

1 **LEWIS BRISBOIS BISGAARD & SMITH LLP**
 JOHN S. POULOS, SB# 154689
 2 E-Mail: John.Poulos@lewisbrisbois.com
 CHRISTOPHER R. RODRIGUEZ, SB# 212274
 3 E-Mail: Chris.Rodriguez@lewisbrisbois.com
 2020 West El Camino Avenue, Suite 700
 4 Sacramento, California 95833
 Telephone: 916.564.5400
 5 Facsimile: 916.564.5444

6 **OCOTILLO LAW & POLICY PARTNERS, LLP**
 PADRAIC I. MCCOY, SB# 223341
 7 E-Mail: mccoy@olp-partners.com
 RORY E. DILWEG, SB# 225828
 8 E-Mail: rdilweg@olp-partners.com
 6650 Gunpark Drive, Suite 100
 9 Boulder, CO 80301
 Telephone: 303.500.7756
 10 Facsimile: 303.558.3893

11 Attorneys for Plaintiff, THE BUENA VISTA
 12 RANCHERIA OF ME-WUK INDIANS, A
 13 FEDERALLY RECOGNIZED INDIAN TRIBE

14 **UNITED STATES DISTRICT COURT**
 15 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

17 THE BUENA VISTA RANCHERIA OF ME-
 18 WUK INDIANS, a federally recognized
 Indian Tribe,

19 Plaintiff,

20 vs.

21 AMADOR COUNTY, CALIFORNIA; and
 22 THE AMADOR COUNTY BOARD OF
 SUPERVISORS,

23
 24 Defendants.

CASE NO.

**COMPLAINT FOR (1) DECLARATORY
 AND INJUNCTIVE RELIEF, (2) AN
 ACCOUNTING, (3) RESCISSION, (4)
 BREACH OF THE COVENANT OF
 GOOD FAITH AND FAIR DEALING, (5)
 SPECIFIC PERFORMANCE, AND
 UNFAIR BUSINESS PRACTICES**

JURY TRIAL DEMANDED

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 26 COMES NOW Plaintiff, BUENA VISTA RANCHERIA OF ME-WUK INDIANS, a
 27 federally recognized Indian tribe (hereinafter "Plaintiff"), and alleges as follows:

THE NATURE OF THE ACTION

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1. The Buena Vista Rancheria of Me-Wuk Indians (“Plaintiff,” “Buena Vista,” or “the Tribe”) owns and occupies the Buena Vista Rancheria, a recognized Indian reservation, located in Amador County, and thereon owns and operates a casino pursuant to the Indian Gaming Regulatory Act (“IGRA”) (the “Casino”). The Casino, which had been planned for many years, was finally constructed (construction commenced in March 2018) and opened on April 29, 2019. The Casino employs approximately 400 citizens (the vast majority of whom reside in the local community), and has generated state and local tax revenue of at least \$5.4 million in the short time it has been in operation.

2. Plaintiff seeks this Court’s determination that a document entitled Intergovernmental Services Agreement (defined below as the “ISA”), which purports to be a binding contract between Plaintiff and Defendant Amador County, is invalid and enforceable because, among other reasons, (1) it violates a number of federal, tribal, and state laws, including without limitation IGRA, the regulations of the National Indian Gaming Commission (“NIGC”), the Tribe’s federally required and approved gaming ordinance, and California’s Mitigation Fee Act (Cal. Gov. Code § 66000, et seq.), (2) it constitutes an unlawful tax upon an Indian tribe and thus is an unlawful violation of Plaintiff’s sovereignty, in addition to violating the California Constitution’s requirements regarding tax assessments, (3) it was never validly executed or approved in accordance with its terms and/or the requirements of California law and it thus never became a valid, binding agreement; and (4) it lacks mutuality because the County’s counter-obligations were illusory in that, among other reasons, at the time the ISA purportedly became effective, Amador County was actively pursuing litigation against the United States (effectively against Plaintiff) to establish that Plaintiff’s Indian reservation did not constitute an Indian reservation under federal law, and thus Plaintiff was not even eligible to pursue gaming activities on Plaintiff’s lands.

3. Perhaps even more fundamentally, as a matter of contract law, the ISA was not established by the mutual assent of the parties, as it has never been signed by the County, despite



1 the fact that its plain language specifically provides that it only becomes effective upon execution.
2 Nor has the County Board of Supervisors ever approved the ISA, further rendering it void and
3 unenforceable under California law. *See* Cal. Gov. Code § 23005.

4 4. Even if it ever was validly formed and became effective, the ISA purports to
5 require payments from the Tribe that substantially exceed any conceivable connection to the tribal
6 Casino’s off-reservation impacts—and which exceed by more than three times the Tribe’s own
7 distributions from Casino revenues. As set forth in more detail herein, the ISA therefore (i)
8 violates the tribal-state gaming compact from which it arises, (ii) violates IGRA’s requirement that
9 tribes retain the sole proprietary interest in their casino revenues and that management agreements
10 must obtain federal approval, (iii) constitutes an unlawful tax on the Tribe, and (iv) violates the
11 State Mitigation Fee Act. The ISA is also void for lack of mutuality because the County—based
12 on the terms of the ISA itself, as well as the circumstances under which it was created, as
13 explained in more detail below—retained the right to decide later the nature and extent of its own
14 performance. For each these reasons, the ISA is void and unenforceable.

15 5. In the alternative, Plaintiff seeks rescission of the ISA based on the fact that, at the
16 time it purportedly became effective, Plaintiff and/or Defendants were mistaken about the facts
17 and circumstances predicate to that agreement. Specifically, the terms and conditions of the ISA
18 were dictated by the County based upon the then-expected size and scope of the Tribe’s casino
19 project. After Defendants forced Plaintiff to endure years of litigation and delay regarding the
20 status of the Tribe’s Indian reservation (which had been resolved years earlier), Plaintiff was
21 forced several times to significantly reduce the size and scope of the project that was ultimately
22 financed and implemented with significantly more debt than would have existed but for the
23 County’s bad-faith conduct. Thus, the provisions of the ISA, which already imposed unlawful
24 burdens on Plaintiff not commensurate with the real impacts of the project, became even more
25 slanted in favor of the County and unfair to the Tribe.

26 6. Finally, to the extent the ISA is not adjudged to be void and unenforceable for lack
27 of assent, lack or mutuality, illegality, and/or subject to rescission, Plaintiff seeks specific

1 performance of the provisions of the ISA that require the parties to negotiate a new agreement to
2 replace the ISA that Defendants now contend is effective and binding on the parties, as described
3 in further detail herein.

4 **PARTIES**

5 7. Plaintiff Buena Vista Rancheria of Me-Wuk Indians is a federally recognized
6 Indian tribe. The Tribe is included on the Department of the Interior's list of recognized Indian
7 tribes and has been included on every version of this list since approximately 1985. Most
8 recently, the Tribe was included in the February 1, 2019 list published at 84 Fed. Reg. 1200 (Feb.
9 1, 2019).

10 8. Defendant Amador County is a political subdivision of the State of California.
11 Amador County is located approximately 45 miles (72 km) southeast of Sacramento in a part of
12 California known as the foothills of the Sierra Nevada Mountains, with its County seat located in
13 Jackson, California. As of 2010, the population of the County was 38,091.

14 9. Defendant Board of Supervisors, sued in its official capacity, is the governing
15 board of the County, responsible for Amador County, is governed by five members, each of whom
16 is elected on a non-partisan basis from a separate district where he/she lives. Within the broad
17 limits established by the State Constitution, State General Law, the Board exercises both the
18 legislative and the executive functions of government.

19 **JURISDICTION AND VENUE**

20 10. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and
21 1362.

22 11. Venue is proper in this district because the Defendant County is situated in this
23 district, and a substantial part of the events or omissions giving rise to the claim occurred in this
24 district. 28 U.S.C. § 1391(e).

25 **IV. FACTS AND ALLEGATIONS**

26 **A. Brief History of the Buena Vista Rancheria of Me-Wuk Indians**

27 12. Ancestors of the Me-Wuk Indians have occupied what is now Amador County and

1 the surrounding environs for thousands of years. Despite generations of abuse, neglect, the
2 Mission period, the Gold Rush, and destructive federal policies toward Indian tribes (including the
3 termination era of the 1950s), all of which stripped away land ownership, the Me-Wuk Indians
4 survived. In the early 20th Century, the United States created a network of small land parcels
5 called “Rancherias” for landless Indian tribes in California. The United States purchased the lands
6 constituting the Buena Vista Rancheria in 1927 with money appropriated by the Acts of June 21,
7 1906 (34 Stat. 325-328), and April 30, 1908 (35 Stat. 70-76). The government’s purchase was
8 intended to establish the Rancheria as a reservation for the Tribe to be held in trust for the benefit
9 of the Tribe and its members in perpetuity. *See Cty. of Amador, California v. United States Dep’t*
10 *of the Interior*, 136 F. Supp. 3d 1193, 1201 (E.D. Cal. 2015), *aff’d sub nom. Cty. of Amador v.*
11 *United States Dep’t of the Interior*, 872 F.3d 1012 (9th Cir. 2017) (citing AR900; ECF No. 65 at
12 16).

13 13. As an outgrowth of the 1950s federal “termination” era, during which the
14 government disestablished the legal status of many Indian tribes across the country, Congress
15 enacted the 1958 “California Rancheria Act,” Pub. L. 85-671 at 72 Stat. 619, amended in 1964 by
16 78 Stat. 390 (the “Termination Act”). The Termination Act disestablished many California Indian
17 Rancherias, including the Buena Vista Rancheria, and terminated the legal status of the related
18 Indian tribes and their members as Indians under federal law. The United States distributed Buena
19 Vista Rancheria lands (a single 67.5-acre parcel) to the Tribe’s members and withdrew the trust
20 status of the Rancheria parcel and dissolved the Rancheria boundaries. The Termination Act
21 required the United States to improve or construct roads serving the terminated Rancheria lands, to
22 upgrade the related irrigation, sanitation, and domestic water systems, and to provide certain
23 educational and other benefits and services to the terminated Tribe and its members. The
24 government failed to fulfill its commitments to the terminated California tribes and litigation
25 ensued (*Tillie Hardwick v. United States, et al.*, Case No.: 5:79-CV-01710) against the United
26 States and various California Counties to restore the affected tribes to their pre-termination status.

27 14. The case was settled by stipulated judgment between the plaintiff Indians and

1 restored tribes and Rancherias, on the one hand, and the federal and county defendants (including,
2 with respect to the Tribe, Amador County), on the other hand. Settlement generally took the form,
3 first, of a stipulation to restore the terminated tribes and Indians and, second and later, a stipulated
4 judgment to restore the boundaries of the terminated reservations.

5 15. In the case of Buena Vista, a stipulated judgment entered in 1983 restored the
6 individual Indian plaintiffs to their status as Indians under federal law, restored the recognized
7 status of the Tribe, and required the United States to add the restored Tribe to the Bureau of Indian
8 Affairs' Federal Register list of recognized Indian tribes.

9 16. The second stipulated judgment, in 1987, provided that the Rancheria was "never
10 and [is] not now lawfully terminated," restored the Rancheria's original boundaries, and further
11 declared that all land within the restored Rancheria boundaries is "Indian country" (the legal term
12 of art for lands subject to tribal jurisdiction, as defined by 18 U.S.C. § 1151).

13 17. The 1987 stipulated judgment further required the United States and Amador
14 County to treat the Rancheria "as any other federally recognized Indian Reservation," and
15 provided that "all of the laws of the United States that pertain to federally recognized Indian
16 Tribes and Indians" shall apply to the Rancheria. The County has deliberately and consistently
17 engaged in actions that violate the terms of the stipulations, including years of costly legal actions
18 claiming the subject Rancheria is not an Indian reservation.

19 **B. The Indian Gaming Regulatory Act**

20 18. In 1987, the U.S. Supreme Court confirmed the right of Indian tribes to operate
21 gaming activities within their jurisdiction. *California v. Cabazon Band of Mission Indians*, 480
22 U.S. 202 (1987).

23 19. Congress enacted IGRA in 1988 "for the benefit of Indian tribes" and to regulate
24 such Indian gaming activities. *Artichoke Joe's v. Norton et al.*, 353 F.3d 712, 731(2003). As
25 states (and local governments) lack jurisdiction over Indian tribes and within Indian country,
26 Congress also enacted IGRA as a means of granting states "some role" in the regulation of Class
27 III gaming (*i.e.*, slots and other forms of high-stakes games). *Artichoke Joe's v. Norton et al.*, 353

1 F.3d 712 (2003). As this Court has noted:

2 IGRA was Congress' compromise solution to the difficult questions involving Indian
3 gaming. The Act was passed in order to provide "a statutory basis for the operation of
4 gaming by Indian tribes as a means of promoting tribal economic development, self-
5 sufficiency, and strong tribal governments" and "to shield [tribal gaming] from organized
6 crime and other corrupting influences *to ensure that the Indian tribe is the primary*
7 *beneficiary of the gaming operation.*" 25 U.S.C. § 2702(1), (2). [Emphasis added] IGRA
8 is an example of "cooperative federalism" in that it seeks to balance the competing
9 sovereign interests of the federal government, state governments, and Indian tribes, by
10 giving each a role in the regulatory scheme.

11 *Id.* at 715.

12 20. Congress did not include counties or other local governments among the various
13 and competing interests whose concerns it sought to address and counties are not so included.
14 This is consistent with Congress' intent to treat Indian tribes' "government-to-government"
15 relationship as being with the United States, and not with individual states, counties, or local
16 governments, all of whom lack jurisdiction over Indian tribes and their lands.

17 21. IGRA creates three classes of gaming, each subject to a different level of
18 regulation. As this Court has explained:

19 Class I gaming covers 'social games solely for prizes of minimal value or traditional forms
20 of Indian gaming engaged in by individuals as part of, or in connection with, tribal
21 ceremonies or celebrations.' 25 U.S.C. § 2703(6). Class II gaming includes bingo and
22 card games that are explicitly authorized by a state or 'not explicitly prohibited by the laws
23 of the State and are [legally] played at any location in the State.' *Id.* § 2703(7)(A)(ii).
24 Class II gaming specifically excludes banked card games and slot machines. [Class III
25 gaming is] the most heavily regulated and most controversial form of gambling under
26 IGRA. Class III gaming includes 'all forms of gaming that are not class I gaming or class
27 II gaming.' *Id.* § 2703(8). It includes the types of high-stakes games usually associated
28 with casino-style gambling, as well as slot machines and parimutuel horse-wagering.

29 *Id.* at 715-716.

30 22. Regarding regulation and state (or local) authority, Congress left uninterrupted
31 Class I and Class II gaming. Class I gaming remains subject to the exclusive jurisdiction of the
32 tribe, and Class II gaming remains subject only to tribal and federal jurisdiction. IGRA at 25
33 U.S.C. § 2710(a).

1 23. Class III gaming is lawful on Indian lands only if the National Indian Gaming
2 Commission (“NIGC”) Chairman approves the tribe’s gaming ordinance, the State permits such
3 gaming, and the Secretary of the Interior (“Secretary”) has approved a Tribal-State gaming
4 compact. *See* IGRA at 25 U.S.C. § 2710(d)(1). (Where a tribe and state cannot agree on a
5 compact, the Secretary may institute procedures to govern Class III gaming. 25 U.S.C. §
6 2710(d)(7)(B)(vii)).

7 24. In accordance with IGRA and as required to operate Class III gaming, the NGIC
8 Chairman has approved the Tribe’s gaming ordinance, by which the State of California permits the
9 gaming activities contained within the Tribe’s compact, and the Tribe’s compact is effective, but
10 only to the extent consistent with IGRA.

11 25. IGRA’s Class III gaming compact requirement offers states limited power to
12 negotiate with tribes regarding certain aspects of Class III gaming—and only Class III gaming—
13 that directly relate to the operation of that activity. *Id.*, at § 2710(d)(3)(C). It provides:

14 (C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions
15 relating to— (i) the application of the criminal and civil laws and regulations of the Indian
16 tribe or the State that are directly related to, and necessary for, the licensing and regulation
17 of such activity; (ii) the allocation of criminal and civil jurisdiction between the State and
18 the Indian tribe necessary for the enforcement of such laws and regulations; (iii) the
19 assessment *by the State* of such activities *in such amounts as are necessary to defray the*
20 *costs of regulating such activity*; (iv) taxation by the Indian tribe of such activity in
amounts comparable to amounts assessed by the State for comparable activities; (v)
remedies for breach of contract; (vi) standards for the operation of such activity and
maintenance of the gaming facility, including licensing; and (vii) *any other subjects that*
are directly related to the operation of gaming activities.

21 *Id.* at § 2710(d)(3)(C) (emphasis added).

22 26. Congress recognized the historical tensions extant between Indian tribes and states
23 over governmental authority, jurisdiction, taxation, and related matters, and expressly forbade
24 States from usurping the compact process to impose taxes upon Indian tribes, which federal law
25 otherwise prohibits. The Act states in unambiguous terms:

26 Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this
27 subsection [regarding regulatory costs], *nothing in this section shall be interpreted as*
conferring upon a State or any of its political subdivisions authority to impose any tax, fee,

1 *charge, or other assessment upon an Indian tribe or upon any other person or entity*
2 *authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter*
3 *into the negotiations described in paragraph (3)(A) based upon the lack of authority in such*
4 *State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.*

4 *Id.* at 2710(d)(4).

5 27. IGRA further permits Indian tribes to enter into casino-related agreements with
6 third parties but strictly subject to the NIGC Chairman’s approval and upon the satisfaction of
7 certain conditions listed in IGRA and as implemented within certain NIGC and Interior
8 Department regulations.

9 28. IGRA and NIGC regulations expressly forbid unapproved management contracts
10 and render them void *ab initio*. NIGC regulation 25 CFR 502.15 defines management contract as
11 “any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or
12 between a contractor and a subcontractor if such contract or agreement provides for the
13 management of all or part of a gaming operation.”

14 29. The NIGC has issued guidance on what kinds of agreements contain management-
15 like terms and therefore require federal approval. NIGC Bulletin 94-5 dated October 14, 1994
16 provides that “[m]anagement encompasses many activities (e.g., planning, organizing, directing,
17 coordinating, and controlling). Engaging in any one of such activities with respect to all or part of
18 a gaming operation constitutes management for the purpose of determining whether any contract
19 or agreement for the performance of such activities is a management contract that requires
20 approval.”

21 30. NIGC regulation 25 CFR 533.7 explains that management contracts “that have not
22 been approved by the Chairman in accordance with the requirements of part 531 of this chapter
23 and this part, *are void*.” (emphasis added).

24 31. IGRA requires that Indian tribes hold the “sole proprietary interest” in gaming
25 operations on tribal lands. (25 USC Sec. 2710(2)(A)). Therefore, although and Indian tribe may
26 contract for the management of its gaming operations, it may not give away or sell all or part of a
27 gaming operation itself. A tribal casino, under IGRA, must be owned by the tribe itself. The

1 overarching purpose of IGRA and the “sole proprietary interest” rule is that “the Indian tribe is the
2 primary beneficiary of the gaming operation[.]” 25 USC Sec. 2702(2). While the NIGC has never
3 published a final rule or regulation defining “sole proprietary interest,” it did publish a draft
4 regulation in 2018 to be added to 25 CFR Part 573. This draft regulation states that the Chair of
5 the NIGC may take into account whether a third party receiving revenue from the gaming
6 operation provided any service or asset to the gaming operation, whether the tribe is the primary
7 beneficiary of the gaming revenue, and the amount of gaming revenue paid to a third party.

8 32. The NIGC Office of General Counsel has issued several advisory opinions further
9 delineating the bounds of the “sole proprietary interest” rule. Those opinions generally consider
10 the third party’s compensation in light of the services provided and in comparison to the tribe’s
11 own casino income or profits, the term of the relationship or how long the compensation is
12 effective (by way of comparison, IGRA’s maximum management agreement term is seven years),
13 and the third party’s right to control all or any aspect of the tribe’s gaming activities.

14 33. Pursuant to the terms of the ISA, the Tribe is required to pay exorbitant amounts of
15 gaming revenue to Amador County and related agencies (more than \$12 million annually) that
16 greatly exceed the minimal services Amador County (and those related agencies) provides to the
17 Tribe and its Casino. The massive overpayment by the Tribe for the services provided by Amador
18 County, as described in more detail below, constitutes a violation of the “sole proprietary interest”
19 requirement of IGRA, because, due to the excessive payments, the Tribe is no longer the primary
20 beneficiary of its own gaming operation.

21 **C. The Tribal-State Gaming Compact (1999-2004)**

22 34. On or about September 10, 1999, the Tribe entered into a compact with the State of
23 California (the “1999 Compact”), which the Secretary affirmatively approved by letter to the Tribe
24 dated May 5, 2000. Among other things, the 1999 Compact provided that the Tribe would have
25 the right to operate a Class III gaming facility with up to 2,000 gaming machines.

26 35. The parties amended the 1999 Compact in 2004 (the “2004 Compact
27 Amendment”), which required for the first time, among other things, that the Tribe enter into an

1 intergovernmental agreement with Amador County to address the actual and attributable impacts
2 of any planned Tribal casino project. The 2004 Compact Amendment also lifted the cap set forth
3 in the 1999 Compact of 2,000 gaming machines, allowing the Tribe the right to have a casino with
4 an unlimited number of gaming machines.

5 36. The 2004 Compact Amendment requires an intergovernmental agreement to
6 address (A) the mitigation of certain significant off-reservation impacts to air, water, traffic, and
7 other matters, “where such effect is attributable, in whole or in part, to the Project ...” (10.8.8(i)),
8 (B) provisions relating to compensation for law enforcement, fire protection, emergency medical
9 and related services provided by the County or City of Ione “to the Tribe for the purposes of the
10 Tribe’s Gaming Operation as a consequence of the Project” (*Id* at 10.8.8(ii)), (C) reasonable
11 compensation for programs designed to address gambling addiction, and (D) mitigation of any
12 effect on public safety attributable to the Project, including any compensation to the County and
13 the City of Ione *as a consequence thereof*.

14 37. The Tribe requested but the Secretary did not approve the 2004 Compact
15 Amendment. Rather, pursuant to IGRA, the Secretary allowed 45 days to elapse following the
16 Tribe’ approval request, and the 2004 Compact Amendment took apparent effect through the so-
17 called “deemed approval” process: IGRA provides that “[i]f the Secretary does not approve or
18 disapprove a compact described in subparagraph (A) before the date that is 45 days after the date
19 on which the compact is submitted to the Secretary for approval, the compact shall be considered
20 to have been approved by the Secretary, but only to the extent the compact is consistent with the
21 provisions of this chapter.” 25 U.S.C. § 2710(d)(8)(C).

22 **D. The ISA between the Tribe and Amador County**

23 38. Pursuant to IGRA, the 1999 Compact, and the 2004 Compact Amendment, the
24 Tribe was authorized to develop a Class III gaming casino with an unlimited number of gaming
25 devices. In approximately 2005, the Tribe proposed to develop a 328,521 square-foot Class III
26 gaming casino and entertainment facility, with approximately 2000 Class III gaming devices and
27 80 table games, with support offices and facilities, and restaurant, food court, lounge, shopping

1 and entertainment areas.

2 39. In approximately 2007, the Tribe and the County entered into negotiations about a
3 potential intergovernmental services agreement which would, among other things, provide for
4 compensation from the Tribe to the County, purportedly in connection with the mitigation of
5 various impacts including those related to traffic, water resources, fire protection, emergency
6 medical services, and law enforcement.

7 40. Although the parties engaged in lengthy negotiations over the terms of such an
8 agreement—and even reached agreement on the terms of a proposed agreement on multiple
9 occasions—the County’s Board of Supervisors did not approve the form or terms of agreement
10 that was presented to the Board for approval at the conclusion of negotiations.

11 41. Between January and March 2008, two separate versions of a proposed agreement
12 were presented to the Board of Supervisors for approval. In each instance, the Board deadlocked,
13 with two of its five members voting to approve the agreement, two members voting to disapprove
14 it, and one member recusing himself.

15 42. After the County failed to honor its agreement to approve the agreement that had
16 been negotiated, and in accordance with applicable provisions of the 1999 Compact and the 2004
17 Compact Amendment, the Tribe was forced to initiate an arbitration proceeding in an effort to
18 finalize the terms of an intergovernmental services agreement referenced in the 2004 Compact
19 Amendment. To that end, the Tribe submitted to the arbitrator a version of the agreement nearly
20 identical in substance to what had previously been presented to the County Board of Supervisors,
21 which contained assessments the County insisted were required to mitigate actual expected
22 impacts of the Casino, as the size and scope of the Casino was then contemplated. Pursuant to the
23 procedure outlines in the 2004 Compact Amendment, the Tribe asked the arbitrator to issue an
24 award declaring that the agreement submitted by the Tribe be declared the effective agreement
25 between the Tribe and the County. The County did not affirmatively participate in the arbitration
26 proceeding, and it did not submit a competing form of agreement.

27 43. On June 11, 2008, the arbitrator issued a “Decision and Award” stating that the

1 proposed form of agreement submitted by the Tribe “is declared to be...the Agreement between
2 the Tribe and the County, as to those matters within the scope of Section 10.8.8 of the Compact.”
3 The version of the agreement approved by the arbitrator is hereafter referred to as the “ISA.”

4 44. Among other things, the ISA provides that it “will take effect immediately upon
5 execution by both parties...” ISA, § 8(a). The County, however, never executed the ISA, and the
6 Board of Supervisors has never approved or ratified it. Furthermore, neither the County nor
7 Plaintiff has ever moved to confirm the arbitration award as a judgment in either federal or state
8 court. The ISA has never been reviewed by the NIGC or Interior Department for legal sufficiency.

9 45. The ISA purports to require the Tribe to pay millions of dollars per year “for
10 mitigation of off-site impacts expected to result from the proposed gaming facility.” ISA, at p. 2.
11 At the time the ISA purportedly went into effect (i.e., June 2008), the Tribe expected that the
12 Casino would immediately be constructed and would consist of a “gaming and entertainment
13 facility of no more than 260,000 square feet,” with 950 slot machines and 20 gaming tables. ISA,
14 Exhibit A (p. 1).

15 46. In accordance with the purported requirements of the ISA, the Tribe spent millions
16 of dollars on the construction of various infrastructure and other mitigation measures. These
17 expenditures amount to millions of dollars, including the construction of an oversized water
18 treatment facility, a new jail facility (based on significant renovations to an existing facility), two
19 new fire stations, and new roads and traffic signals.

20 47. In addition to the construction of infrastructure and related mitigation expenses, the
21 ISA purports to require the Tribe to spend millions of dollars per year in fees, purportedly in
22 connection with alleged impacts to traffic, fire and medical services, and law enforcement. Among
23 other things, solely in connection to purported impacts to law enforcement, the ISA requires to
24 Tribe to pay an annual payment in excess of approximately \$3.4 million, with a total annual
25 assessment in excess of approximately 12 million.

26 48. These unlawful assessments exceed by many orders of magnitude the amounts
27 necessary to mitigate any impacts actually caused by or associated with Casino operations. For

1 example, the Tribe now funds, by itself, approximately 66% of all amounts spent in the entire
2 County for fire protection services, and approximately 22% of the County’s total budget for public
3 safety. In fact, while the very basis for the assessments charged to the Tribe is supposed to relate
4 solely to mitigation of actual impacts attributable to the Casino, the County’s own budgets for
5 public services, including fire protection and law enforcement, have not increased. The only thing
6 that has increased since the Tribe started paying its assessments is the percentage of the County’s
7 overall budget for such services that is being covered by the Tribe. Tellingly, the County has
8 refused to provide the Tribe with information about the applicable “performance metrics” relating
9 to any actual impacts to public services attributable to the Casino, presumably because those
10 “performance metrics” will show that the Casino’s actual impacts are negligible. In fact, public
11 data available to the Tribe actually shows a decrease in calls to law enforcement since the Casino
12 began operating.

13 49. Furthermore, all of the above-described fees—which, as described below are
14 excessive and have no relationship to any impacts actually attributable to the Casino—escalate
15 every year by approximately 5 percent. Furthermore, although the ISA provides that the fees were
16 to commence only “six (6) months prior to the commencement of operations at the [Casino],” such
17 payments commenced more than a year in advance of the Casino’s opening in April 2019, as a
18 direct result of the County’s bad-faith litigation to delay and significantly increase the cost of the
19 construction of the Casino.

20 50. The ISA provides that it “will remain in effect for 20 years or until termination of
21 the Tribe’s Amended Compact with the State, whichever occurs first; provided, however, that if
22 the Tribes Amended Compact [the 2004 Compact Amendment] is replaced with another compact,
23 *then this Agreement shall remain in effect until replaced by a new agreement between the parties.*
24 ISA, § 8(a) (emphasis added). Pursuant to this provision—and given that the 2004 Compact
25 Amendment was terminated and replaced by the 2016 Compact (as defined and described
26 below)—if the ISA is effective at all, the parties are obligated to replace the ISA with a newly-
27 negotiated agreement that complies in all respects with federal and state law. Any contrary

1 interpretation of this provision would result in an absurd result—i.e., that the 2016 Compact
2 converted the term of the ISA from a maximum of 20 years to an indefinite term, with indefinite
3 escalators. It would also purport to usurp and/or restrict the State’s rights to negotiate compact
4 amendments or modifications with the Tribe—another absurd result that was clearly not intended.

5 51. The ISA also contains “Re-Opener Provisions” that entitle either party to re-
6 negotiate the provisions of the ISA in various circumstances, including where “there is a
7 significant change that directly or indirectly relates to the party’s expectations under [the
8 ISA]...that materially impacts that party; and...that...was not anticipated at the time of...the
9 Agreement.” ISA, § 5(a).

10 **E. The County’s Litigation to Challenge the Rancheria’s Status**

11 52. Despite the County’s entry years earlier into the 1983 and 1987 stipulated
12 judgements to treat the Buena Vista Rancheria as Indian country and as any other Indian
13 reservation, the County sued the Interior Department to invalidate the 2004 Amendment *on the*
14 *basis that* that Buena Vista Rancheria was not an Indian reservation and didn’t therefore qualify as
15 Indian lands eligible for gaming under IGRA.

16 53. The County willfully continued to pursue this litigation for many years *after* the
17 ISA purportedly became effective in June 2008—specifically, until March 2016 when the final
18 order was issued in the United States and Tribe’s favor. It was only then that the Tribe was finally
19 able to obtain project financing, on terms significantly less favorable that what it would otherwise
20 have been able to obtain years earlier. Thus, while the County now insists that the ISA became
21 effective in 2008 and remains effective—apparently into perpetuity—it actively attempted for
22 more than a decade to deprive the Tribe of its opportunity to take advantage of any benefits
23 available under the ISA. Had the County been successful in the above-described litigation, it
24 would have stripped the Rancheria of its standing as an Indian reservation, invalidated the 1999
25 Compact and 2004 Compact Amendment, and thereby deprived the Tribe of its right to pursue,
26 develop or operate the Casino.

27 54. In addition to the litigation, the County engaged in a variety of additional conduct

1 designed to frustrate the Tribe’s rights to pursue gaming on its lands. This conduct included
2 unreasonably delaying approval of the Tribe’s alcohol permitting, and unreasonable requirements
3 and withheld approvals of environmental permits relating to the construction and operation of the
4 Casino.

5 55. These efforts by the County delayed the Tribe’s casino financing and opening for
6 more than a decade. The County thus intentionally and directly caused the Tribe to suffer
7 hundreds of millions of dollars in lost revenues and attorneys’ fees, not to mention lost jobs,
8 governmental development, land acquisition, ability to capitalize on contract rights, and other
9 valuable benefits.

10 **F. The 2016 Compact Replaces the 2004 Compact Amendment**

11 56. On June 28, 2016, the State and Tribe executed the Amended Compact (the “2016
12 Compact”). On September 12, 2016, the California Legislature ratified the 2016 Compact when it
13 added Section 12012.76 to the California Government Code. *See* Cal. Gov’t Code § 12012.76(a).
14 This legislative enactment and express ratification gave the 2016 Compact the full force and effect
15 of state law, binding the Tribe (by contract) and all other parties subject to State law, including the
16 County.

17 57. The 2016 Compact, like its predecessor compacts, allows for an intergovernmental
18 services agreement to reasonably address the actual impacts of the casino project,. It requires an
19 agreement relative to the following matters:

20 “(1) Reasonable and timely mitigation of any Significant Effect on the Environment” [as
21 as related to air, water, traffic, and other matters, again] ... where such effect is attributable,
22 in whole or in part, to the Project unless the particular mitigation is infeasible, taking into
23 account economic, environmental, social, technological, or other considerations. (2)
24 Reasonable compensation for law enforcement, fire protection, emergency medical
25 services and any other public services, to the extent such services are to be provided by the
26 County and its special districts to the Tribe for the purposes of the Gaming Operation,
27 including the Gaming Facility, as a consequence of the Project. (3) Reasonable
28 compensation for programs designed to address gambling addiction. [and] (4) Reasonable
and feasible mitigation of any significant effect on public safety attributable to the Project,
including any reasonable compensation to the County as a consequence thereof, to the
extent such effects are not mitigated pursuant to subdivision (a)(2) above.

2016

1 2016 Compact, §11.7.

2 58. Thus, with respect to mitigation and compensation for casino impacts, the 2016
3 Compact requires both causation and proportionality. In other words, if the casino project
4 legitimately causes an off-reservation condition, such as traffic or crime (*i.e.*, if a true impact
5 exists), the ISA purports to require the Tribe to reasonably mitigate or reasonably compensate the
6 County for such impact, consistent with the requirements of the parallel State Mitigation Fee Act.

7 59. The Secretary did not affirmatively approve the 2016 Compact. Rather, like the
8 2004 Compact Amendment before it, the Secretary did not approve or disapprove the 2016
9 Compact and the document became effective under the “deemed approved” method described
10 above—to the extent consistent with IGRA.

11 **G. The Finance and Construction of the Casino Project**

12 60. The Tribe commenced the Casino financing process in 2004. Shortly thereafter,
13 the County challenged the Tribe’s compact, as described above, and the then-planned financing
14 slowed as a result and ultimately failed. The financing parties proposed borrowing less money to
15 construct the Casino, and the Tribe was forced to reconfigure the Casino project in anticipation of
16 limited borrowing capacity. This sequence repeated several times in attempted but failed
17 financing efforts in 2004-2005, 2008, 2010, 2013-2014 and 2015. The Tribe finally achieved a
18 successful financing in 2018, which commenced following a federal court’s 2016 final resolution
19 of the County litigation challenging the status of the Tribe’s reservation.

20 61. The Casino, as constructed and opened on April 19, 2019, is substantially
21 smaller—yet significantly more costly—than the “Project” identified in the ISA, all as a result of
22 the County’s bad-faith conduct, as alleged herein.

23 **H. The Project’s Minimal Impact (Relative to the ISA Assessments)**

24 62. The ISA, if it were effective, would provide an unlawful windfall for the County in
25 that the payments Plaintiff purportedly is required to make thereunder dramatically over-mitigate
26 the Casino's actual and verifiable impacts. The Casino that Plaintiff opened in April 2019 is
27 substantially smaller than the “Project” identified in the ISA. So while the ISA greatly over-

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1 mitigated even the casino project contemplated at the time of the ISA, it vastly and unlawfully
2 over mitigates the few and minor impacts created by the Casino that is now in existence. This
3 over-mitigation is demonstrated by, among other things, recent crime reports and statistics
4 evidencing an apparent decrease in the area's crime rate since the Casino became operational, a
5 recent traffic study showing traffic to exist at just over 50% of what the ISA anticipated, and
6 statistical analysis that shows the need for fire and emergency services attributable to the operation
7 of the Casino, as described in greater detail above, pales in comparison to the massive assessments
8 that the Tribe is purportedly required to pay for these services, including its funding of an entire
9 fire station (and related personnel and equipment) at a cost of nearly \$4 million per year (again,
10 more than 66% of the County-wide spend on fire-related services). In short, this verified over-
11 mitigation (which only becomes more severe with each passing year of increases) is unreasonable,
12 unlawful, and without any nexus whatsoever to actual Casino operations or impacts.

13 63. In addition, Amador County has failed to allocate or expend ISA payments as
14 contemplated under the ISA and, not surprisingly, it has failed to properly account for the use of
15 such funds, despite the express requirement of the 2016 Compact to account for such funds. These
16 failures have been documented by a number of independent investigations by qualified auditors,
17 including a formal audit commissioned by the County itself. These failures evidence and
18 constitute willful violations by the County of the clear requirements of the State Mitigation Fee
19 Act. *See* Cal. Gov. Code § 66000, *et seq.* Again, this issue is exacerbated by the County's
20 steadfast refusal to produce "performance metric" information to the Tribe relating to the Casino's
21 actual impact on public services.

22 64. As part of the Tribe's responsibility to carefully track all proceeds of its bond
23 financing, to monitor the use of all Casino revenues as required under its bond Indenture and
24 related Notes, as well as fulfilling its fiduciary obligations as a tribal government, the Tribe sought
25 assistance in auditing the County's use of purported ISA mitigation payments. The Tribe retained
26 the outside accounting firm of Moss Adams to perform an independent review of ISA payments
27 and related reporting by the County. The Moss Adams Report reveals significant issues regarding

1 the County's use and accounting of ISA funds. Because the Tribe's ISA payments are not—and
2 cannot lawfully be—a tax and are instead intended to mitigate the actual impacts of Casino
3 construction and operation, all ISA funds must be spent on actual mitigation or refunded to the
4 Tribe. This is clearly not how the County is using the funds at issue.

5 65. Recently, as a result of the County's unlawful assessments against the Tribe, the
6 Buena Vista Gaming Authority (the "Gaming Authority"), recently received a Notice of Concern
7 from the Buena Vista Gaming Commission (the "Gaming Commission"), dated April 9, 2020.
8 The Notice of Concern expresses serious concern over the ISA's lawfulness for various reasons.
9 However, the Notice indicates a serious and immediate concern merely because the County's ISA
10 payments substantially exceed (by more than three times and growing) the Tribe's own casino
11 income. By way of comparison, if the County were lawfully permitted to tax the Tribe's Casino
12 income, the ISA payments would amount to a tax rate far exceeding any reasonable corporate tax.
13 Further, certain non-payment provisions (e.g., an outright prohibitions against class II gaming, a
14 limitation on the number of gaming machines, and the control of alcohol service) within the ISA
15 raise a grave question about whether the ISA constitutes an agreement for the illegal
16 "management" of a tribal gaming facility under IGRA.

17 **I. Background of the Immediate Dispute**

18 66. As of the date of this pleading, Defendants refuse to acknowledge the illegality and
19 invalidity of the ISA, and its inherent unfairness to Plaintiff. Instead, the County insists on
20 collecting the unlawful and exorbitant fees from Plaintiff. For example, on July 2, 2020, the
21 County sent a letter to Plaintiff demanding an additional payment of approximately \$3.4 million,
22 purportedly for law enforcement mitigation that the County asserts has become due since April
23 2019, despite the fact that the County still holds millions of dollars in unspent funds obtained from
24 prior assessments the Tribe paid in 2018 and 2019.

25 67. Accordingly, despite its best efforts to negotiate a new agreement that adheres to
26 the legal requirements of IGRA and other applicable law, Plaintiff has no choice but to initiate this
27 action.

1 engage in Class II gaming operations, restricts the service of alcoholic beverages and limits the
2 number of gaming machines, the ISA violates IGRA's prohibition on management contracts by a
3 third party (here, the County) of all or part of a gaming operation and, because it has not been
4 approved by the NIGC, is thus void *ab initio*.

5 74. Plaintiff is informed and believes, and thereon alleges, that Defendant disputes
6 Plaintiff's contentions, and that Defendant further contends that the County not only believes the
7 ISA is valid and enforceable, but that its terms bind the parties in perpetuity.

8 75. Plaintiff has no adequate remedy at law and desires a judicial determination of the
9 respective rights, duties and interests of the parties in accord with the contentions set forth herein.
10 A prompt adjudication of this controversy is necessary and proper at this time so that the parties
11 may ascertain their respective rights, duties and interests under the ISA and applicable federal and
12 state law.

13 76. Specifically, Plaintiff desires a judicial declaration that the ISA is invalid and
14 enforceable because, among other reasons,

15 (a) violates the terms of the 2004 Compact Amendment and/or the 2016 Compact that
16 prohibit Defendants from imposing taxes upon Plaintiff, especially those that exceed the
17 amount necessary to mitigate the actual impacts of Casino operations;

18 (b) violates the provisions of IGRA and federal law that prohibit Defendants from
19 imposing taxes upon Plaintiff, especially those that exceed the amount necessary to
20 mitigate the actual impacts of Casino operations;

21 (c) violates IGRA's requirement that tribes retain the sole proprietary interest in their
22 casino revenues;

23 (d) constitutes an unlawful tax upon an Indian tribe by the County because it infringes on
24 tribal sovereignty and

25 (e) violates IGRA's prohibition on unapproved management contracts that involve the
26 management by a third party (here, the County) of all or part of a gaming operation.

27 77. Plaintiff intends to seek a preliminary injunction from this Court, if necessary, in

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1 order to avoid irreparable harm that will be suffered if the County is allowed to continue to insist
2 that the ISA is effective and to insist on the collection of exorbitant and unlawful fees and
3 assessments.

4 WHEREFORE, Plaintiff seeks judgment as set forth below.

5 **SECOND CAUSE OF ACTION**

6 **(Declaratory Relief – the ISA is Otherwise Invalid and Unenforceable)**

7 78. Plaintiff incorporates by reference as though fully set forth herein the allegations
8 contained in Paragraphs 1 through 77 of this Complaint.

9 79. In addition to the controversy that exists over whether the ISA is invalid and
10 unenforceable because it violates multiple tenets of federal law, an actual controversy has also
11 arisen and also now exists between Plaintiff, on the one hand, and Defendants, on the other hand,
12 regarding whether the ISA is invalid and unenforceable under applicable State law.

13 80. As alleged above, Plaintiff asserts that is invalid and enforceable because, among
14 other reasons, (1) it violates the requirements of the State Mitigation Fee Act and the California
15 Constitution’s prohibition on unauthorized tax assessments, (2) it was never validly executed or
16 approved in accordance with its terms and/or the requirements of California law and it thus never
17 became a valid, binding agreement, (3) it lacks mutuality because the County’s counter-
18 obligations were illusory in that, among other reasons, at the time the ISA purportedly became
19 effective, Amador County was actively pursuing litigation against Plaintiff’s reservation status,
20 asserting that the Tribe was thus not even eligible to pursue the Casino project in the first place.

21 81. Plaintiff is informed and believes, and thereon alleges, that Defendant disputes
22 Plaintiff’s contentions, and that Defendant further contends that the County not only believes the
23 ISA is valid and enforceable, but that its terms bind the parties in perpetuity.

24 82. Plaintiff has no adequate remedy at law and desires a judicial determination of the
25 respective rights, duties and interests of the parties in accord with the contentions set forth herein.
26 A prompt adjudication of this controversy is necessary and proper at this time so that the parties
27 may ascertain their respective rights, duties and interests under the ISA and applicable federal and

1 state law.

2 83. Specifically, Plaintiff desires a judicial declaration that the ISA is invalid and
3 enforceable because, among other reasons,

4 (a) it violates the requirements of the State Mitigation Fee Act;

5 (b) it violates the California Constitution's prohibition on unauthorized tax assessments;

6 (c) it was never validly executed or approved in accordance with its terms and/or the
7 requirements of California law and it thus never became a valid, binding agreement (to
8 the extent necessary, this action thus constitutes a petition to vacate the AAA
9 arbitration award issued on June 11, 2008); and

10 it is an invalid illusory agreement, lacking mutuality, as required under applicable law.

11 84. Plaintiff intends to seek a preliminary injunction from this Court, if necessary, in
12 order to avoid irreparable harm that will be suffered if the County is allowed to continue to insist
13 that the ISA is effective and to insist on the collection of exorbitant and unlawful fees and
14 assessments.

15 WHEREFORE, Plaintiff seeks judgment as set forth below.

16 **THIRD CAUSE OF ACTION**

17 **(An Accounting)**

18 85. Plaintiff hereby incorporates and realleges Paragraphs 1 through 84 of this
19 Complaint as though fully set forth herein.

20 86. As alleged above, the County has failed not only to expend the funds collected
21 from Plaintiff under the ISA, it has failed to properly account for the manner in which said funds
22 have been spent.

23 87. Accordingly, Plaintiff seeks the equitable remedy of an accounting in order to
24 determine the extent of the County's unlawful conduct and the associated remedies available to
25 Plaintiff.

26 WHEREFORE, Plaintiff seeks judgment as set forth below.

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FOURTH CAUSE OF ACTION

(Rescission)

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3 88. Plaintiff hereby incorporates and realleges Paragraphs 1 through 87 of this
4 Complaint as though fully set forth herein.

5 89. In the event that the ISA is determined to be valid, enforceable and binding on
6 Plaintiff, the ISA should be rescinded in accordance with the provisions of California Civil Code
7 section 1689. Among other things, as alleged above, at the time the ISA was declared effective,
8 Plaintiff and the County were both mistaken about the size and scope of the Casino project—a fact
9 material to Plaintiff’s participation in the negotiation and purported formation of the ISA.

10 90. In the alternative, to the extent the County was not mistaken about the size and
11 scope of the Casino project or had superior information about that issue, the County withheld such
12 information from Plaintiff and used that information in order to induce Plaintiff to take the actions
13 described herein.

14 91. Additionally, Plaintiff was mistaken about the nature and extent of the County’s
15 intended efforts to undermine any benefit the Tribe might have derived from the ISA by seeking to
16 invalidate the Tribe’s standing as a federally recognized Indian tribe.

17 92. Accordingly, Plaintiff seeks rescission of the ISA, as well as all associated damages
18 and other remedies available under applicable law.

19 WHEREFORE, Plaintiff seeks judgment as set forth below.

FIFTH CAUSE OF ACTION

(Breach of the Covenant of Good Faith and Fair Dealing)

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22 93. Plaintiff hereby incorporates and realleges Paragraphs 1 through 92 of this
23 Complaint as though fully set forth herein.

24 94. By taking the actions herein alleged, including without limitation the pursuit of
25 years of litigation that was specifically designed to deprive Plaintiff’s reservation of its standing as
26 a federally recognized Indian reservation, Defendants intentionally violated Plaintiff’s contractual
27 rights under the ISA and deprived Plaintiff from obtaining the full value of the benefits intended

1 under that agreement, to the extent it is deemed valid.

2 95. Plaintiff, for its part, did all of the things required of it under the ISA, except as
3 waived or excused by Defendants, either expressly or by conduct.

4 96. As a result of Defendants' breaches, Plaintiff is entitled to, among other remedies, a
5 termination of the ISA, to the extent it is adjudged to be otherwise valid and enforceable.

6 WHEREFORE, Plaintiff seeks judgment as set forth below.

7 **SIXTH CAUSE OF ACTION**

8 **(Specific Performance)**

9 97. Plaintiff hereby incorporates and realleges Paragraphs 1 through 96 of this
10 Complaint as though fully set forth herein.

11 98. In the event that the ISA is determined to be valid, enforceable and binding on
12 Plaintiff, the terms of the ISA require, as a result of the fact that the 1999 Compact and 2004
13 Compact Amendment were terminated and replaced with the 2016 Compact, that Plaintiff and the
14 County negotiate in good faith on the terms of a new agreement to replace the ISA. *See* ISA, §
15 8(a); *see also* ISA §§ 5(a) and 5(d). Such "good faith" negotiations must necessarily recognize the
16 express requirements of applicable law that allow the County to assess the Tribe only for
17 mitigation of actual impacts of Casino operations.

18 99. Accordingly, Plaintiff seeks specific performance of the requirement set forth in
19 sections 8(a), 5(a) and 5(d) of the ISA in the form of an order from this Court requiring the parties
20 to negotiate in good faith on the terms of a replacement intergovernmental services agreement that
21 complies with the provisions of the 2016 Compact, as well as all applicable requirements of state
22 and federal law.

23 WHEREFORE, Plaintiff seeks judgment as set forth below.

24 **SEVENTH CAUSE OF ACTION**

25 **(Violation of Cal. Bus. & Prof. Code § 17200, *et seq.*)**

26 100. Plaintiff hereby incorporates and realleges Paragraphs 1 through 99 of this
27 Complaint as though fully set forth herein.

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1 G. To the extent the ISA is not deemed void or unenforceable, for a judgment ordering
2 Defendants to negotiate in good faith with Plaintiff, as required under sections 8.4(a), 5(a) and
3 5(d) of the ISA;

4 H. For injunctive and restitutionary relief available under California Business &
5 Professions Code section 17200, *et seq.*;

6 I. For attorneys' fees, as set forth in section 4(f) of the ISA;

7 J. Costs of suit;

8 K. And for such other and further relief as the Court may deem proper.
9

10 DATED: July 9, 2020

LEWIS BRISBOIS BISGAARD & SMITH LLP

11
12 By: /s/ John S. Poulos

13 JOHN S. POULOS

14 Attorneys for Plaintiff, THE BUENA VISTA
15 RANCHERIA OF ME-WUK INDIANS, A
16 FEDERALLY RECOGNIZED INDIAN TRIBE
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JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff, THE BUENA VISTA RANCHERIA OF ME-WUK INDIANS, A FEDERALLY RECOGNIZED INDIAN TRIBE demands a trial by jury on all issues so triable.

DATED: July 9, 2020

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ John S. Poulos
JOHN S. POULOS
Attorneys for Plaintiff, THE BUENA VISTA
RANCHERIA OF ME-WUK INDIANS, A
FEDERALLY RECOGNIZED INDIAN TRIBE