according to proof;  
12  
13 2. For restitution of funds paid to and for the benefit of the Tribal Parties, together  
14 with interest at the legal rate of 10%;  
15  
16 3. For attorney's fees available pursuant to the Credit Agreement;  
17  
18 4. For costs of suit;  
19  
20 5. For a declaration of rights and duties of the parties to the Credit Agreement; and  
21  
22 6. For such other and further relief as the Court may deem proper.

23 **JURY DEMAND**

24 Counterclaimant Brownstone, LLC hereby demands trial by jury.

25 Dated: June 8, 2016.

26 By: /s/James J. Lee  
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