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

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

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

Plaintiff,

vs.

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

Defendants.

CASE NO. 2:20-CV-01383-MCE-AC

STIPULATION AND ORDER ALLOWING PLAINTIFF TO FILE FIRST AMENDED COMPLAINT

WHEREAS, on July 9, 2020, THE BUENA VISTA RANCHERIA OF ME-WUK INDIANS ("Plaintiff") filed its 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 (6) unfair business practices against defendants AMADOR COUNTY, CALIFORNIA and THE AMADOR COUNTY BOARD OF SUPERVISORS (together, "Defendants"); and

WHEREAS, Plaintiff, through its counsel of record, has met and conferred with Defendants, through their counsel of record, in connection with Plaintiff's intent to file a First Amended Complaint in this matter; and

WHEREAS, a copy of Plaintiff's proposed First Amended Complaint, which has previously been circulated to, and reviewed by Defendants' counsel, is attached hereto as Exhibit A.

IT IS HEREBY STIPULATED, by and between Plaintiff and Defendants, by and through their respective counsel, that:

1. Plaintiff should be granted leave to file its First Amended Complaint, a copy of which is attached hereto as Exhibit A;
2. For purposes of any statute of limitations, Plaintiff shall be deemed to have filed the First Amended Complaint upon the filing of this stipulation, and Defendants in any event agree to the tolling of any unexpired statute of limitations applicable to any claim set forth in the First Amended Complaint, as of the date of filing of this stipulation; and

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3. Defendants' pleading in response to Plaintiff's First Amended Complaint shall be due thirty days after the Court's order entered in connection with this stipulation.

IT IS SO STIPULATED.

DATED: February 1, 2021

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: */s/ Christopher R. Rodriguez*
Christopher R. Rodriguez
Attorneys for Plaintiff, THE BUENA VISTA RANCHERIA OF ME-WUK INDIANS, A FEDERALLY RECOGNIZED INDIAN TRIBE

DATED: February1, 2021

NIELSEN MERKSAMER PARRINELLO GROSS & LEONI LLP

By: */s/ Christopher E. Skinnell*
Christopher E. Skinnell
Attorneys for Defendants AMADOR COUNTY, CALIFORNIA; and THE AMADOR COUNTY BOARD OF SUPERVISORS

ORDER

The Court having reviewed the foregoing Stipulation, and good cause appearing therefore:

IT IS HEREBY ORDERED that Plaintiff, THE BUENA VISTA RANCHERIA OF ME-WUK INDIANS, A FEDERALLY RECOGNIZED INDIAN TRIBE, is granted leave to file its First Amended Complaint, a copy of which is attached hereto as Exhibit A.

IT IS ALSO ORDERED that Defendants AMADOR COUNTY, CALIFORNIA's and THE AMADOR COUNTY BOARD OF SUPERVISORS' responsive pleading shall be due thirty days after the date of this Order.

IT IS FURTHER ORDERED that the First Amended Complaint for Damages is deemed filed as of the date this Order is transmitted via the CM/ECF system.

IT IS SO ORDERED.

Dated: _____, 2021

_____
Morrison C. England, Jr.
United States District Judge

EXHIBIT A

LEWIS BRISBOIS BISGAARD & SMITH LLP
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Attorneys for Plaintiff, THE BUENA VISTA RANCHERIA OF ME-WUK INDIANS, A FEDERALLY RECOGNIZED INDIAN TRIBE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

THE BUENA VISTA RANCHERIA OF ME-WUK INDIANS, a federally recognized Indian Tribe, Plaintiff, vs. AMADOR COUNTY, CALIFORNIA; and THE AMADOR COUNTY BOARD OF SUPERVISORS, Defendants.	CASE NO. 2:20-CV-01383-MCE-AC **FIRST AMENDED 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, (6) UNFAIR BUSINESS PRACTICES, AND (7) BREACH OF COMPACT** JURY TRIAL DEMANDED

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

THE NATURE OF THE ACTION

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 unenforceable 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

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

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

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

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

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

PARTIES

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

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

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

JURISDICTION AND VENUE

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

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

IV. FACTS AND ALLEGATIONS

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

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

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

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

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

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

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

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

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

B. The Indian Gaming Regulatory Act

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

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

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

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

Id. at 715.

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

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

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

Id. at 715-716.

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

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

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

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

> (C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to— (i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity; (ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations; (iii) the assessment *by the State* of such activities *in such amounts as are necessary to defray the 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*.

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

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

> Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this 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,*

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

Id. at 2710(d)(4).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. The ISA between the Tribe and Amador County

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

and entertainment areas.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

E. The County's Litigation to Challenge the Rancheria's Status

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

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

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

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

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

F. The 2016 Compact Replaces the 2004 Compact Amendment

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

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

> "(1) Reasonable and timely mitigation of any Significant Effect on the Environment" [as related to air, water, traffic, and other matters, again] … where such effect is attributable, in whole or in part, to the Project unless the particular mitigation is infeasible, taking into account economic, environmental, social, technological, or other considerations. (2) Reasonable compensation for law enforcement, fire protection, emergency medical services and any other public services, to the extent such services are to be provided by the County and its special districts to the Tribe for the purposes of the Gaming Operation, including the Gaming Facility, as a consequence of the Project. (3) Reasonable 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

2016 Compact, §11.7.

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

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

G. The Finance and Construction of the Casino Project

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

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

H. The Project's Minimal Impact (Relative to the ISA Assessments)

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

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

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

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

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

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

I. Background of the Immediate Dispute

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

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

68. On July 9, 2020, concurrently with the filing of Plaintiff's initial complaint in this matter, and out of an abundance of caution, Plaintiff submitted a Tort Claims Act Notice to Defendant specifying claims for money damages that Plaintiff has to assert against the County. On or about August 24, 2020, Defendant notified Plaintiff that the specified claims for money damages were rejected by the Amador County Board of Supervisors.

FIRST CAUSE OF ACTION

(Declaratory Relief – the ISA Violates IGRA)

69. Plaintiff incorporates by reference as though fully set forth herein the allegations contained in Paragraphs 1 through 68 of this Complaint.

70. This is a declaratory relief action pursuant to 28 U.S.C. section 2201, for the purpose of determining a question of actual controversy between the parties concerning their rights and duties under federal law—specifically whether the ISA is invalid and unenforceable because it violates IGRA and the Tribe's gaming ordinance.

71. An actual controversy has arisen and now exists between Plaintiff, on the one hand, and Defendants, on the other hand, regarding the enforceability of the ISA under IGRA and the Tribe's gaming ordinance.

72. As alleged above, Plaintiff asserts that the ISA is invalid and unenforceable in that it violates numerous requirements of IGRA. As alleged herein, the ISA purports to require Plaintiff to pay exorbitant fees and assessments that substantially exceed any conceivable connection to the tribal Casino's off-reservation impacts—and which exceed by more than three times the Tribe's own distributions from Casino revenues. Plaintiff asserts, therefore, that the ISA violates the 2004 Compact Amendment and/or the 2016 Compact, violates the provisions of IGRA that prohibit Defendants from imposing taxes upon Plaintiff, especially those that exceed the amount necessary to mitigate the actual impacts of Casino operations, constitutes an unlawful tax upon an Indian tribe by the County because it infringes on tribal sovereignty, and violates IGRA's requirement that tribes retain the sole proprietary interest in their casino revenues.

73. Plaintiff also asserts that, because the ISA purports to restrict Plaintiff's right to

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

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

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

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

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

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

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

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

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

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

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

WHEREFORE, Plaintiff seeks judgment as set forth below.

SECOND CAUSE OF ACTION

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

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

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

80. As alleged above, Plaintiff asserts that is invalid and unenforceable because, among other reasons, (1) it violates the requirements of the State Mitigation Fee Act and the California Constitution's prohibition on unauthorized tax assessments, (2) 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, (3) 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 Plaintiff's reservation status, asserting that the Tribe was thus not even eligible to pursue the Casino project in the first place.

81. Plaintiff is informed and believes, and thereon alleges, that Defendant disputes Plaintiff's contentions, and that Defendants further contend that the County not only believes the ISA is valid and unenforceable, but that its terms bind the parties in perpetuity.

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

state law.

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

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

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

(c) 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 (to the extent necessary, this action thus constitutes a petition to vacate the AAA arbitration award issued on June 11, 2008); and

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

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

WHEREFORE, Plaintiff seeks judgment as set forth below.

THIRD CAUSE OF ACTION

(An Accounting)

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

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

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

WHEREFORE, Plaintiff seeks judgment as set forth below.

FOURTH CAUSE OF ACTION

(Rescission)

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

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

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

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

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

WHEREFORE, Plaintiff seeks judgment as set forth below.

FIFTH CAUSE OF ACTION

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

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

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

under that agreement, to the extent it is deemed valid. Specifically, Defendants violated the rights of Plaintiff by willfully engaging in conduct specifically designed to frustrate and delay Plaintiff's financing, construction, opening and operation of its casino, including without limitation by proceeding in bad faith, and contrary to the provisions of binding court orders, the Compact, and (to the extent valid and enforceable) the ISA, with litigation against the federal government (and, in effect, Plaintiff itself) designed to deprive Plaintiff of its very right to conduct gaming activities on its Tribal lands.

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

96. As a result of Defendants' breaches, Plaintiff is entitled to, among other remedies, a termination of the ISA, to the extent it is adjudged to be otherwise valid and enforceable. In addition (or in the alternative), Plaintiff is entitled to damages in an amount to be determined at trial, which is well in excess of at least $250 million, including lost profits and excess costs, interest and finance charges.

WHEREFORE, Plaintiff seeks judgment as set forth below.

SIXTH CAUSE OF ACTION

(Specific Performance)

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

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

99. Accordingly, Plaintiff seeks specific performance of the requirement set forth in

sections 8(a), 5(a) and 5(d) of the ISA in the form an order from this Court requiring the parties to negotiate in good faith on the terms of a replacement intergovernmental services agreement that complies with the provisions of the 2016 Compact, as well as all applicable requirements of state and federal law.

WHEREFORE, Plaintiff seeks judgment as set forth below.

SEVENTH CAUSE OF ACTION

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

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

101. Defendants have engaged in unfair competition as defined by California Business and Professions Code, section 17200, et seq., in that they used unfair, unlawful, and/or fraudulent business practices in the manner described above, including but not limited to willfully violating IGRA and other requirements of federal and State law by assessing the Tribe for amounts far in excess of the amounts necessary to mitigate any actual impacts of Casino operations and by purposefully hindering the Tribe's rights to pursue gaming activities on its lands.

102. Plaintiff has lost money and/or property as a result of Defendants' unfair, unlawful, and/or fraudulent business practices.

103. As a result of Defendants' above-described unlawful, unfair, and/or fraudulent business practices, Plaintiff is entitled to injunctive and restitutionary relief, as provided by California Unfair Competition Law, including without limitation the difference between the amount of money Defendants have assessed against Plaintiff (approximately $27 million) and the maximum amount of money that Defendants could reasonably claim is necessary to mitigate the impacts of Plaintiff's casino on Amador County (no more than $2 million).

WHEREFORE, Plaintiff seeks judgment as set forth below.

EIGHTH CAUSE OF ACTION

(Breach of the Compact)

104. Plaintiff hereby incorporates and realleges Paragraphs 1 through 103 of this

Complaint as though fully set forth herein.

105. As herein alleged, by virtue of their conduct, Defendants are in violation of the requirements of the Compact between the Tribe, on the one hand, and the State of California, on the other hand, by purporting to require payments from the Tribe, in connection with the ISA, which is invalid and unenforceable, that substantially exceed any conceivable connection to the tribal casino's off-reservation impacts to Amador County.

106. By purporting to enforce the unlawful ISA, Defendants are therefore in violation of the Compact, in violation of IGRA, including without limitation IGRA's requirement that tribes retain the sole proprietary interest in their casino revenues and that casino management agreements obtain federal approval, in violation of state and federal constitutional provisions and laws that prohibit the imposition of taxes on Indian tribes, including without limitation IGRA and the California Mitigation Fee Act.

107. As a result of Defendants' breaches and unlawful conduct, Plaintiff has sustained damages in the amount of at least $25 million, which consists of the difference between the amount of money Defendants have assessed against Plaintiff (approximately $27 million) and the maximum amount of money that Defendants could reasonably claim is necessary to mitigate the impacts of Plaintiff's casino on Amador County (no more than $2 million).

WHEREFORE, Plaintiff seeks judgment as follows:

PRAYER FOR RELIEF

Wherefore, the plaintiff Buena Vista Rancheria of Me-Wuk Indians respectfully prays that this Court grant it the following relief:

A. A judgment declaring that the ISA is unenforceable for lack of mutual assent;

B. A judgment declaring that the ISA is void because its provisions violate federal and state law;

C. A judgment declaring that the ISA is invalid and unenforceable for lack of mutuality;

D. A judgment requiring the County to perform an accounting of all funds collected under the ISA;

E. To the extent the ISA is not deemed void or unenforceable, a judgment ordering the rescission of the ISA;

F. To the extent the ISA is not deemed void or unenforceable, an order that the ISA is terminated as a result of Defendants' breach of the covenant of good faith and fair dealing implied in the ISA;

G. To the extent the ISA is not deemed void or unenforceable, an award of damages in an amount to be determined at trial for Defendants' breach of the ISA;

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

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

J. For an award of damages in an amount to be determined at trial for Defendants' breach of the Compact and/or its violation of IGRA and the California Mitigation Fee Act;

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

L. Costs of suit;

M. And for such other and further relief as the Court may deem proper.

DATED: February __, 2021

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

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: February __, 2021

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