

EXHIBIT A

**to Wells Fargo Bank's Rule 15(a) Motion
for Leave to Amend Complaint**

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Trustee,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Case No. 09-cv-768-rtr
	:	
LAKE OF THE TORCHES ECONOMIC DEVELOPMENT CORPORATION,	:	
	:	
Defendant.	:	
	:	
	:	
	:	

FIRST AMENDED COMPLAINT

This Action stems from the default and repudiation of a series of Bonds and a Trust Indenture issued by Defendant Lake of the Torches Economic Development Corporation (“EDC”) to secure a \$50 million loan to EDC in January 2008 (the “Series 2008 Bond Transaction” or “Transaction”). In the alternative to causes of action for breach of contract, this Action also asserts causes of action for reformation, unjust enrichment, and fraudulent and negligent misrepresentations by the EDC and by certain members of the Lac du Flambeau Band of Chippewa Indians (“Tribe”) in association with the Series 2008 Bond Transaction.

THE PARTIES

1. Wells Fargo Bank, National Association (“Wells Fargo”) is a national banking association with trust powers, with its principal place of business in Sioux Falls, South Dakota; Wells Fargo’s Corporate Trust Division has its principal place of business in Minneapolis, Minnesota.

2. The EDC is a corporation chartered by the Lac du Flambeau Band of Lake Superior Chippewa Indians (the “Tribe”), which is organized under Section 16 of the Indian

Reorganization Act of 1934 (25 U.S.C. § 461, et. seq.) and is recognized by the federal government. Wells Fargo and the EDC are collectively referred to herein as the “Parties.”

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship—the EDC is organized under the tribal laws of the Lac du Flambeau Tribe in Wisconsin and is therefore a citizen of Wisconsin, whereas the Trustee is a citizen of South Dakota and Minnesota for diversity purposes. The value of the relief sought here is in excess of \$75,000.

4. Defendant EDC is subject to personal jurisdiction in this Court because it is a resident of and does business in Wisconsin. Furthermore, EDC expressly consented to this Court’s jurisdiction in multiple agreements and resolutions, discussed below.

5. Venue is appropriate in this Court under 28 U.S.C. § 1391 because Defendant EDC resides in this district as do the Individual Defendants, and a substantial part of the events giving rise to this claim occurred in this district.

FACTUAL BACKGROUND

Origin of the Series 2008 Bond Transaction

6. EDC is a single purpose, wholly-owned entity of the Tribe, established under tribal law in Wisconsin to own and operate the Lake of the Torches Resort Casino (the “Casino Facility”).

7. In order to refinance and consolidate certain EDC debt associated with the operation of the Casino Facility, and to fund another unrelated business venture by the Tribe, the EDC, through its bond-placement agent, Stifel, Nicolaus & Company (“Stifel”), sought financing through the bond markets.

8. Specifically, the EDC had approximately \$26.5 million in existing debt spread across three different lenders that the EDC wished to refinance. Some of that debt was due to mature in early 2008, so time was of the essence to the EDC to arrange for refinancing of the debt. The Tribe, through a different corporation, was also engaged in a non-Indian casino construction project in Natchez, Mississippi that had construction deadlines and other financial pressures that the Tribe, through the EDC, was seeking to resolve through the bond financing.

9. On or about October 2007, Stifel, in association with the EDC and the Tribe, approached individuals associated with Saybrook Tax-Exempt Investors (“Saybrook”) regarding Saybrook’s possible purchase of the EDC Bonds.

10. Because of the need to refinance and the financial demands of the Natchez project, the EDC represented that time was of the essence in completing the Bond transaction. At various times in the negotiation process the EDC pressed for a bridge loan for the Natchez project and pressed to close the bond deal weeks in advance of its ultimate closing date.

11. The EDC issued the Bonds to Stifel on or about January 18, 2008, dated as of January 1, 2008, in exchange for \$50 million less original discount. The Bonds were resold to a Saybrook special purpose vehicle for holding the Bonds (the “SPV”), with Saybrook as the Bondholder Representative and with Wells Fargo as Trustee authorized to act on behalf of the SPV.

12. As part of the Series 2008 Bond Transaction, the EDC entered into, issued, or caused to be issued a number of documents, including the following:

- (a) a Trust Indenture, entered into on or about January 18, 2008 and dated as of January 1, 2008, between EDC and Wells Fargo (attached hereto as Exhibit A) (“Indenture”). The Indenture was signed by Victoria Doud

(“Doud”) as President of the EDC and was “drafted by Godfrey & Kahn, S.C.” (“Godfrey”), counsel to the EDC and the Tribe;

- (b) the Bonds, issued on or about January 18, 2008 and dated as of January 1, 2008 (a sample bond is attached hereto as Exhibit B). The Bonds were signed by Doud as President of the EDC and by Gerry Brown (“Brown”) as Secretary of the EDC;
- (c) a Limited Offering Memorandum (“Offering Memo”), dated January 18, 2009 and signed by Doud as President of the EDC (attached hereto as Exhibit C);
- (d) a Closing Certificate of President and Secretary of Corporation (“Closing Certificate”), dated January 18, 2008 and signed by Doud and Brown as President and Secretary of the EDC, respectively. Attached as the last document to the Closing Certificate is Resolution No. 1(08) of the EDC (“Bond Resolution), certified by Brown as Secretary of the EDC (Closing Certificate and Bond Resolution are attached hereto as Exhibit D);
- (e) an Opinion Letter, dated January 18, 2008, and issued by Godfrey (“Godfrey I”) as counsel for the EDC and the Tribe to Stifel, Wells Fargo, and Saybrook (attached hereto as Exhibit E); and
- (f) an Opinion Letter, dated January 18, 2008, by Godfrey (“Godfrey II”) as Bond counsel to the EDC, Wells Fargo, Stifel and Saybrook (attached hereto as Exhibit F).

The EDC’s Multiple Waivers of Sovereign Immunity and Consent to Jurisdiction

13. As a condition precedent to purchasing the EDC’s bonds, Plaintiff required the EDC to waive its sovereign immunity as it related to the Series 2008 Bond Transaction. To that

end, the EDC issued various documents and commitments confirming that (1) it waived its sovereign immunity related to the Series 2008 Bond Transaction and (2) that the EDC consented to jurisdiction in both Wisconsin federal and state courts.

14. So, in each Bond, the EDC stated in relevant part as follows:

The [EDC] hereby expressly waives its sovereign immunity from suit . . . should an action be commenced on this Bond, the Indenture, the Security Agreement, or the Bond Resolution, **or regarding the subject matter of the Indenture.** * * * This waiver:

* * *

(b) is granted solely to the Trustee and [Saybrook],

(c) shall extend only to a suit to enforce the obligations of the [EDC] under the Indenture, the Bond Resolution, the Security Agreement, or the Bond Placement Agreement

* * *

The [EDC] expressly submits to and consents to the jurisdiction of the United States District Court for the Western District of Wisconsin . . . and, in the event (but only in the event) the said federal court fails to exercise jurisdiction, the courts of the State of Wisconsin wherein jurisdiction and venue are otherwise proper, **for the adjudication of any dispute or controversy arising out of this Bond, the Indenture, or the Bond Resolution . . . , or to any transaction in connection therewith**

(Ex. B at 4-5 (emphasis added).)

15. Nearly identical language is contained in the Indenture in Section 13.02. (Ex. A at 63.)g

16. In the Offering Memo the EDC stated as follows:

In the Indenture, the Security Agreement, the Tribal Agreement, the Tribal Resolution, the Bond Resolution, and the Bond Purchase Agreement (the “Bond Documents”), the [EDC] and the Tribe have waived their sovereign immunity and consented to suits against them only in connection with the Bonds and the Bond Documents.

(Ex. C at 4.)

17. In the Bond Resolution, the EDC stated in relevant part as follows:

Whereas, the Board of Directors [of the EDC] has been advised that as a condition to the issuance of the Bonds, the Corporation will be required to agree to various legal provisions . . . that will provide for (a) a limited waiver of its sovereign immunity with respect to suits or other legal actions or proceedings arising because of disputes related to the Bonds or the foregoing named documents or other agreements related thereto

* * *

Resolved, that all legal Provisions in the Bond Documents are hereby approved; more specifically and expressly the [EDC] (i) waives immunity from suit . . . with respect to any dispute or controversy arising out of the Indenture, the Security Agreement, the Bond Placement Agreement, the Bonds, this Bond Resolution . . . or to any transaction in connection therewith

(Ex. D at 3.)

18. On behalf of the EDC and the Tribe, Godfrey represented:

28. “The Corporation has duly waived its sovereign immunity in accordance with the terms of each of the Bond Documents and the Tribe has duly waived its sovereign immunity in accordance with the terms of the Tribal Agreement and such waivers are valid and enforceable against the Corporation and the Tribe in accordance with their terms.”

19. As Bond counsel for the EDC, Godfrey, confirmed that “[t]he consents to suit given by the [EDC] in the Indenture and the Bond Purchase Agreement constitute a valid and enforceable waiver of the [EDC’s] sovereign immunity from suit, and in a suit for the enforcement of the Indenture or the Bonds the sovereign immunity of the [EDC] shall not constitute a valid defense to the enforcement thereof.” (Ex. F at 2.)

20. Based on all the above provisions, taken individually and collectively, the EDC has waived its sovereign immunity for the purposes of all the issues and causes of action raised in this Action, which all arise out of, or are in connection with, the Series 2008 Bond Transaction.

Overview of the Series 2008 Bond Transaction

21. The Series 2008 Bond Transaction, as reflected in the various agreements entered into by the Parties, and by the various representations and warranties offered by the EDC, was a

loan transaction whereby Saybrook loaned the EDC, at its request, \$50 million less an original discount, and the EDC promised to repay that \$50 million over a period of five years, with interest.

22. Each Bond contains the EDC's promise to pay as provided therein. The Bonds provide that, twice a year, on April 1 and October 1, the EDC will pay the 12% interest on Bonds. As of the time of this Complaint, approximately \$46,615,000 of the principal amount of the bonds is outstanding and the bi-annual interest calculation is approximately \$2,796,900, or approximately \$5.5 million annually. In addition, the Bonds call for annual principal redemptions beginning on October 1, 2009 according to the following schedule:

2009 - \$3,385,000

2010 - \$3,790,000

2011 - \$4,245,000

2012 - \$38,580,000

23. The 2009 payment was made according to schedule. Assuming there was no cause to accelerate the amounts due under the Bonds, the principal on the Bonds would be paid down by the above amounts each year, with the balance of the original \$50 million debt—\$38,580,000—due on October 1, 2012.

24. As security for the loan, the Parties also agreed to the Indenture. While the Bonds reflected the EDC's obligation to repay its debt, the Indenture provided the means by which the EDC would do so and provided the means by which the EDC's obligation on the Bonds would be secured.

25. It was understood by the Parties at the time of the Series 2008 Bond Transaction that the source of funds by which the EDC would repay the Bond debt was revenues from the Casino Facility.

26. The EDC promised to deposit daily the Gross Revenues generated by the Casino Facility, less amounts necessary to meet the Facility's current cash requirements, in a bank account controlled by the Trustee in a Revenue Fund. Upon certification of need by the EDC, the EDC could withdraw funds from the Operating Reserve Account described below.

27. On the second to last day of each month, amounts in the Revenue Fund are applied by the Trustee pursuant to the "Waterfall," to:

- (a) the Expense Account, for Trustee costs and expenses for managing the loan; then
- (b) to the Insurance and Taxes Escrow Account, for 1/12th of the monthly costs for insurance and taxes; then
- (c) to the Bond Fund, in an amount equal to 1/6th of interest due on the Bonds; then
- (d) to the Mandatory Amortization Fund, in an amount equal to 1/12th of the principal due on the next succeeding October 1st; then
- (e) to the Reserve Fund to fund the Reserve Requirement to the extent required to bring this fund up to \$5 million; then
- (f) to the Operating Reserve Account, which must be funded to contain the Operating Reserve Requirement, which is 60 days of Annual Operating Expenses based on prior year audited figures; then
- (g) to fill unfilled reserves above; then
- (h) to the Surplus Account, for transfer to the EDC.

28. It was never the intent of any party to the Bonds or the Indenture that the Trustee or Saybrook would have any role in managing or in instructing the EDC on how to manage the Casino Facility. The Indenture and the Bonds were not for the purpose of operating or managing the Casino Facility. In particular, neither Saybrook nor Wells Fargo was providing any "services" whatsoever to the EDC or the Casino Facility at any time or under any circumstances, including management services. Neither Saybrook nor Wells Fargo was paid for providing any

“services” whatsoever to the EDC or the Casino Facility at any time or under any circumstance, including management services, other than Wells Fargo serving as trustee on the debt service.

29. Likewise, the debt-service amounts paid to the Bondholders were a fixed interest rate and a set-aside for the amortized principal on the Bonds; the Bondholders do not share in the actual revenues of the Facility. The Bondholders are to be paid the same fixed amounts under the Bonds regardless of how the Casino Facility performed.

30. The EDC represented in various documents—including the Indenture, the Offering Memorandum, the Closing Certificate and the Bond Resolution—that the Indenture and the Bonds were legally-enforceable obligations of the EDC and did not violate any laws.

31. Likewise, in the Opinion Letter, Godfrey, counsel to the EDC and the Tribe, represented to Plaintiff that the Indenture and the Bonds were legally enforceable obligations that did not violate any laws, that “all approvals required to be obtained from any . . . state or federal agency . . . for the execution . . . or performance . . . of the Bond Documents [had] been obtained, including all necessary approvals of the Secretary of the Interior, the Bureau of Indian Affairs and the National Indian Gaming Commission” and that the Bond Documents—which included the Indenture and the Bonds—were neither “management contracts” nor a “collateral agreement” to a management contract as defined under the Indian Gaming Regulatory Act (“IGRA”). (Ex. E ¶¶ 21, 31.)

**Saybrook Purchases the Bonds and the EDC Receives
the Proceeds Thereof in Reliance Upon The Indenture**

32. Stifel purchased the EDC’s Bonds on or about January 18, 2008. That same day, Saybrook purchased the Bonds from Stifel, with the Bondholder being the SPV.

33. The Bondholders paid \$50,000,000 less an original discount of \$500,000 to purchase the Bonds. The proceeds were deposited with the Trustee, pursuant to the Indenture.

34. Pursuant to the Indenture, the Trustee then distributed funds to the EDC, which accepted and utilized the funds. The Trustee itself also distributed certain amounts of the Bond proceeds provided by Saybrook to pay the EDC's existing bank debt.

35. The Trustee and the Bondholders fully and wholly performed their obligations under the Series 2008 Bond Transaction and all related agreements thereto, including the Indenture and the Bonds.

The Tribe's Off-Reservation Businesses

36. The Tribe has made a series of decisions to invest tribal funds in businesses off the reservation that have not performed well. The Tribe invested in a gambling boat called "Dreamcatcher" in Cancun, Mexico and a gambling facility in Natchez, Mississippi. Neither of these businesses are or were subject to regulation under the Indian Gaming Regulatory Act. Because of the history of off-reservation troubled businesses, the EDC offered the security of the on-reservation Casino Facility Revenues to collateralize and secure the repayment of the \$50,000,000 in Bonds.

37. The EDC and its placement agent Stifel approached Saybrook and solicited Saybrook to make the loan. The EDC and Stifel advised Saybrook that time was of the essence and there was urgency on the part of the EDC and the Tribe to get the proceeds. The interest rate and structure of the Bonds was favorable to the Tribe, as the credit markets continued to deteriorate and the Nation fell into a recession.

The NIGC Investigates the 2008 Bond Transaction

38. Shortly after the Series 2008 Bond Transaction concluded, on or around April 2008, certain members of the Tribe complained to the National Indian Gaming Commission ("NIGC") regarding the Bond Transaction because certain Tribal members were concerned that

funds generated by the Casino Facility were being improperly used to honor the EDC's debt on the Bonds.

39. In April, 2008, John Peterson, Regional Director of the National Indian Gaming Commission, met with the Tribe's Tribal Council to investigate the use of revenue from the Lake of the Torches Casino. According to contemporaneous press reports in the *Rhineland Daily News*:

“According to insiders who have requested anonymity, the NIGC, an independent federal regulatory agency, is now conducting an investigation into these claims, which, if upheld, could result in fines or even temporary closure of the casino.

‘Through calls by concerned tribal members, the NIGC had to come and check on the situation,’ one source said. ‘John Peterson said that if the NIGC finds that the council has violated federal laws, it may be subject to closure of the casino or fines. If the NIGC requests certain documentation to find where the money has flowed, there's no way they (the council) can hide it. There's no doubt in my mind that the council has violated federal law.’”

According to those same press reports, the Bond documents were a central focus of certain members of the Tribe's complaints because no general funds were being distributed to the Tribe.

Attached as Exhibit G are articles from the *Rhineland Daily News*, dated April 20, 2008

“Commission Investigating Use of Casino Funds” and April 21, 2008 “Tribal Members Concerned About Casino Revenue Allocations.”

40. If the NIGC had found the Bonds and the Trust Indenture to be “management contracts,” it had the authority to initiate an enforcement action against the Tribe. Neither the NIGC's Regional Office nor the NIGC in Washington initiated enforcement action against the Tribe in response to the complaints of certain Tribal members after the Bonds were issued.

41. To Plaintiff's knowledge, at no time from April 2008 to the time of filing of this First Amended Complaint has the NIGC taken any action regarding the Transaction.

The EDC Performs Under the Bonds and the Indenture

42. The Indenture requires daily deposits of EDC funds relating to its Casino Facility operations. From the inception of the Bonds through November 2009, the EDC complied with this requirement and made the daily deposits.

43. From the inception of the Bonds through October 2009, the EDC made the bi-annual interest payments required under the Bonds.

44. In particular, section 5.01 of the Indenture requires that all gross revenues from the Casino Facility be deposited, on a daily basis, into a designated trust fund: “The Corporation shall make daily deposits of Gross Revenues . . . into the Revenue Fund or a Deposit Account controlled by the Trustee from which transfers will be made into the Revenue Fund upon order of the Trustee.”

45. From the inception of the Indenture and the Bonds through the present, no funds have been paid to Plaintiff or the Bondholders for any services related to the operation or management of the Casino Facility; likewise, in that period, the Plaintiff and the Bondholders have neither performed nor offered or sought to perform any services related to the operation or management of the Casino Facility.

The Fall 2009 Tribal Election

46. Over the course of the past two years, the Tribe’s Tribal Council fell into factions as members of the Tribe sought to allocate blame for the poor performance of the Tribe’s off-reservation business ventures. Over the course of the past two years, the Nation’s recession further impacted the Tribe’s businesses.

47. In the Fall of 2009, the Tribe held a series of contested elections. According to the postings on LDFnews.com, one of the issues in the elections was whether payments should

be stopped on the Bonds and the Casino Facility Revenues should be distributed to the Tribe, and not used to repay the EDC's debts.

48. As a result of the Tribal Elections in October 2009, four new members were elected to the Tribal Council and Barry LeSieur was elected the Tribe's treasurer and Betty Graven was elected secretary. Out of 2,660 eligible votes, only 907 tribal members voted. The margins of victory for the treasurer and secretary positions were less than 200 votes as reported in the *Rhineland Daily News*. Thereafter, the new Tribal administration embarked on its program to honor the campaign promises to stop the payments on the Bonds—all of this unbeknownst to Wells Fargo and the Bondholders.

The EDC Breaches the Indenture

49. Beginning in December 2009, the EDC stopped making daily deposits into the Trust account established for such payments. For example, by December 16, 2009, the applicable Trust account had a balance of only \$44,097.51, and total net deposits of gross revenues during the month of December had totaled only \$36,975.07 through December 16, 2009. In comparison to the prior month, by November 16, 2009, the same account had a balance of \$1,154,398.53, and total net deposits of gross revenues during the month of November had totaled \$1,138,918.68 through November 16, 2009.

50. Per financial statements provided by the EDC to Saybrook, gross revenues for the twelve months that ended November 30, 2009 totaled \$53,354,860 and averaged \$4,446,238 per month. Furthermore, during each of the past two years, the Casino Facility operations generated, on average, \$3,109,978 of gross revenues during the month of December.

51. As of the date of this First Amended Complaint, no further amounts have been deposited by the EDC into the applicable Trust account.

52. According to Section 5.01 of the Trust Indenture, EDC may only draw funds from the Operating Reserve Account to pay for EDC operating expenses: “Funds on deposit in the Operating Reserve Account may be withdrawn by the Corporation upon written certification from the Authorized Representative that the funds being withdrawn are needed and will be used by the Corporation to pay Operating Expenses of the Corporation.” The Operating Reserve Account is intended to provide a working capital reserve available to the EDC to cover up to 60 days of operating expenses.

53. On November 30, 2009, newly-elected Tribe Treasurer Barry LeSieur and Tribe Vice President Dee Mayo requested that \$4,750,000 be transferred from the EDC Operating Reserve Account to the EDC Master Account at Chippewa Valley Bank. LeSieur and Mayo certified that the purpose of the transfer was to pay operating expenses of EDC.

54. In reliance on the truth of LeSieur’s and Mayo’s representations, the Trustee transferred the requested funds on December 1, 2009.

55. LeSieur’s and Mayo’s representation that the funds transferred by the Trustee were for the EDC’s operating expenses was false. At the time the request for funds was made, LeSieur and Mayo, as Treasurer and acting-President of the EDC, respectively, knew or should have known that the EDC had sufficient cash on hand to cover operating expenses for several months without need for the transferred funds.

56. As the time of the transfer, the EDC’s monthly average operating expenses were \$1,984,980. As of November 30, 2009, the EDC had approximately \$4,145,585 of unrestricted cash available and thus had no operational need for the transferred funds and would have no operational need for the transferred funds for months.

57. LeSieur’s and Mayo’s certification for transfer of the funds from the Operating Reserve Account was also fraudulent because LeSieur and Mayo used the provisions of the

Indenture to transfer the funds from an account under the Trustee's control, when LeSieur and Mayo knew or should have known that the EDC was treating the Indenture as invalid. LeSieur and Mayo fraudulently caused the transfer of funds in anticipation of the EDC seeking to, once the funds were transferred, invalidate the Indenture.

58. The Plaintiff relied on LeSieur's and Mayo's false endorsement of the Indenture's validity and LeSieur's and Mayo's failure to state that the EDC, LeSieur and Mayo no longer considered the Indenture valid.

59. Beginning on December 7, 2009, Plaintiff sought to verify that the EDC in fact needed the funds to pay operating expenses when historical experience and recently received financial reports suggested no operating need.

Plaintiff Accelerates the Bond Obligations

60. According to Section 8.01(c) of the Trust Indenture, a failure to "observe or perform, in any material respect, any covenant, condition, agreement or provision" of any of the previous sections—namely, Sections 5.01, 6.06, and 6.07—constitutes an Event of Default.

61. This "Event of Default" language is incorporated by reference into the Bonds as well, though the Bonds are otherwise independent and separate from the Indenture. The Bonds state in relevant part as follows:

In case an event of default as defined in the Indenture occurs, the principal of this Bond and all other Bonds outstanding may be declared or may become due and payable prior to the stated maturity hereof in the manner and with the effect and subject to the conditions provided in the Indenture (Ex. B at 4.)

62. Like the Bonds, Section 8.02 of the Trust Indenture includes the right to accelerate payment of the principal and interest on the bonds when an Event of Default occurs:

Upon the occurrence of an Event of Default, the Trustee may . . . by notice in writing delivered to the Corporation declare the principal of all Bonds hereby secured then outstanding and the interest accrued thereon immediately due and payable, and such

principal and interest shall thereupon become and be immediately due and payable subject, however, to the right of the Holders of a majority in aggregate principal amount of Bonds then outstanding hereunder, by written notice to the Corporation and to the Trustee, to annul such declaration and destroy its effect at any time if all covenants with respect to which default shall have been made shall be fully performed or made good

63. On December 18, 2009, Saybrook requested the Trustee to declare the principal and interest of all bonds due immediately based on the multiple Events of Default that have occurred; the Trustee in turn notified the EDC that the principal and interest of all bonds are due immediately.

64. As of the date of this First Amended Complaint, the EDC has not made payment or sought to make payment of the amounts due under the Bonds.

The EDC Repudiates the Indenture and Claims it is a Management Contract

65. On December 21, 2009, Wells Fargo filed the initial Complaint in this Action, alleging that the above described defaults by EDC breached the Trust Indenture and sought relief for breach of the Indenture.

66. On December 22, 2009, the EDC, in accordance with the Indenture, supplied Wells Fargo updated financial statements and certification.

67. Contrary to LeSieur's and Mayo's assurance and reliance on the validity of the Indenture three weeks before and the submission of the certification on December 22, 2009, the EDC argued in this Action a few days later that the Indenture was a "management contract" needing NIGC approval; that the Indenture was not approved by the NIGC; and that the Indenture was therefore void. The EDC so argued even though, in 2008, to induce the purchase of the Bonds, the EDC and its Counsel Godfrey made repeated representations confirming that the Indenture was not a "management contract," that the Indenture complied with the law, and that all necessary federal approvals for the Series 2008 Bond Transaction had been obtained.

68. On January 6, 2010, the District Court issued an order declaring the Trust Indenture invalid *ab initio*, and on January 11, 2010 the District Court issued its full decision and judgment. The District Court held that it did not have jurisdiction over this action because the District Court found the EDC had not waived its sovereign immunity from suit because the sovereign immunity waiver in the Indenture was a nullity due to the Indenture being an unapproved “management contract” under 25 C.F.R. § 533.7.

69. The Indenture also clearly expressed the Parties’ intent that provisions in the Indenture considered illegal, invalid or unenforceable be deemed to never have been in the Indenture:

In case any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Indenture, but this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

(Ex. A, Indenture § 14.04.)

70. The provisions in the Indenture that allegedly caused the Indenture to be an unapproved “management contract” were not an essential part of the bargain of the parties. Those provisions have never been enforced or exercised by the Trustee or the Bondholders, and are severable in accordance with the intent of the Parties as expressed in the Indenture.

71. The relief requested in this Amended Complaint does not enforce any of the provisions that allegedly cause the Indenture to be an unapproved “management contract.”

The EDC Repudiates The Bonds

72. Subsequent to this Court’s decision and judgment, the EDC has repudiated its obligation to repay the Bonds. Counsel for the EDC has advised Plaintiff that the EDC and the Tribe do not owe a significant debt and that as a result of this Court’s decision, in the EDC’s

view, the EDC has been relieved of “all further obligations.” A copy of the EDC’s Counsel’s letter of February 3, 2010 is attached as Exhibit H.

73. On February 6, 2010, among the “Accomplishments since October Election” listed on the LDFNews.com website under a section called “The Bond,” is the following statement:

Payment for the bond was stopped in the month of December. The trustee, Wells Fargo filed a lawsuit in federal court attempting to put the casino in receivership. The judge ruled that the bond agreement was invalid.

A copy of the relevant portion of the webpage is attached as Exhibit I.

COUNT I

Breach of Contract — Failure to Deposit Daily All Gross Revenues

74. Plaintiff hereby realleges the allegations contained in paragraphs 1 through 73 as if set forth fully herein.

75. The EDC is bound by Section 5.01 of the Trust Indenture to make daily deposits of all gross revenues from the Casino Facility into the EDC’s Master Account.

76. The EDC has not deposited all gross deposits after the month of November 2009 into its Master Account.

77. The EDC’s failure to make such daily deposits of all gross revenues constitutes a breach of contract and an Event of Default under Section 8.01(c) of the Trust Indenture.

COUNT II

Breach of Contract — Use of Funds for Unauthorized Purpose

78. Plaintiff hereby realleges the allegations contained in paragraphs 1 through 73 as if set forth fully herein.

79. The EDC is bound by Section 5.01 of the Trust Indenture to draw funds from the Operating Account only to pay for EDC operating expenses.

80. The EDC did not, in fact, require the \$4,750,000 transferred from its Operation Account to its Master Account for operating purposes.

81. The EDC's transfer, therefore, constitutes a breach of contract and an Event of Default under Section 8.01(c) of the Trust Indenture.

COUNT III

Breach of Contract — Failure to Provide Records for Inspection

82. Plaintiff hereby realleges the allegations contained in paragraphs 1 through 73 as if set forth fully herein.

83. The EDC is bound by Section 6.06 of the Trust Indenture to furnish to the Trustee appropriate financial books and any other records relating to the operation of the Casino Facility when so requested by the Trustee.

84. The EDC has failed to provide these documents to the Trustee in response to its multiple requests to do so.

85. Each of the EDC's multiple failures to produce records for inspection, therefore, constitutes a breach of contract and an Event of Default under Section 8.01(c) of the Trust Indenture.

COUNT IV

Breach of Contract — Failure to Provide Financial Statements

86. Plaintiff hereby realleges the allegations contained in paragraphs 1 through 73 as if set forth fully herein.

87. The EDC is bound by Section 6.07 of the Trust Indenture to furnish financial statements, including balance sheets, income statements and cash flow statements, to the Trustee upon request.

88. The EDC has failed to provide these documents to the Trustee in response to its multiple requests to do so.

89. Each of the EDC's multiple failures to provide requested financial statements, therefore, constitutes a breach of contract and an Event of Default under Section 8.01(c) of the Trust Indenture.

COUNT V

Breach of Contract —The Bonds

90. Plaintiff hereby realleges the allegations contained in paragraphs 1 through 73 as if set forth fully herein.

91. The EDC has repudiated the Bonds and Counsel for the EDC has advised that the EDC has no further obligation to repay the Bonds.

92. The EDC is bound by the terms of the Bonds to pay all amounts due under the bonds—both principal and interest.

93. All amounts due under the Bonds were accelerated on December 18, 2009. To date, the EDC has not paid any of the accelerated Bond amount.

94. The EDC's 1) repudiation of the Bonds and 2) failure to make payment of the accelerated Bond amount are a breach of the Bonds.

COUNT VI

Reformation — Indenture

95. Plaintiff hereby realleges the allegations contained in paragraphs 1 through 73 as if set forth fully herein.

96. Plaintiff pleads this claim for reformation in the alternative to Counts I through V, above, and in light of the Trust Indenture having been declared void *ab initio* by the Court in its

January 11, 2010 Judgment, on the basis that the Trust Indenture was an unapproved “management contract.”

97. The undisputed intent of the Plaintiff and the EDC was that the Indenture not be deemed, categorized or function as a “management contract,” as regulated by 25 U.S.C. § 2117.

98. The Plaintiff has never undertaken any management role, nor made any management decision, regarding the EDC’s management of the Casino Facility, nor does the Indenture provide Plaintiff with authority to manage any part of the Casino Facility.

99. The Indenture also clearly expressed the Parties’ intent that provisions in the Indenture considered illegal, invalid or unenforceable be deemed to never have been in the Indenture.

100. Any provisions included in the Indenture that are deemed to be provisions converting the Indenture into a management contract are present by the mutual mistake of Plaintiff and the EDC and do not reflect the Parties’ intent that the Indenture is not a management agreement.

101. Alternatively, if the EDC knew or should have known that certain provisions of the Indenture would categorize the Indenture as a management contract, those provisions were placed in the Indenture as a result of fraud by the EDC and mistake on the part of Plaintiff and are contrary to the Parties’ intent.

102. As such, because the management contract provisions are contrary to the Parties’ intent and because the challenged provisions were placed in the Indenture either by mutual mistake of the Parties or as a result of the EDC’s fraud and Plaintiff’s unilateral mistake, the Indenture should be reformed with those provisions that are deemed to make the Indenture a management contract stricken.

COUNT VII

Reformation — Bonds

103. Plaintiff hereby realleges the allegations contained in paragraphs 1 through 73 as if set forth fully herein.

104. Plaintiff pleads this claim for reformation in the alternative to Count V should the EDC argue and the Court find that the Bonds are a management contract.

105. It was undisputed intent of the Plaintiff and EDC that the Bonds not be deemed, categorized or function as a “management contract,” as regulated by 25 U.S.C. § 2117.

106. The Bondholders have never undertaken any management role, nor made any management decision, regarding the EDC’s management of the Casino Facility. The Bonds only address the EDC’s obligation to pay a debt.

107. The Indenture also clearly expressed the Parties’ intent that provisions in the Bonds considered illegal, invalid or unenforceable be deemed to never have been in the Indenture:

In case any one or more of the provisions contained in this Indenture or in the Bonds shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Indenture, but this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

(Indenture § 14.04.)

108. Any provisions included in the Bonds that are deemed to be provisions converting the Bonds into management contracts or contracts ancillary to a management contract are present by the mutual mistake of Plaintiff, the Bondholders and the EDC and do not reflect the Parties’ intent that the Bonds are not management contracts.

109. Alternatively, if the EDC knew or should have known that certain provisions of the Indenture would categorize the Bonds as management contracts, those provisions were

placed in the Bonds as a result of fraud by the EDC and mistake on the part of Plaintiff and the Bondholders, and are contrary to the Parties' intent.

110. As such, because any purported management contract provisions are contrary to the Parties' intent and because those provisions were placed in the Bonds either by mutual mistake of the Parties or as a result of the EDC's fraud and Plaintiff's unilateral mistake, the Bonds should be reformed with any purported management contract provisions stricken.

COUNT VIII

Restitution

111. Plaintiff hereby realleges the allegations contained in paragraphs 1 through 73 as if set forth fully herein.

112. Plaintiff pleads this claim for restitution in the alternative to Counts I through VII, above, and in light of the Trust Indenture having been declared void *ab initio* by the Court in its January 11, 2010 Judgment, on the basis that the Trust Indenture was an unapproved "management contract."

113. In January 2008, the purchaser of the Bonds paid \$49.5 million to the EDC for the Bonds to be issued, and the net proceeds of the sale ("Net Proceeds") were deposited with Wells Fargo to pay the obligations of the EDC.

114. Plaintiff and the Bondholders bear no fault for the basis of the declared invalidity of the Indenture.

115. The EDC and Godfrey represented to Plaintiff and the Bondholders that all necessary government approvals had been obtained and that the Indenture and other documents relating to the Bonds did not comprise, individually or collectively, a management contract regulated by 25 U.S.C. § 2117. The EDC is a chartered Indian corporation under Section 16 of

the Indian Reorganization Act. The EDC and counsel Godfrey have specialized knowledge and expertise in matters relating to Indian Gaming and Indian tribal governance.

116. Plaintiff and the Bondholders did not know or have reason to believe that the Trust Indenture and other documents relating to the bonds required any approvals under 25 U.S.C. § 2117 or any other statute; they are not in *pari delicto* with the EDC.

117. Plaintiff, on behalf of the Bondholders, is entitled under Wisconsin law to restitution from the EDC sufficient to restore Plaintiff to the position it enjoyed before entering into the void and unenforceable contract.

COUNT IX

Unjust Enrichment — Restitution

118. Plaintiff hereby realleges the allegations contained in paragraphs 1 through 73 as if set forth fully herein.

119. Plaintiff pleads this claim for restitution in the alternative to Counts I through VIII above, in light of the Trust Indenture having been declared void *ab initio* by the Court in its January 11, 2010 Judgment.

120. A benefit has been conferred upon the EDC in the form of \$49.5 million transferred to Defendant in January 2008 in the context of the Trust Indenture.

121. The EDC has recognized and appreciated the benefit of these monies, and put them to use in the course of its operations for the benefit of the EDC.

122. The EDC's acceptance and retention of this benefit, under the circumstances, would be inequitable without payment to the Plaintiff of the value of the benefit, or the return of the benefit itself, to Plaintiff.

123. Plaintiff, on behalf of the Bondholders, is entitled to restitution from Defendant under Wisconsin law of unjust enrichment.

COUNT X

Fraud — Transfers

124. Plaintiff hereby realleges the allegations contained in paragraphs 1 through 73 as if set forth fully herein.

125. Plaintiff pleads this claim in the alternative to Counts I through IX, above, and in light of the Trust Indenture having been declared void *ab initio* by the Court in its January 11, 2010 Judgment on the basis that the Trust Indenture was an unapproved “management contract.”

126. LeSieur’s and Mayo’s representations that (a) they were relying on, and affirming, the validity of the Indenture when seeking to transfer funds on November 30, 2009 and (b) that the requested funds were for operational expenses of the EDC, were material and false. LeSieur and Mayo also materially withheld that they and the EDC did not view the Indenture as valid. LeSieur and Mayo both intended that the Plaintiff rely on such representations.

127. Plaintiff reasonably relied on LeSieur’s and Mayo’s representations and omissions to the Plaintiff’s detriment. Had the Plaintiff known that LeSieur and Mayo disavowed the validity of the Indenture and/or that the requested funds were not to be used for operational expenses of EDC, the Trustee would not have transferred the funds.

128. As a direct, proximate and foreseeable result of the material misrepresentations and omissions made by LeSieur and Mayo, the Plaintiff has been damaged in an amount to be determined at trial.

COUNT XI

Negligent Misrepresentation — Transfers

129. Plaintiff hereby realleges the allegations contained in paragraphs 1 through 73 as if set forth fully herein.

130. Plaintiff pleads this claim in the alternative to Counts I through X, above, and in light of the Trust Indenture having been declared void *ab initio* by the Court in its January 11, 2010 Judgment on the basis that the Trust Indenture was an unapproved “management contract.”

131. LeSieur and Mayo have made false representations and omissions as more fully set forth above.

132. In the exercise of reasonable care, LeSieur and Mayo should have known that the representations were false and that material information was omitted.

133. It was reasonably foreseeable to LeSieur and Mayo that Plaintiff would receive, rely upon, and act upon the misrepresentations and omissions at issue and, therefore, had a duty to exercise reasonable care to ensure the truthfulness of all representations to Plaintiff and the absence of material omissions.

134. Plaintiff did, in fact, justifiably rely on the above-described misrepresentations and omissions. Such misrepresentations and omissions were material because, had Plaintiff known that LeSieur and Mayo considered the Indenture invalid and that that the transferred funds were not needed for operational expenses, the Trustee would not have transferred the funds. For the reasons described above, Plaintiff’s reliance was reasonable.

135. As a direct, proximate and foreseeable result of LeSieur and Mayo’s negligent misrepresentations and negligence, Plaintiff has been damaged in an amount to be determined at trial.

COUNT XII

Conversion

136. Plaintiff realleges the allegations contained in paragraphs 1 through 73 as if set forth fully herein.

137. Plaintiff pleads this claim in the alternative to Count XI above, and in light of the Trust Indenture having been declared void *ab initio* by the Court in its January 11, 2010 Judgment on the basis that the Trust Indenture was an unapproved “management contract.”

138. The EDC intentionally took property belonging and controlled by Wells Fargo for the benefit of the Bondholders.

139. The EDC took the property without lawful authority to do so.

140. Plaintiff has demanded the property be returned and the EDC has wrongfully refused.

141. The EDC’s actions have seriously interfered with the Plaintiff’s ability to possess the property and amounts to a conversion of the funds in the Trust and as a result, Plaintiff has been damaged in an amount to be determined at trial.

COUNT XIII

Fraud in the Inducement — 2008 Series Bond Transaction

142. Plaintiff hereby realleges the allegations contained in paragraphs 1 through 73 as if set forth fully herein.

143. Plaintiff pleads this claim in the alternative to Counts I through XII, above, and in light of the Trust Indenture having been declared void *ab initio* by the Court in its January 11, 2010 Judgment on the basis that the Trust Indenture was an unapproved “management contract” and if the EDC claims that the Bonds themselves are invalid for any reason.

144. The EDC made numerous fraudulent representations in the Indenture, the Bonds, the Offering Memorandum, the Closing Certificate and the Bond Resolution. If the EDC disavows the validity of the Indenture and the Bonds, then all or nearly all the representations made in those documents—in particular that the various agreements were legally binding and enforceable and that the EDC waived sovereign immunity, that all approvals had been obtained

and that the agreement did not violate any laws—were false and misleading. The EDC knew that these representations were materially false and misleading and that material information was also omitted.

145. The EDC knew that Plaintiff was relying on the EDC's representations in the Indenture, the Bonds, the Offering Memorandum, the Closing Certificate and the Bond Resolution and that those representations were material to Plaintiff and the Bondholders.

146. Plaintiff relied on the EDC's misrepresentations and omissions when determining whether to purchase the Bonds and provide the refinancing requested by the EDC. Plaintiff's reliance was reasonable and justifiable.

147. Had Plaintiff known of the EDC's material misrepresentations and omissions, Plaintiff would never have participated in the Series 2008 Bond Transaction.

148. As a direct, proximate and foreseeable result of the material misrepresentations and omissions made by the EDC, the Plaintiff and the Bondholders have been damaged in an amount to be determined at trial.

COUNT XIV

Negligence and Negligent Misrepresentation — 2008 Series Bond Transaction

149. Plaintiff hereby realleges the allegations contained in paragraphs 1 through 73 as if set forth fully herein.

150. Plaintiff pleads this claim in the alternative to Counts I through XIII, above, and in light of the Trust Indenture having been declared void *ab initio* by the Court in its January 11, 2010 Judgment on the basis that the Trust Indenture was an unapproved "management contract" and if the EDC claims that the Bonds themselves are invalid for any reason.

151. The EDC made numerous misrepresentations and omission in the Indenture, the Bonds, the Offering Memorandum, the Closing Certificate and the Bond Resolution. If the EDC

disavows the validity of the Indenture and the Bonds, than all or nearly all the representations made in those documents—in particular that the various agreements were legally binding and enforceable, that the EDC had waived sovereign immunity, that all government approvals had been obtained and that the agreements did not violate any laws—were false and misleading. These representations were material.

152. In the exercise of reasonable care, the EDC should have known that the representations were false and that material omissions were being made.

153. It was reasonably foreseeable to the EDC that Plaintiff would rely upon and act upon the misrepresentations and omissions at issue and, therefore, had a duty to exercise reasonable care to ensure the truthfulness of all representations to Plaintiff and the Bondholders and the absence of material omissions.

154. Plaintiff did, in fact, justifiably rely on the above-described misrepresentations and omissions. Such misrepresentations and omissions were material because, had Plaintiff known the truth about the EDC's misrepresentations and omissions, Plaintiff would not have participated in the Series 2008 Bond Refinance.

155. As a direct, proximate and foreseeable result of the EDC's negligent misrepresentations and negligence, Plaintiff has been damaged in an amount to be determined at trial.

WHEREFORE, Plaintiff respectfully request that this Court:

- (1) Enter a judgment against the Defendant on each Count of the Complaint and identified above;
- (2) Order Defendant to pay Plaintiff such damages as have been sustained in consequence of Defendant's wrongful actions;
- (3) Enter a declaratory judgment on the Bonds that Defendant has repudiated and breached the Bonds and is obligated to pay the full amount of principal and interest;

- (4) Enter a declaratory judgment that the principal and interest on the Bonds has been accelerated pursuant to the terms of the Trust Indenture;
- (5) Order Defendant to pay all costs and expenses, including attorneys' fees;
- (6) Reform the Indenture and the Bonds to the extent necessary to conform with the Parties' intent;
- (7) Order Defendant to provide restitution to Plaintiff in an amount to be determined by the Court; and
- (8) Order such additional relief as the Court deems just and proper;

JURY DEMAND

Plaintiff reserves its rights and hereby requests a trial by jury on all matters so triable.

Dated: February __, 2010

Respectfully submitted,

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