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 OF WESTERN MONO INDIANS and the BIG
 SANDY RANCHERIA ENTERTAINMENT
 AUTHORITY

10 **UNITED STATES DISTRICT COURT**
 11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
 12 **FRESNO DIVISION**

13 BIG SANDY RANCHERIA OF WESTERN
 14 MONO INDIANS and the BIG SANDY
 15 RANCHERIA ENTERTAINMENT
 AUTHORITY,

16 Plaintiffs,

17 v.

18 BROWNSTONE, LLC,

19 Defendant.

Case No.

**COMPLAINT FOR DECLARATORY
 RELIEF PURSUANT TO 18 U.S.C.
 §2201, ET SEQ.**

20
 21 1. This is a civil action brought pursuant to the Declaratory Judgment Act, 18 U.S.C. § 2201,
 22 et seq., by a federally recognized Indian tribe, and a wholly owned and controlled tribal entity, to
 23 invalidate and have declared void two illegal and unenforceable agreements with a non-Tribal entity
 24 that refused to comply with the federally- mandated licensing provisions required by the Indian
 25 Gaming Regulatory Act, 25 U.S.C. § 2701 et seq. (hereinafter "IGRA").

26 2. The Big Sandy Rancheria of Mono Wind Indians (hereinafter "Tribe"), and the Big Sandy
 27 Entertainment Authority, a tribal entity, seek a declaration from the Court invalidating agreements
 28 between the Tribe and Brownstone, LLC in that they violate key provisions of: (1) IGRA, (2) the
 29

1 Tribal-State Compact, (3) the Tribe's Gaming Ordinance, and (4) the Tribe's Gaming Regulations
2 and therefore create no enforceable contractual rights on the part of Brownstone against the Tribe, the
3 Big Sandy Rancheria Entertainment Authority (hereinafter the "Entertainment Authority"), or any
4 agents of the Tribe or the Entertainment Authority.

5
6 **JURISDICTION**

7 3. This court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §
8 1331 (federal question) in that this is a civil action arising under the Constitution and laws of the
9 United States because federal law creates the Tribe's causes of action and because the Tribe's right to
10 relief necessarily depends on the resolution of a substantial question of federal law as established in
11 the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2501, et seq.

12 **VENUE**

13 4. Venue in this action lies in this Court pursuant to 28 U.S.C. § 1391(b) and Local Rule
14 120(d) because "a substantial part of the events or omissions giving rise to the claim" in this action
15 occurred in Fresno County, located within this District.

16 **THE PARTIES**

17 5. Plaintiff the Big Sandy Band of the Western Mono Indians (hereinafter the "Tribe") is a
18 federally-recognized Indian tribe duly organized under the Constitution of the Big Sandy Band of
19 Western Mono Indians, as amended on March 28, 2005, (hereinafter the "Constitution"), and
20 possessing a government-to-government relationship with the United States. *See Indian Entities*
21 *Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs*, 74 Fed.
22 Reg. 40218 (Aug. 4, 2009). The Tribe adopted and approved the Constitution on February 21, 2000
23 and on April 1, 2004, through the Superintendent of the Central California Agency, an authorized
24 delegate, the Secretary of the Interior approved the Constitution. (True and correct copies of the
25 Constitution, the 2004 approval, and the 2005 Amendment are attached hereto as Exhibits A, B, and
26 C respectively.)

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3 6. Plaintiff the Big Sandy Entertainment Authority (hereinafter the “Entertainment
4 Authority”) is a wholly owned instrumentality of the Big Sandy Rancheria organized under Tribal
5 law as an authorized governmental agency. (A true and correct copy of the August 20, 2004 Tribal
6 Resolution creating the Entertainment Authority is attached hereto as Exhibit D.)

7 7. Defendant Brownstone, LLC is a Nevada limited liability corporation, and a subsidiary of
8 American Vantage Companies, Inc, a Nevada corporation.

9
10 **GENERAL ALLEGATIONS**

11 **I. The Application of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701, et seq.**

12 8. Congress enacted the Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. §§ 2701, et
13 seq. in the wake of the United States Supreme Court’s decision in *California v. Cabazon Band of*
14 *Mission Indians*, 480 U.S. 202 (1987), in which the Court recognized that states had no regulatory
15 authority over tribal gaming enterprises operating within Indian country.

16 9. Prior to Congress’ enactment of IGRA, there was no federal structure for Indian gaming.
17 Thus the stated purposes of IGRA include providing a legislative basis for the operation and
18 regulation of Indian gaming, protecting gaming as a means of generating revenues for the tribes,
19 encouraging economic development on Indian reservations, and protecting tribes and tribal gaming
20 enterprises from negative influences.

21 10. IGRA recognizes three (3) distinct classes of Indian gaming – Class I, Class II, and Class
22 III gaming – and establishes a different regulatory scheme for each class.

- 23 a. Class I Gaming is defined as traditional Indian gaming and social gaming for minimal
24 prizes. IGRA provides that all regulatory authority over Class I gaming shall be
25 vested exclusively with the Tribes leaving it free from any state or federal regulation.
26 (25 U.S.C. §§ 2703(b); 2710(a)(1).)
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1 b. Class II Gaming is defined as the game of chance commonly know as bingo (whether
2 or not electronic, computer, or other technological aids are used in connection
3 therewith) and if played in the same location as the bingo, pull tabs, punch boards, tip
4 jars, instant bingo, and other games similar to bingo. The definition also includes
5 games played exclusively against other players and not against the “house” or another
6 player acting as a “bank.” IGRA allows tribes to retain exclusive jurisdiction over
7 Class II gaming so long as the Indian gaming is conducted in a state that permits such
8 gaming for any purpose by any person organization or entity, and if the governing
9 body of the Indian tribe conducting Class II gaming adopts a gaming ordinance –
10 which must be approved by the Chairman of the National Indian Gaming Commission
11 – to regulate gaming within its territory. (25 U.S.C. §§ 2703(7)(A); 2710(a)(2).)

12 c. Class III Gaming includes all forms of gaming that are neither Class I nor Class II
13 gaming. Class III gaming includes games commonly played at a casino such as slot
14 machines, black jack, craps, roulette, house banked card games, wagering games and
15 electronic facsimiles of any game of chance. (25 U.S.C. § 2703(8).)

16
17 11. As set forth in the Congressional Declaration of Policy, the purpose of IGRA was to
18 provide a statutory basis for the regulation of gaming of an Indian tribe adequate to shield it from
19 organized crime and other corrupting influences, to ensure that the Indian tribe is the primary
20 beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by
21 both the operator and the players; and to establish an independent federal regulatory authority for
22 gaming on Indian lands, federal standards for gaming on Indian lands, and a National Indian Gaming
23 Commission.

24 12. The regulatory scheme for Class III – casino style – Indian gaming is comprehensive and
25 complex. Pursuant to section 2710(d) of IGRA, an Indian tribe may only conduct Class III gaming if:

26 a. The particular form of Class III gaming that the Indian tribe desires to conduct is
27 permitted in the state in which the gaming will occur;
28

1 b. The Indian tribe has adopted a Tribal Gaming Ordinance, which must be approved by
2 the Chairman of the National Indian Gaming Commission, to regulate the conduct of
3 gaming; and

4 c. The Tribe and the State in which the Tribe will conduct gaming operations have
5 negotiated and executed a Tribal-State Gaming Compact, which also must be
6 approved by the Secretary of the United States Department of the Interior.

7
8 13. The Tribal-State Gaming Compact gives the states an opportunity to negotiate limited
9 regulatory authority with regard to Indian gaming that prior to the passage of IGRA was entirely
10 lacking. The specific terms of a particular Tribal-State Gaming Compact determine the extent to
11 which state laws are either applicable within Indian country or are preempted by federal law.

12 14. In addition to requiring that Indian tribes wishing to conduct Class III gaming enact a
13 Tribal Gaming Ordinance and enter into a Tribal-State Gaming Compact, IGRA also sets specific
14 requirements and limitations as to what may be included in those necessary documents.

15 15. IGRA requires that a Tribal Gaming Ordinance must, among other things, make certain
16 that there is an adequate system that ensures that key individuals and entities associated with the
17 development and operation of Class III Indian gaming have undergone sufficient background
18 investigations and are properly licensed by the Indian tribe or an authorized Tribal Gaming Authority.
19 (25 U.S.C. ¶ 2710(b)(2)(F).)

20
21 16. Pursuant to IGRA, an individual or entity whose prior activities, criminal record,
22 reputation, habits and associations that may pose a threat to the public interest or to the effective
23 regulation of gaming, or create or enhance the danger of unsuitable, unfair, or illegal practices and
24 methods in relation to gaming activities cannot obtain a Tribal Gaming license and thus is not eligible
25 for employment or association with tribal gaming. (25 U.S.C. § 2710(b)(F)(ii)(II).)

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1 17. In addition to establishing specific requirements for Tribal Gaming Ordinances, IGRA
2 also specifies areas that may be properly addressed in the required Tribal-State Gaming Compact.
3 (25 U.S.C. § 2710(d)(3)(A).)

4 18. Pursuant to IGRA, a Compact is not required to, but may include provisions addressing:

- 5
- 6 a. The application of criminal and civil law and regulations of the Indian tribe or the
7 State that are directly related to, and necessary for, the licensing and regulation of such
8 activity (25 U.S.C. § 2710(d)(3)(C)(i));
- 9 b. The allocation of criminal and civil jurisdiction between the State and the Indian tribe
10 necessary for the enforcement of [Gaming] laws and regulations (25 U.S.C. §
11 2710(d)(3)(C)(ii));
- 12 c. Standards for the operation of gaming and maintenance of facilities including
13 licensing (25 U.S.C. § 2710(d)(3)(C)(vi)); and
- 14 d. Any other subjects that are directly related to the operation of gaming activities (25
15 U.S.C. § 2710(d)(3)(C)(vii).)

16

17 19. Section 2704 of IGRA established the National Indian Gaming Commission (hereinafter
18 “NIGC”)— a three-member body designated to exercise regulatory authority over Indian gaming.

19

20 20. IGRA grants the Chair of the NIGC specific authority, including among other things the
21 sole authority to approve tribal ordinances or resolutions “regulating class II and class III gaming (25
22 U.S.C. § 2705(a)(3); and (2).)

23 **II. The Tribal-State Gaming Compact Between The Big Sandy Rancheria and the State of**
24 **California.**

25 21. On September 10, 1999, pursuant to IGRA, the Tribe and the State of California executed
26 and entered into the “TRIBAL-STATE GAMING COMPACT Between the BIG SANDY BAND OF
27 WESTERN MONO INDIANS, a federally recognized Indian tribe, and the STATE OF
28

1 CALIFORNIA” (hereinafter the “Compact”). (A true and correct copy of the Compact is attached
2 hereto as Exhibit E.)

3
4 22. The Tribe submitted the Compact to the Secretary of the United States Department of the
5 Interior for approval on March 23, 2000. The Secretary of Interior – through then Assistant Secretary
6 Kevin Gover – approved the Compact on May 5, 2000. (A true and correct copy of the Assistant
7 Secretary’s approval is attached hereto as Exhibit F.)

8 23. The primary objectives of the Compact are to:

- 9
10 a. “Develop and implement a means of regulating Class III gaming . . . on the Tribe’s
11 Indian lands to ensure its fair and honest operation in accordance with IGRA, and
12 through the regulated Class III gaming, enable the Tribe to develop self sufficiency,
13 promote tribal economic development and generate jobs and revenues to support the
14 Tribe’s government and governmental services and programs” (Compact, Sec. 1.0(b));
15 and
16 b. “Promote ethical practices in conjunction with . . . gaming, through the licensing and
17 control of entities employed in, or providing goods and services to, the Tribe’s
18 Gaming Operation and protecting against the presence or participation of persons
19 whose criminal backgrounds, reputations, character, or associations make them
20 unsuitable for participation in gaming, thereby maintaining a high level of integrity in
21 tribal government gaming.” (Compact, Sec. 1.0(c).)

22 24. The licensing of individuals associated with the development or operation of gaming on
23 Indian lands is a critical component of the Compact. Thus, the Compact sets forth specific and
24 comprehensive licensing requirements. (Compact, Sec. 6.0.)

25 25. The Compact mandates several levels of licensing and establishes different classes of
26 licensees based on their connection to tribal gaming. Key among these classes are Gaming Resource
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1 Suppliers and Financial Sources, each of whom must comply with strict licensing requirements and
2 prerequisites before providing any services to the Tribe. (Compact, Secs. 6.4.5; 6.4.6.)

3 26. A Gaming Resource Supplier is any person or entity that directly, or indirectly, provides,
4 has provided, or is deemed likely to provide at least twenty-five thousand dollars (\$25,000.00) in
5 Gaming Resources during any 12 month period, or who has received at least twenty-five thousand
6 dollars (\$25,000.00) in any consecutive 12 month period. (Compact, Secs. 2.12; 6.4.5.)

7
8 27. Gaming Resources include, but are not expressly limited to, equipment, furniture,
9 gambling devices, ancillary gambling equipment and Class III gaming consulting services.
10 (Compact, Sec. 6.4.5.)

11 28. Pursuant to the Compact a Gaming Resource Supplier must be licensed by the Tribe's
12 Tribal Gaming Agency before providing any such resources. (Compact, Sec. 6.4.5.)

13 29. A Financial Source, as defined by the Compact, is any person, or entity, who extends
14 financing either directly or indirectly to the Tribal Gaming Facility or Gaming Operation. (Compact,
15 Sec. 6.4.6.)

16
17 30. Pursuant to the Compact, Financial Sources must, like Gaming Resource Suppliers, be
18 licensed by the Tribe's Tribal Gaming Agency before extending any funding to the Tribe or to the
19 Tribe's gaming enterprise, with minor exceptions. (Id.)

20 31. Section 6.4.6 of the Compact allows, but does not require, a Tribal Gaming Authority to
21 exclude the following entities, and only these entities, from the Financial Source licensing
22 requirements:

- 23
24 a. Federally or state regulated banks and savings and loans institutions;
- 25 b. Federally or state regulated lending institutions;
- 26 c. Agencies of the federal, state, or local governments; or

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1 d. Investors who, alone or in conjunction with others holds less than 10% of any
2 outstanding indebtedness evidenced by bonds issued by the Tribe.

3 32. To obtain a license as either a Gaming Resource Supplier or a Financial Source, Section
4 6.4.7 of the Compact requires that a business entity such as Brownstone must submit a formal
5 application for the entity and for:

6 a. Each individual officer and director of the company;

7 b. Each of its principal management employees, including any chief executive officer,
8 chief financial officer, chief operating officer, and general manager;

9 c. Each of its share holders who owns more than 10 percent of the shares of the
10 corporation, if a corporation; and

11 d. Each person or entity that alone or in combination with others, has provided financing
12 in connection with any gaming authorized by the Compact, if that person or entity
13 provided more than 10 percent of (1) start up capital; (2) operating capital over a 12-
14 month period; or (3) a combination thereof.

15 33. Prior to being licensed and after submitting an application, an entity seeking a Gaming
16 Resource Supplier or Financial Source license must submit to an intensive background investigation
17 to determine whether the applicant is suitable to hold a gaming license. (Compact, Sec. 6.4.8.)
18

19 34. A third requirement for applicants for prospective Gaming Resource Suppliers and
20 Financial Sources is that they must also submit to a State Certification process whereby the California
21 Gambling Control Commission ("CGCC") must independently determine whether the entity is
22 suitable for licensure under the California Gambling Control Act. (Compact, Sec. 6.5.6.)
23

24 35. The CGCC suitability determination must be completed before a Tribal Gaming Agency
25 may issue a Gaming Resource Supplier or Financial Source license. (Id.)
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1 36. A person who has not been found suitable for a license by the CGCC may not be licensed
2 by the Tribal Gaming Agency and thus cannot provide Gaming Resources or Financial Sources in
3 relation to tribal gaming. (Id.)

4 **III. The Big Sandy Rancheria Tribal Gaming Ordinance and Regulations**

5 37. On May 1, 2002, in compliance with the provisions of IGRA and the Compact, the Tribe
6 enacted the Big Sandy Rancheria Tribal Gaming Ordinance (hereinafter the "Gaming Ordinance")
7 and adopted the Big Sandy Rancheria Tribal Gaming Regulations (hereinafter the "Gaming
8 Regulations"). (True and correct copies of the Gaming Ordinance and the Gaming Regulations are
9 attached hereto as Exhibits G and H.)

10
11 38. The NIGC approved the Tribe's Gaming Ordinance and Gaming Regulations on
12 November 27, 2002. (A true and correct copy of the NIGC's letter of November 27, 2002, is
13 attached hereto as Exhibit I).

14 39. The Tribe's Gaming Ordinance establishes the Big Sandy Rancheria Gaming Commission
15 (hereinafter the "Gaming Commission") and provides that the Gaming Commission "shall have the
16 power, duty, and primary responsibility to carry out [the Tribe's] regulatory responsibilities" under
17 the Gaming Ordinance as well as any "applicable provisions of the Compact." (Gaming Ordinance,
18 Article IX.)

19 40. In order that it may fulfill its duties and adequately protect the Tribe, Article IX of the
20 Gaming Ordinance directs that the Gaming Commission shall:

21
22 a. "Conduct, or cause to be conducted, background investigations regarding any person
23 in any way connected with any gaming activities and issue licenses to . . . investors,
24 contractors or others required to be licensed under standards established by [the Tribe],
25 IGRA, and the Compact;" (Gaming Ordinance, Article IX, Section (a)(4).)

26 b. "Implement and administer a system of investigating, licensing, monitoring, reviewing
27 and license renewal for . . . gaming contractors and vendors, suppliers, investors and
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1 others connected with gaming activities . . . including the issuance of licenses to gaming
2 facilities, individuals, and entities as required under tribal gaming regulations, IGRA and
3 the Compact;" (Gaming Ordinance, Article IX, Section (a)(5).)

4 c. "Implement and monitor regulations in order to comply with the provisions of IGRA
5 and the Compact" and "[e]nsure their effective enforcement in areas including
6 enforcement of relevant laws and rules, investigations . . . prevention of illegal activity
7 within the facility or in respect to the gaming operation"; (Gaming Ordinance, Article IX,
8 Section (a)(7).) and

9 d. "Impose gaming license fees, sanctions, fines and conditions established by the Tribal
10 Council and renew gaming licenses; deny, suspend or revoke gaming licenses; and issue
11 temporary gaming licenses as appropriate under the provisions of the tribal gaming
12 regulations, IGRA, and the Compact." (Gaming Ordinance, Article IX, Section (a)(8).)

13
14 41. The Gaming Regulations set forth the licensing requirements the Gaming Commission
15 must follow and impose.

16
17 42. The Gaming Regulations provide that "the purpose of this regulation is to establish
18 standards of eligibility for issuing Tribal Gaming licenses to gaming employees as well as a uniform
19 process for the issuance of licenses to vendors and suppliers of gaming equipment, supplies and
20 services. The Gaming Regulations further require that these standards must be in compliance with
21 NIGC requirements, the State Compact, and the Gaming Ordinance. (GCR003 § 1.1.)

22 43. In terms of specific licensing requirements the Gaming Regulations provide that "each
23 manufacturer and supplier of devices, equipment, supplies, etc., and each person providing services
24 to the Casino, and their principals will be licensed." (GCR003 § 3.6.)

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1 **IV. The Business Relationship Between Brownstone and the Tribe**

2 44. Brownstone and the Tribe first entered into a relationship on January 16, 2007, when they
3 agreed to and executed a "Memorandum of Understanding." (hereinafter the "MOU".) (a true and
4 correct copy of the MOU is attached hereto as Exhibit J.)

5 45. The MOU memorialized the attempt of Brownstone and the Tribe to enter into a formal
6 development and financing agreement and a consulting agreement for a newly planned casino,
7 hospitality and recreational project for the Tribe.

8 46. Pursuant to the MOU, the Tribe was to forego any discussions with any entity other than
9 Brownstone with respect to contracts or agreement related to the development, construction, opening,
10 financing, or on-going operation of the Tribe's proposed gaming project.

11 47. The MOU provided that Brownstone would advance \$40,000.00 to the Tribe pursuant to a
12 Credit Agreement the parties intended to enter into at a later date.

13 48. On or about March 25, 2007, as anticipated in the MOU, the Tribe, the Entertainment
14 Authority and Brownstone executed two purported agreements: (1) a Development Agreement; and
15 (2) a Credit Agreement. (True and correct copies of the Development Agreement and Credit
16 Agreement are attached hereto as Exhibits K and L, respectively.)

17 49. The Development Agreement stated that Brownstone would provide an array of services
18 to the Tribe in connection with Class III Indian gaming activities including Class III Indian gaming
19 consulting services.

20 50. Section 2.01 of the Development Agreement provides that, "[s]ubject to the terms and
21 conditions of this Agreement, the Developer will provide the Tribal Parties the following services:

- 22
- 23 a. Assist in arranging with third party financiers, investment banks or other sources the
 - 24 Bridge Financing and the Permanent Financing [for the Tribe's Class III Gaming Project];
 - 25
 - 26 b. Assist with respect to structuring the [Class III Gaming] Project; including the
 - 27 formation of appropriate Tribal enterprises, if required;
 - 28

- 1 c. Make recommendations with respect to regulatory matters related to the [Class III
2 Gaming] Project, including with respect to obtaining NIGC, Bureau of Indian Affairs
3 (“BIA”) or other government approvals and services in connection with compact
4 negotiations with the State of California;
- 5 d. Make recommendations and negotiate contractual arrangements with architects,
6 contractors, consultants and other professionals for the development, construction and
7 operation of the [Class III Gaming] Project;
- 8 e. Prepare and submit appropriate project, construction and development budgets, and
9 provide regular updates for such budgets;
- 10 f. Assist with arranging the selection and procurement of vendors for furnishings and
11 equipment for the [Class III Gaming] Project;
- 12 g. Meet regularly (and unless as may be otherwise agreed, no less than once a week) with
13 Tribal representatives to provide updates on the status of the [Class III Gaming]
14 Project, including, but not limited to the status of negotiations of any material
15 agreements;
- 16 h. Consult with respect to recruiting and staffing (including executive employees),
17 training, marketing and other pre-opening activities;
- 18 i. Develop an initial business plan for the [Class III Gaming] Project;
- 19 j. Prepare capital, revenue, expense and cash flow budgets and forecasts for the [Class
20 III Gaming] Project; and
- 21 k. Recommend and assist with the implementation of insurance policies in connection
22 with the financing, development, construction, furnishing, equipment and opening of
23 the [Class III Gaming] Project.
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1 51. In exchange for the services Brownstone agreed to provide in the Development
2 Agreement, i.e, the financing, development, construction, furnishing, and operation of the Tribe's
3 proposed Class III Gaming Project, Brownstone was to be paid a development fee equal to six
4 percent (6.0%) of the total cost of the Project as follows:

- 5 a. Five Hundred Thousand Dollars (\$500,000.00) at the closing of the Bridge Financing;
6
7 b. One Million Dollars (\$1,000,000.00) at the closing of the Permanent Financing;
8
9 c. One Hundred Thousand Dollars (\$100,000.00) (or such higher amount as is
10 negotiated with the lenders of the Permanent Financing) on the first day of each calendar
11 quarter beginning the first calendar quarter after the closing of the Permanent Financing
12 and ending on the Project Opening Date; and
13 d. All remaining amounts on the Project Opening Date.

14 52. Pursuant to the services Brownstone was required to perform under Section 2.01 and the
15 payments it would receive under Section 4.01(a) of the Development Agreement, Brownstone was
16 required to submit to the full licensing requirements of the Compact, the Gaming Ordinance, and the
17 Gaming Regulations relating to Gaming Resource Suppliers.

18 53. For unknown reasons, Brownstone demanded that the Development Agreement include
19 provisions that purport to relieve Brownstone from any licensing requirements imposed under IGRA,
20 the Compact, the Gaming Ordinance and the Gaming Regulations.

21
22 54. Section 5.01(b)(iii) of the Development Agreement provides that "no approval of any
23 tribal Governmental Authority, including without limitation, any tribal Gaming Authority is required
24 for the execution, delivery and performance of this Agreement. All ordinances, resolutions and laws
25 of the Tribe pertaining to or relating to the Tribe, the Gaming Operations, and the transactions
26 contemplated hereby, have been duly enacted and adopted, as necessary by the Tribe, in accordance
27 with all applicable ordinances, acts, resolutions and laws of the Tribe."

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1 55. Section 5.01(i) provides that “[e]xcept to the extent Sections 6.4.5. or 6.4.6 of the
2 Compact may be deemed by a Person other than the Tribal Parties or any Related Party of the Tribe
3 (including any Gaming Regulatory Authority of the Tribe) to require [Brownstone] to be licensed, it
4 is not necessary under the Tribal Law that Developer be licensed, qualified or entitled to carry on
5 business in any jurisdiction by reason of the execution, delivery, performance or enforcement of any
6 of this Agreement. Neither the Tribal Parties or any Related Party of the Tribe (including any
7 Gaming Regulatory Authority of the Tribe) have adopted any law, rule, regulation, ordinance or
8 resolution which requires [Brownstone] to be licensed, including any law, rule, regulation, ordinance
9 or resolution pursuant to Sections 6.4.5. or 6.4.6 of the Compact or otherwise.”

10 56. Section 7.04 of the Development Agreement – relating to the involuntary termination due
11 to requirements of law – provides that “[i]n the event of any change in State or federal law or
12 regulations or action by any Governmental Authority that results in final determination that this
13 Agreement is unlawful or unenforceable, the Tribal Parties and the Developer agree to use their
14 respective good faith efforts to amend this Agreement in a mutually satisfactory manner which will
15 result in compliance with such Requirement of Law and not materially change the rights, duties and
16 obligations of the parties hereunder. The parties shall negotiate the terms of any such amendment in
17 good faith. In the event such amendment cannot be legally effected following exhaustion of all such
18 good faith efforts, either party shall have the right to terminate this Agreement upon notice to the
19 other party”.

20 57. Brownstone – in section 1.01 of the Credit Agreement – promised to extend a minimum of
21 Five Hundred Thousand Dollars (\$500,000.00) to the Big Sandy Entertainment Authority for the
22 initial financing necessary for the development of the Tribe’s proposed Class III gaming project.
23

24 58. In exchange, Section 1.02 of the Credit Agreement provided that the Tribe would repay
25 the full amount of all loans it received from Brownstone under the Credit Agreement plus interest.
26 The Credit Agreement set interest on the loan at a rate equal to the Effective Rate –at the time of
27 disbursement or assessment to the time of payment – compounded daily, plus an additional five
28 percent (5%).

1 59. The sole purpose of the Credit Agreement was to provide finances for the start up costs
2 associated with the Class III Gaming Project and therefore pursuant to Section 6.4.6 of the Compact,
3 Brownstone was required to be licensed as a Financial Source.

4 60. As it did with the Development Agreement, Brownstone demanded that the Credit
5 Agreement include provisions that purported to exempt Brownstone from all applicable licensing
6 requirements of IGRA, the Compact, the Gaming Ordinance and the Gaming Regulations.

7 61. Section 2.02(c) of the Credit Agreement provides that “[e]xcept as provided hereunder, no
8 approval of any tribal Governmental Authority or tribal Gaming Regulatory Authority or the Tribe is
9 required for the execution, delivery and performance of this Agreement, the Note or other Loan
10 Documents by the Tribal Parties. All ordinances, resolutions and laws of the Tribe pertaining to or
11 relating to the Borrower, the Gaming Operations, and the transactions contemplated by the Loan
12 Documents have been duly enacted and adopted, as necessary by the Tribe, in accordance with all
13 applicable ordinances, acts, resolutions and laws of the Tribe.”
14

15 62. Section 2.08 of the Credit Agreement provides that “[e]xcept to the extent Sections 6.4.5
16 or 6.4.6 of the Compact may be deemed by a Person other than the Tribal Parties or any Related Party
17 of the Tribe (including any Gaming Regulatory Authority) to require [Brownstone] to be licensed, is
18 not necessary under the Tribal Law that [Brownstone] be licensed, qualified or entitled to carry on
19 business in any jurisdiction by reason of the execution, delivery, performance or enforcement of any
20 of this Agreement, the Note or other Loan Documents. Neither the Tribe nor the Borrower have
21 adopted any law, rule, regulation, ordinance or resolution which requires [Brownstone] to be
22 licensed, including any law, rule, regulation, ordinance or resolution pursuant to Sections 6.4.5 or
23 6.4.6 of the Compact or otherwise.”

24 63. Section 4.06 of the Credit Agreement similarly states that “[e]xcept to the extent required
25 by a Person other than the Tribe pursuant to Sections 6.4.5 or 6.4.6 of the Compact, neither the Tribal
26 Parties nor any Related Party of the Tribe (including any Gaming Regulatory Authority of the Tribe)
27 shall adopt any law, rule, regulation, ordinance or resolution which requires [Brownstone] to be
28

1 licensed. Neither the Tribal Parties nor any Related Party of the Tribe (including the Gaming
2 Regulatory Authority of the Tribe) shall unreasonably refuse to grant such gaming or other licenses
3 as [Brownstone] or its employees shall duly apply, and shall cooperate with [Brownstone] in the
4 obtaining of any such licenses.”

5 64. Under the terms and provisions of the both the Development Agreement and the Credit
6 Agreement, the Compact, the Gaming Ordinance and the Gaming Regulations required that
7 Brownstone be licensed as a Gaming Resource Supplier and as a Financial Source.
8

9 65. Brownstone has never applied for, or been granted, a Tribal Gaming License as required
10 by Section 6.4.5 and 6.4.6 of the Compact, Article IX(a)(4)-(5) of the Gaming Ordinance or Section
11 GCR003 § 3.6 of the Gaming Regulations.

12 66. Brownstone has never submitted to Suitability Determination by the CGCC and the
13 CGCC has never determined Brownstone to be suitable for a license under the California Gambling
14 Control Act as required by Section 6.5.7 of the Compact.
15

16 **V. The Legal Dispute With Brownstone.**

17 67. On or about, December 10, 2009, the Gaming Commission contacted Brownstone and
18 notified Brownstone that it was required to be licensed by the Gaming Commission. In its
19 correspondence to Brownstone, the Gaming Commission requested that Brownstone submit all
20 necessary applications within ten (10) days of receiving the notification. The Gaming Commission’s
21 correspondence further advised that until Brownstone was properly licensed, the Tribe could not
22 legally use Brownstone for any future services. (A true and correct copy of the Gaming
23 Commission’s December 10, 2009, letter to Brownstone is attached hereto as Exhibit M.)

24 68. On or about January 10, 2010, thirty-days after the notice provided by the Gaming
25 Commission, Brownstone responded by asserting that Brownstone was not required to comply with
26 IGRA, the Compact, the Gaming Regulations, or the Gaming Ordinance and obtain a license because
27 Brownstone’s agreements with the Tribe did not require Brownstone to obtain a license and because
28 Brownstone did not deem any of the services it provided to the Tribe to be “Gaming Resources.” (A

1 true and correct copy of Brownstone's January 21, 2010, letter to the Gaming Commission is attached
2 hereto as Exhibit N.)

3 69. On or about February 9, 2010, the Gaming Commission again contacted Brownstone
4 regarding the Gaming Commission's determination that Brownstone was required to be licensed
5 pursuant to the Compact, the Gaming Ordinance and the Gaming Regulations. The February 9, 2010,
6 Gaming Commission Correspondence further notified Brownstone that the Development Agreement
7 and Credit Agreement conflicted with the express terms of the Compact, the Gaming Ordinance and
8 the Gaming Regulations and that any attempt to require the Tribe to waive these provisions was
9 invalid. Consequently, the Gaming Commission notified Brownstone that until Brownstone
10 submitted "an Application for Finding of Suitability" and received the necessary license that
11 Brownstone was to "refrain from further contact with the Big Sandy Tribal Council or the Big Sandy
12 Tribal Entertainment Authority . . ." (A true and correct copy of the Gaming Commission's February
13 9, 2010, letter to Brownstone is attached hereto as Exhibit O.)
14

15 70. On or about February 11, 2010, the Tribe, through its Tribal Council, notified Brownstone
16 that the Tribe had received the Gaming Commission's February 9, 2010 letter and that the Tribe
17 would honor the Gaming Commission's demand and requested that Brownstone resolve the
18 regulatory issues before conducting further business with the Tribe. (A true and correct copy of
19 Tribal Council's February 11, 2010, letter is attached hereto as Exhibit P.)

20 71. On or about March 9, 2010, because Brownstone continued in its refusal to obey the
21 Gaming Commission's directive to comply with the Compact, the Gaming Ordinance and Gaming
22 Regulations and submit all items necessary to obtain the requisite background check and license, the
23 Tribal Gaming Commission sought assistance from the NIGC in the form of a review of the
24 Development Agreement and Credit Agreement between Brownstone and the Tribe. (a true and
25 correct copy of the Gaming Commission's March 9, 2010, letter to the NIGC is attached hereto as
26 Exhibit Q.)
27

28 ///

1 72. On or about July 2, 2010, the NIGC, through its Acting General Counsel, responded to
2 the Gaming Commission's request for assistance. The NIGC determined that, although neither the
3 Development, nor the Credit Agreement was a management agreement or collateral agreement
4 requiring NIGC approval, there were numerous problems with the Development Agreement and
5 Credit Agreement relating to the attempt to exempt Brownstone from applicable licensing
6 requirements. Consequently, the NIGC determined that:

7 a. Despite language to the contrary in the Development Agreement and the Credit
8 Agreement, the Tribe's Gaming Ordinance requires that Brownstone must be licensed.

9 b. Brownstone was required to be licensed pursuant to Sections 6.4.5 and 6.4.6 of the
10 Compact;

11 c. Brownstone's failure to become licensed "is a violation of the compact and the Tribe's
12 gaming ordinance, which must be remedied." (A true and correct copy of the NIGC's July
13 2, 2010, letter is attached hereto as Exhibit R.)
14

15 73. On or about July 13, 2010, the Gaming Commission notified the Tribe regarding the
16 Gaming Commission's "Findings of Regulatory Review of Brownstone, LLC and Associated
17 Documents with resulting Business Relationships with the Big Sandy Entertainment Authority
18 (BSEA) and the Big Sandy Rancheria Band of Western Mono Indians (BSR.)" (hereinafter the
19 "Findings".) (a true and correct copy of the July 12, 2010, Gaming Commission's Findings is
20 attached hereto as Exhibit S.)
21

22 74. The Findings provided that the Gaming Commission determined that:

23 a. "Brownstone, LLC is not licensed by the Big Sandy Rancheria;"

24 b. "Brownstone has no status as a Gaming Licensee and/or as a Gaming Licensee
25 Applicant;"
26

27 ///

1 c. "Brownstone, LLC was requested to comply with BSRGC requirements in regard to
2 licensing and completing a Background Application and Brownstone failed to do so at
3 least two times prior; and

4 d. Due to Brownstone's failure, the Development Agreement and Credit Agreement were
5 "null and void" for failure to comply with the Compact, the Gaming Ordinance and the
6 Gaming Regulations.

7
8 Id.

9 75. On or about July 16, 2010, in response to the Gaming Commission's July 13, 2010,
10 Findings, the Tribe, through its Tribal Council, notified Brownstone that the Development
11 Agreement, the Credit Agreement and the MOU were each null and void and that as a consequence
12 "all parties are relieved of any duties and obligations arising from each of these arrangements." (A
13 true and correct copy of the Tribe's July 16, 2010, (sic June 16, 2010), letter is attached hereto as
14 Exhibit T.)

15 76. On or about July 22, 2010, Brownstone, through its legal counsel, responded to the
16 Tribe's July 16, 2010, correspondence. Brownstone asserted that the Development Agreement and
17 the Credit Agreement remained in effect and binding and reiterated Brownstone's position that
18 Brownstone was exempt from any and all licensing requirements imposed by the Compact, the
19 Gaming Ordinance and the Gaming Regulations. (A true and correct copy of Brownstone's counsel,
20 Mr. Glenn Feldman's July 22, 2010, letter is attached hereto as Exhibit U.)

21
22 77. The Tribe, through its legal counsel, responded to Brownstone on September 7, 2010. In
23 its response the Tribe reiterated its prior conclusion that its agreements with Brownstone were null
24 and void. However, the Tribe indicated a willingness to continue to pursue a resolution and would
25 entertain further proposals from Brownstone conditioned on Brownstone's compliance with all
26 applicable licensing provisions. (A true and correct copy of the Tribe's September 7, 2010, letter to
27 Brownstone is attached hereto as Exhibit V.)

1 78. Despite the Tribe's offer to work with Brownstone and to entertain additional proposals
2 from Brownstone provided that Brownstone comply with the licensing provisions of the Compact,
3 the Gaming Ordinance and the Gaming Regulations, Brownstone continues to refuse to submit to any
4 of the licensing requirements.

5 79. To this date, Brownstone has never applied for, nor has it received, a valid gaming license
6 from the Gaming Commission.
7

8 **FIRST CAUSE OF ACTION**

9 **(Declaratory Relief under Contract Claim – Development Agreement)**

10 80. Plaintiffs reallege and incorporate by reference the allegations contained in Paragraphs 1
11 through 79 as if fully set forth herein.

12 81. There is an actual and justiciable controversy relating to the legal rights and duties of
13 Plaintiffs and Defendant under the Development Agreement in that Plaintiffs have advised
14 Defendant that they believe the Development Agreement violates the Compact, the Gaming
15 Ordinance and the Gaming Regulations and that the Development Agreement is thus null and void.
16 This controversy is of sufficient immediacy and reality to warrant the issuance of a declaratory
17 judgment.

18 82. Thus, a declaration of the invalidity of the Development Agreement is necessary to
19 protect the Plaintiffs from uncertainty and insecurity which is causing the Plaintiffs injury by, among
20 other things, damaging its goodwill, disrupting its business and precluding it from pursuing legal
21 means of promoting economic development and its self-sufficiency as a federally recognized Indian
22 tribe.
23

24 **SECOND CAUSE OF ACTION**

25 **(Declaratory Relief under Contract Claim – Credit Agreement)**

26 83. Plaintiffs reallege and incorporate by reference the allegations contained in Paragraphs 1
27 through 82 as if fully set forth herein.
28

1 84. There is an actual and justiciable controversy relating to the legal rights and duties of
2 Plaintiffs and Defendant under the Credit Agreement in that Plaintiffs have advised Defendant that
3 they believe the Credit Agreement violates the Compact, the Gaming Ordinance and the Gaming
4 Regulations and the Credit Agreement is thus null and void. This controversy is of sufficient
5 immediacy and reality to warrant the issuance of a declaratory judgment.

6 85. Thus, a declaration of the invalidity of the Credit Agreement is necessary to protect the
7 Plaintiffs from uncertainty and insecurity which is causing the Plaintiffs injury by, among other
8 things, damaging its goodwill, disrupting its business and precluding it from pursuing legal means of
9 promoting economic development and its self-sufficiency as a federally recognized Indian tribe.

10
11 WHEREFORE, and based on the foregoing, Plaintiffs respectfully request that the Court grant the
12 following relief:

- 13 a. A judgment that the Development Agreement is null and void due to Defendant's
14 failure to comply with applicable licensing provisions of the Compact, the Gaming
15 Ordinance and the Gaming Regulations;
- 16 b. A judgment that the Credit Agreement is null and void due to Defendant's failure to
17 comply with applicable licensing provisions of the Compact, the Gaming Ordinance and
18 the Gaming Regulations;
- 19 c. Attorneys fees and costs; and
- 20
21 d. Such other relief as the Court deems just and equitable.

22 Dated: February 3, 2011

23 John M. Peebles
24 Michael A. Robinson
25 John Nyhan
26 **FREDERICKS PEEBLES & MORGAN LLP**

27 By: 

28 John M. Peebles
Attorneys for Plaintiffs Big Sandy Rancheria of
Western Mono Indians and the Big Sandy
Rancheria Entertainment Authority