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7 *Attorney for Plaintiffs*

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10
11 NO CASINO IN PLYMOUTH,
12 Plaintiffs,
13 v.
14 RYAN HUNTER; AMY DUTSCHKE;
15 SARA DUTSCHKE SETSHWAELO;
16 DILAN & FAMILY, INC.; IMG
17 PLYMOUTH LAND HOLDINGS,
18 LLC; SALVATORE JOSEPH
19 RUBINO; and the BUREAU OF
20 INDIAN AFFAIRS, Pacific Region,
21 Defendants.

Case No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

20 Plaintiff, No Casino In Plymouth (NCIP), files this complaint against
21 Defendants, Ryan Hunter, Amy Dutschke, Sara Dutschke Setshwaelo, Dilan &
22 Family Inc., IMG Plymouth Land Holdings LLC; Salvatore Joseph Rubino and the
23 Bureau of Indian Affairs, Pacific Region (BIA) and allege as follows:
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INTRODUCTION

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2 The purpose of this lawsuit is to challenge the false narrative generated by
3
4 Defendants over the last four months that the Ione Band supposedly acquired “trust
5 land” in Amador County that is eligible for an Indian casino. Defendants claimed,
6 on or about March 12, 2020, that this acquisition was approved by the Assistant
7 Secretary of Interior. This is not true. But based on this false claim, Defendants
8 generated grant deeds and unlawful “acceptances” of 10 parcels into trust. These
9 bogus deeds and acceptances were recorded by the BIA on March 20, 2020 in the
10 Amador County Recorder’s Office. And this false narrative, that the 10 parcels are
11 eligible for gaming, is being used by Defendants to lure investors into financing the
12 proposed illegal casino and to deceive the State into negotiating a gaming compact.
13
14
15

16 The Defendants actions and efforts to construct a casino and initiate illegal
17 gambling in Amador County are contrary to Federal and State law. Federal law
18 limits trust acquisitions to tribes which were recognized in 1934 and under federal
19 jurisdiction in 1934. The Ione Band has never been federally recognized under Part
20 83 and did not exist as a tribe in 1934. Federal law also prohibits gambling on land
21 acquired after 1988. The 10 parcels involved in this case were not “acquired” until
22 March 20, 2020 and, consequently, are not eligible for gambling or an Indian
23 casino. The proposed casino by an Indian group that is not federally recognized on
24 non-Indian land would violate California’s Constitution and public nuisance laws.
25
26 It should be “enjoined, abated and prevented.” That is the purpose of this lawsuit.
27
28

1 **JURISDICTION AND VENUE**

2 1. The jurisdiction of this Court is invoked per 28 U.S.C. §§1331, 5 U.S.C. § 701-
3 706, 28 U.S.C. §§ 2201 & 2202, 25 U.S.C. §§ 2700, *et seq* and 25 USC § 2202.

4
5 2. Venue is proper in United States District Court for the Eastern District of
6 California under 28 U.S.C. §§ 1391(b) (2) and 1391(e), 5 U.S.C. § 703.

7
8 3. The property that is the subject of this lawsuit, is located in the Eastern District
9 and all the Plaintiffs reside in the Eastern District of California.

10 **PARTIES**

11 **Plaintiff**

12
13 4. Plaintiff, No Casino In Plymouth (NCIP) is a representative citizens group. NCIP
14 members reside, own property and/or operate businesses in Amador County that
15 would be adversely impacted if the false narrative of the Defendants is
16 implemented and the proposed Ione Band casino is constructed.

17 **Defendants**

18
19
20 5. Defendant, Ryan Hunter is a federal government employee who works in the
21 BIA Pacific Regional Office. On March 20, 2020, Hunter signed Acceptances of
22 Conveyances which purport to take land into trust for the Ione Band. Defendant
23 Hunter is not the Secretary of Interior and has no authority to take lands into trust
24 for the Ione Band. He is being sued in his official and personal capacity.

25
26 6. Defendant, Amy Dutschke, is the BIA Pacific Regional Director. She is also a
27 member of an unrecognized group of Indians that call themselves the Ione Band of
28

1 Miwok Indians. Defendant Dutschke misused and abused her position of authority
2 in the BIA, to benefit herself and the Ione Band, by allowing BIA employees to
3 give the Ione Band benefits and rights that are only available to tribes that have
4 been federally recognized under 25 CFR Part 83. Defendant Dutschke is not the
5 Secretary of Interior and has no authority to take lands into trust. Defendant
6 Dutschke is being sued in her official capacity and her personal capacity.
7

8
9 7. Defendant Sara Dutschke Setshwaelo is the current leader of the Ione Band. She
10 is Amy Dutschke's niece and was employed by the BIA. Since the posting of a
11 supposed "decision" that a trust transfer for the Ione Band was approved, Defendant
12 Dutschke Setshwaelo has used that false decision to actively and deceptively seek
13 investors for the proposed casino. Defendant Dutschke Setshwaelo has no authority
14 to create Indian land eligible for gambling under IGRA for the Ione Band.
15

16
17 8. Defendant, Dilan & Family Inc. (Dilan) is a California corporation that owns the
18 two parcels, and a hotel (Shenandoah Inn), adjacent to the ten parcels that were
19 recently transferred by Defendant IMG to the United States for the benefit of the
20 Ione Band. Plaintiff is informed and believe, and on that basis alleges, that
21 Defendant Dilan has agreed to transfer all or part of its two parcels to IMG or to
22 other Defendants to be used for Phase II of the proposed Ione Band casino project.
23

24
25 9. Defendant, IMG Plymouth Land Holdings LLC (IMG), is a California
26 corporation organized by Defendant Rubino in 2018. Shortly after it was organized
27 IMG received title to the 10 parcels which are the focus of this lawsuit from Valley
28

1 View Packing and Bonus Gaming– two other corporations owned by Defendant
2 Rubino. On March 17, 2020, without the required title report, IMG transferred the
3
4 10 parcels to the BIA for the benefit of the Ione Band for the proposed casino.

5 10. Defendant, Salvatore Joseph Rubino (Rubino) organized and owns IMG, Valley
6 View Packing and Bonus Gaming. Plaintiff is informed and believe, and on that
7
8 basis alleges, that Defendant Rubino also owns, or has a retained interest in, the 10
9 parcels which are the focus of this lawsuit. Plaintiff is informed and believe, and on
10 that basis allege, that Defendant Rubino also has an option to purchase, or similar
11 agreement to buy, the two adjacent parcels currently owned by Defendant Dilan.

12
13 11. Defendant, BIA Pacific Regional Office is the federal agency responsible for
14 managing the affairs of Indians and tribes in California. The BIA is responsible for
15 insuring that its employees comply with the law and that they do not abuse or act in
16 excess of their authority. Despite this mandate, BIA Pacific Region employees
17 acted beyond their authority in an attempt to deceive the public, by posting a false
18 “decision” on the BIA website claiming that the Assistant Secretary of Interior
19 approved an application by Ione Indians to have land acquired in trust for gambling
20 and casino purposes. The BIA Pacific Region then used this false claim as a basis
21 for a faulty fee-to-trust transfer of 10 parcels for an Indian casino,
22
23

24
25 12. Defendants BIA Pacific Region and Dutschke requested that the grant deeds
26 signed by Defendants IMG and Rubino and the acceptances of conveyances signed
27 by Defendant Hunter be recorded in the Amador County Recorder’s Office
28

1 13. Plaintiffs are ignorant of the true names or capacities of Defendants sued as
2 Does 1-20 and, therefore, sues these Defendants by such fictitious names. Plaintiff
3 will amend this complaint to allege their true names when they are ascertained.
4

5 **FACTS**

6 14. In 1934, Congress enacted the Indian Reorganization Act (IRA). Section 5 of
7 the IRA provides that “[t]he Secretary of Interior is hereby authorized, in his
8 discretion, to acquire through purchase, relinquishment, gift, exchange, or
9 assignment, any interest in lands, water rights or surface rights to land . . . for the
10 purpose of providing lands for Indians.” (Codified at 25 U.S.C. § 5108.)
11

12 15. Under the IRA, Congress delegated the exclusive authority to take land into
13 trust for an Indian tribe or for individual Indians to the Secretary of Interior.
14 Congress did not authorize the Secretary of Interior to redelegate this exclusive
15 authority to any other official or employee in the BIA or the Department of Interior.
16

17 16. Pursuant to the IRA, tribes were entitled to opt out of its provisions, including
18 the fee-to-trust provisions, by majority vote. (Codified at 25 U.S.C. § 5125.)
19

20 17. In 1983, Congress enacted the Indian Lands Consolidation Act (ILCA).
21 (Codified at 25 U.S.C. §§ 2201, *et seq.*) The ILCA provides, in part, that the fee-
22 to-trust provisions of the IRA “shall apply to all tribes notwithstanding” a decision
23 by a tribe recognized in 1934 to opt out of the IRA. (25 U.S.C. § 2202.) But, to
24 qualify for fee-to-trust benefits pursuant to the ILCA, an “op-out” tribe must still
25 have been a recognized tribe in 1934 and meet the other requirements of the IRA.
26
27
28

1 18. In 1988, Congress enacted the Indian Gaming Regulatory (IGRA). (Codified at
2 25 U.S.C. §§ 2700, *et seq*) IGRA allows Part 83 federally recognized tribes, with
3 compacts with the State, to conduct gaming on land acquired before October 17,
4 1988. Indian gaming is prohibited on land acquired after October 17, 1988.
5

6 19. In 2000, the People of California, by initiative, amended their constitution, to
7 allow Indian gaming and casinos by federally recognized tribes on eligible Indian
8 land in California pursuant to a tribe-state compact. Cal. Const. Art.4, Sec.19(f).
9

10 20. On the other hand, in California, gaming by an unrecognized group of Indians,
11 or on land that is not Indian land as defined by IGRA, is an illegal public “nuisance
12 which shall be enjoined, abated and prevented.” (Cal. Penal Code § 11225.)
13

14 21. On February 24, 2009, the Supreme Court decided *Carciere v. Salazar*, 555
15 U.S. 379. The Court held that, to qualify for IRA fee-to-trust benefits, a tribe must
16 have been **both** federally recognized in 1934 and under federal jurisdiction in 1934.
17

18 22. The Court in *Carciere* also confirmed that a tribe must be federally recognized
19 under 25 CFR Part 83 to apply for or receive the protection, services, and benefits
20 of the Federal government available to Indian tribes by virtue of their status as
21 tribes including, but not limited to, IRA fee-to-trust benefits, ILCA land
22 consolidation benefits and IGRA Indian gaming benefits. (25 CFR §83.2 (2008).)
23

24 23. The Court in *Carciere* also confirmed that the ILCA does not provide an
25 independent basis, separate from the IRA, for the Secretary of Interior to take land
26 into trust.
27
28

1 24. On March 9, 2020, the DOI Solicitor issued the M-37055 Opinion which
2 confirmed that, under *Carcieri*, a tribe must have been **both** federally recognized in
3 1934 and under federal jurisdiction in 1934 to qualify for IRA fee-to-trust benefits.
4 The DOI Solicitor withdrew the Department’s prior misinterpretations of *Carcieri*.
5

6 25. The Ione Band does not qualify for a fee-to-trust transfer under the IRA because
7 it was not a federally recognized tribe in 1934 or under federal jurisdiction in 1934.
8

9 26. Nor is the Ione Band eligible to apply for fee-to-trust benefits under the IRA or
10 for a casino under IGRA or for benefits under the ILCA or any similar benefits
11 because they have not been federally recognized pursuant to 25 CFR Part 83.
12

13 27. On or about March 12, 2020, a document entitled “Ione Band of Miwok Indians
14 Trust Acquisition” was drafted and posted by Defendants on the BIA Pacific
15 Region’s website. The first paragraph of that document, labeled **Decision**, includes
16 the following unsubstantiated and false statement:
17

18 “The Assistant Secretary – Indian Affairs has approved the Ione Band
19 of Miwok Indians’ application to have approximately 228 acres of land
20 acquired in trust on its behalf for gaming purposes.”

21 28. On March 17, 2020, Defendants IMG and Rubino signed two Grant Deeds
22 purporting to convey 10 parcels, approximately 220 acres, to the United States in
23 trust for the Ione Band. Both Grant Deeds are signed by Defendant Rubino as an
24 “Authorized Tribal Representative” of an unidentified tribe.
25

26 29. Attached to each Grant Deed is an Acceptance of Conveyance, dated March 20,
27 2020, signed by Defendant Hunter as the “Acting Regional Director” for the BIA
28

1 Pacific Region. In the acceptances, Defendant Hunter make three false claims that:

2 (1) he is an “authorized representative of the Secretary of Interior”; (2) the Ione

3 Band is “a Federally recognized tribe” and (3) the grant was being accepted

4 “pursuant to the Indian Land Consolidation Act of 1983, 25 U.S.C. § 2202.”

5 30. On March 20, 2020, the two IMG Grant Deeds, with the Acceptances of

6 Conveyances attached, were recorded at the request of the BIA Pacific Region with

7 the Amador County Recorder (DOC 2020-0002270-00 and DOC-2020-000271-00).

8 31. Plaintiff is informed and believes, that Defendants IMG and Rubino have

9 retained an unrecorded interest in the 10 parcels and an investment interest in the

10 proposed Ione Band casino project.

11 32. Plaintiff is informed and believes, and on that basis alleges, that Defendant

12 Dilan has an unrecorded agreement to sell and/or transfer all or part of their two

13 parcels, including the Shenandoah Inn, to Defendant IMG or to one or more of the

14 other Defendants for Phase II of the proposed casino project.

15 33. On March 31, 2020, Defendant Dutschke Setshwaelo issued a press release,

16 which was published in a local newspaper (the Ledger Dispatch), that the BIA had

17 just acquired “over 220 acres” in trust for the Ione Band. Defendant Dutschke-

18 Setshwaelo is quoted as saying that: “This acquisition is a critical step in

19 establishing economic self-sufficiency and prosperity of our people.”

20 ///

21 ///

1 34. Also on March 31, 2020, Defendants posted and published the March 12, 2020,
2 BIA document entitled “Ione Band of Miwok Indians Trust Acquisition,” including
3 the supposed **Decision**, with the Ledger Dispatch, a local newspaper.

4
5 35. On April 6, 2020, that Sacramento Bee published an article with the false
6 headline that: “Amador tribe [the Ione Band] wins federal right to seek state
7 permission for a new casino in Plymouth.” Defendant Dutschke-Setshwaelo is
8 quoted in the article as saying that they intend to negotiate with the State for a
9 gaming compact after the COVID-19 crisis is over. Defendant Dutschke-
10 Setshwaelo also mischaracterizes the status of the pending federal litigation and
11 falsely claims that the Ione Band won permission from the Court to build a casino,
12 or “Las Vegas-style gaming hall” on the 220 acres of land that was transferred by
13 Defendant IMG to the United States for the benefit of the Ione Band and
14 supposedly “accepted” by Defendant Hunter in trust pursuant to the ILCA.

15
16
17
18 36. On April 10, 2020, Defendants invited investment and described the “Ione
19 Casino Project” in “500 Nations”, an Indian gaming online publication, as follows:
20

21 **PROJECT DESCRIPTION**

22 **Phase I – Cost \$47M**
23 2000 Slot Machines,
24 40 gaming tables,
25 Gift Shop,
26 Buffet restaurant with 250 seats,
27 Full service restaurant with 100 seats,
28 Coffee bar with snack items,
Sports bar

1 41. Plaintiff is informed and believes, and on that basis alleges, that in June 2020,
2 Defendants misrepresented and told the general membership of the Ione Band that
3 the proposed casino has been approved and could be completed in 2021.
4

5 **FIRST CLAIM FOR RELIEF**
6 **Indian Gaming Regulatory Act**

7 42. Plaintiff repeats and re-alleges paragraphs 1 through 41 inclusive, and the
8 following paragraphs, of this Complaint as if fully set forth herein.
9

10 43. Under IGRA, property acquired after October 17, 1988 is not eligible for Indian
11 gaming or an Indian casino.

12 44. The 10 parcels in this case were supposedly transferred by Defendant IMG to
13 the United States and accepted by Defendant Hunter as the acting Regional Director
14 of the BIA Pacific Region on March 20, 2020, over 31 years after the acquisition
15 time allowed by IGRA.
16

17 45. The 2 parcels owned by Defendant Dilan have not been transferred to, or
18 accepted by, Defendant BIA Pacific Region and remain in private ownership.
19

20 46. The National Indian Gaming Commission (NIGC) has exclusive authority to
21 determine whether or not property is eligible for Indian gaming under IGRA.
22

23 47. There has been no determination by the NIGC that any of the IMG 10 parcels or
24 the Dilan 2 parcels is Indian land eligible for gaming under IGRA.
25

26 48. Neither the 10 parcels transferred by Defendant IMG nor the 2 parcels retained
27 by Defendant Dilan is Indian land eligible for gambling under IGRA.
28

1 49. There is an actual controversy among the parties, within the meaning of the
2 Declaratory Relief Judgment Act (28 U.S.C. § 2201) regarding whether the subject
3 property is Indian land eligible for Indian gambling under IGRA. A declaratory
4 judgment in favor of Plaintiffs and against the Defendants that the land is not Indian
5 land eligible for Indian gambling under IGRA is necessary and proper.
6

7
8 50. Plaintiff's remedies at law are inadequate. Injunctive relief, both preliminary
9 and permanent, is necessary to prevent irreparable injury to the Plaintiffs. In the
10 absence of the injunctive relief, an unlawful casino may be allowed in Amador
11 County. The Defendants should be enjoined from gambling or allowing the
12 construction of a casino on the property. Injunctive relief is necessary and proper.
13

14
15 **SECOND CLAIM FOR RELIEF**
Appointments Clause of the Constitution

16 51. Plaintiff repeats and re-alleges paragraphs 1 through 50 inclusive, and the
17 following paragraphs, in this Complaint as if fully set forth here.
18

19 52. The Appointments Clause of the Constitution divides officers of the federal
20 government into two classes: (1) Principal Officers selected by the President with
21 the advice and consent of the Senate, and (2) Inferior Officers who may be
22 appointed, without the advice and consent of the Senate, by the President, heads of
23 departments, or the judiciary. US Const. Art. II, § 2, cl. 2.
24

25
26 53. A Principal Officer under the Appointments Clause of the Constitution is an
27 appointee of the President, who is confirmed by the Senate, and who exercises
28

1 “significant authority pursuant to the laws of the United States” or “performs
2 significant government duty exercised pursuant to a public law.”

3
4 54. The Secretary of Interior is the Principal Officer, appointed by the President and
5 confirmed by the Senate, with the exclusive authority under the IRA and the ILCA
6 to take land into trust for the benefit of Indian tribes that were federally recognized
7 in 1934 and under federal jurisdiction in 1934.

8
9 55. Congress did not delegate, or authorize the Secretary of Interior to re-delegate,
10 the authority to take land into trust to BIA employees such as Defendant Hunter.

11
12 56. Defendant Hunter lacked the authority under the IRA or under the ILCA to take
13 land into trust for the Ione Band or any faction or group of Ione Indians.

14
15 57. The Acceptances of Conveyances signed by Defendant Hunter on March 20,
16 2020 are unauthorized and contrary the Appointments Clause of the Constitution
17 and the exclusive authority delegated by Congress in the IRA and ILCA to the
18 Secretary of Interior to take land into trust for tribes recognized in 1934 and under
19 federal jurisdiction in 1934. The Acceptances of Conveyances signed by Defendant
20 Hunter as the “Acting” Pacific Regional Director are void and should be vacated.

21
22 58. There is an actual controversy among the parties, within the meaning of the
23 federal Declaratory Relief Judgment Act (28 U.S.C. § 2201) regarding the authority
24 of Defendant Hunter to sign Acceptances of Conveyance and the fact that Congress
25 gave the Secretary the exclusive authority to take land into trust for tribes that were
26 recognized in 1934 and under federal jurisdiction in 1934. A declaratory judgment
27
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1 in Plaintiffs' favor and against the Defendants on Defendant Hunter's lack of
2 authority to take land into trust is necessary and proper.

3
4 59. Plaintiff's remedies at law are inadequate. Injunctive relief is necessary to
5 prevent irreparable injury to the Plaintiffs. In the absence of the injunctive relief,
6 an unlawful casino may be allowed in the rural Amador County. Defendants
7
8 should be required to rescind, and enjoined from implementing, the Acceptances of
9 Conveyances. Defendants should also be enjoined from allowing the construction
10 of the proposed casino in Amador County. Injunctive relief is necessary and proper.
11

12 **THIRD CLAIM FOR RELIEF**
13 **Indian Reorganization Act**

14 60. Plaintiff repeats and re-alleges paragraphs 1 through 59 inclusive, and the
15 following paragraphs of this Complaint, as if fully set forth herein.

16
17 61. Congress limited the application of the IRA to tribes that were recognized in
18 1934 and under federal jurisdiction in 1934. The Ione Indians were not a federally
19 recognized tribe in 1934. Nor were they under federal jurisdiction in 1934.

20
21 62. Defendant Hunter's Acceptances of Conveyances for Indians that were not a
22 recognized tribe in 1934 or under federal jurisdiction in 1934 are contrary to the
23 IRA, ILCA, IGRA and *Carciere*. They are void and should be vacated.

24
25 63. There is an actual controversy among the parties, within the meaning of the
26 federal Declaratory Relief Judgment Act (28 U.S.C. § 2201) regarding the validity
27 of the Acceptances of Conveyances signed by Defendant Hunter for an
28

1 unrecognized group of Indians which were not a federally recognized tribe in 1934
2 as required by the IRA and the ILCA. A declaratory judgment in favor of Plaintiffs
3 and against the Defendants on these issues is necessary and proper.
4

5 64. Plaintiff's remedies at law are inadequate. Injunctive relief, both preliminary
6 and permanent, is necessary to prevent irreparable injury to the Plaintiffs and
7 community. In the absence of the injunctive relief requested in this action, the
8 illicit Acceptances of Conveyances may be implemented and unlawful gambling
9 may be allowed by Defendants in the rural Amador County. The Defendants
10 should be enjoined from implementing the Acceptances of Conveyances or
11 allowing the construction of the proposed casino by Defendants for the Ione Band -
12 an unrecognized group of Indians with no right to fee-to-trust benefits under the
13 IRA of 1934. Injunctive relief is necessary and proper.
14
15
16

17 **FOURTH CLAIM FOR RELIEF**
18 **25 CFR Part 83**

19 65. Plaintiff repeats and re-alleges paragraphs 1 through 64 inclusive, and all the
20 following paragraphs of this Complaint as if fully set forth herein.
21

22 66. To receive federal benefits and assistance, including fee-to-trust benefits under
23 the IRA and the Indian gambling benefits under IGRA and the Indian land
24 consolidation benefits of the ILCA, a group like the Ione Indians must first petition
25 for, and obtain, federal recognition under Part 83. 25 CFR § 83.2.
26

27 ///
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1 67. Defendants' attempts to provide or obtain IRA, ILCA and IGRA benefits for
2 the Ione Band before it obtains federal recognition under Part 83 violates federal
3 law, federal regulation, and the Supreme Court decision in *Carciari*.
4

5 68. Defendants' attempts to provide or obtain IRA, ILCA and IGRA benefits for
6 any group or faction of the Ione Band before it obtains federal recognition under
7 Part 83 is a violation of Equal Protections and Constitutional Federalism.
8

9 69. The purported approval by an Assistant Secretary of the fee-to-trust transfer in
10 the 2020 BIA "Decision" in favor of Ione Indians who do not have Part 83
11 recognition is void and should be reversed and vacated.
12

13 70. There is an actual controversy among the parties, within the meaning of the
14 federal Declaratory Relief Judgment Act (28 U.S.C. § 2201) regarding whether the
15 Ione Band, an unrecognized group of Indians, which has not sought or obtained
16 Part 83 federal recognition, is entitled to the benefits of the IRA, ILCA or IGRA.
17 An actual controversy also exists as to whether Defendants attempts to give such
18 benefits to the Ione Band, before it obtains Part 83 recognition, violate Equal
19 Protection and Constitutional Federalism. A declaratory judgment in favor of
20 Plaintiff and against the Defendants on these issues is necessary and proper.
21
22

23 71. Plaintiff's remedies at law are inadequate. Injunctive relief, both preliminary
24 and permanent, is necessary to prevent irreparable injury to the Plaintiff. In the
25 absence of the injunctive relief requested in this action, illegal gambling and an
26
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28 ///

1 unlawful casino for a group of Indians who have not been federally recognized
2 pursuant to Part 83 may be allowed by Defendants in the rural Amador County.
3
4 Defendants should be enjoined from allowing the construction or operation of the
5 proposed Ione Band casino. Injunctive relief is necessary and proper.

6
7 **FIFTH CLAIM FOR RELIEF**
8 **Public and/or Private Nuisance**

9 72. Plaintiff repeats and re-alleges paragraphs 1 through 71 inclusive, and the
10 following paragraphs, of this Complaint as if fully set forth herein.

11 73. Plaintiff seeks injunctive relief against the Defendants to abate illegal gambling
12 and enjoin the construction of an illegal gambling casino on the subject property
13 and thereby creating a public nuisance in violation of federal and State law.

14
15 74. The California Constitution prohibits “casinos of the type currently operating in
16 Nevada and New Jersey” in California. Cal. Const. Art. 4, Sec. 19(e).

17
18 75. The California Constitution limits Indian gambling in California to “federally
19 recognized tribes on Indian lands in California in accordance with federal law.”
20 Cal. Const. Art. 4, Sec. 19(f).

21
22 76. The Ione Indians do not have Indian land in Amador County or elsewhere in
23 California eligible for Indian gambling as defined by IGRA.

24
25 77. The Ione Indians were not federally recognized in 1934 and are not a federally
26 recognized tribe under Part 83.

27 ///
28

1 78. The construction of a Nevada or New Jersey style casino by an unrecognized
2 group of Indians on non-Indian land is prohibited by California's Constitution.

3
4 79. California Penal Code section 11225, provides in part that: "Every building or
5 place used for the purpose of illegal gambling . . . is a nuisance which shall be
6 enjoined, abated and prevented . . . whether it is a public or private nuisance."
7

8 80. California Penal Code section 11226 provides that any resident of the County
9 where the illegal gambling is occurring may sue to enjoin, abate and prevent a
10 nuisance caused by illegal gambling and to perpetually enjoin the person
11 conducting or maintaining the illegal gambling operation.
12

13 81. The construction of a casino by an unrecognized group of Indians on non-Indian
14 land in rural Amador County would be a public and private nuisance and a violation
15 of law that will cause significant harm to the NCIP and its members who live or
16 have businesses or property near the proposed casino.
17

18 82. The well documented negative effects of building and operating the proposed
19 casino in Amador County include: (a) an irreversible change in the rural character
20 of the area; (b) loss of enjoyment of aesthetic and environmental qualities of land
21 near the casino; (c) increased traffic; (d) increased light, noise, and air pollution; (e)
22 increased crime; (f) diversion of police, fire, and emergency medical resources; (g)
23 decreased property values; (h) increased property taxes; (i) diversion of resources to
24 treat gambling addiction; (j) weakening of the family conducive atmosphere of the
25 community; and (k) other aesthetic, socioeconomic, and environmental problems.
26
27
28

1 83. Plaintiffs' remedies at law are inadequate. Injunctive relief, both preliminary
2 and permanent, against the Defendants, and each of them, enjoining illegal
3 gambling and the construction and operation of the proposed casino is necessary to
4 abate and prevent a public nuisance and to prevent irreparable injury to Plaintiffs.
5

6 **PRAYER FOR RELIEF**
7

8 WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their
9 favor and against the Defendants, and each of them, as follows:

10 A. Declare and find that none of the 10 parcels transferred by Defendant IMG nor
11 the 2 parcels retained by Defendant Dilan is Indian land eligible for gambling or an
12 Indian casino under IGRA.
13

14 B. Declare and find that Defendant Hunter is not the Secretary of Interior and,
15 therefore, lacked authority to take or accept land into federal trust status for the Ione
16 Band or for Ione Indians.
17

18 C. Declare and find that the Ione Band and Ione Indians are not entitled to the fee-
19 to-trust benefits of the IRA or ILCA because they were not a recognized tribe in
20 1934 or under federal jurisdiction in 1934.
21

22 D. Declare and find that the Ione Indians have not obtained federal recognition
23 under Part 83 and therefore are not entitled to apply for or receive the benefits of
24 IRA, ILCA or IGRA.
25

26 E. Declare and find that the Grant Deeds and Acceptances of Conveyances are void
27 and direct the Defendants to rescind and record retractions of these documents.
28

1 F. Find and declare Indian gambling, if allowed, and the proposed casino, if
2 constructed on the property, would violate California's Constitution and public and
3 private nuisance laws.
4

5 G. Issue a preliminary and/or permanent injunction enjoining, abating and
6 preventing illegal gambling or an Indian casino on the subject property.
7

8 H. Award Plaintiff's costs and attorney's fees to the extent permitted by law
9 including, but not limited to, the Equal Access to Justice Act; and

10 I. Grant such other and further relief as to the court deems just and proper.
11

12
13 Dated: July 6, 2020

Respectfully submitted,

s/ Kenneth R. Williams

KENNETH R. WILLIAMS
Attorney for Plaintiffs