

ENDORSED-FILED

APR 03 2017

CLERK OF MENDOCINO COUNTY
SUPERIOR COURT OF CALIFORNIA

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10 a California Corporation

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF MENDOCINO**

13 **UKIAH DIVISION**

14 FORSTER-GILL, INC., a California
15 Corporation,

16 Plaintiff,

17 v.

18 PINOLEVILLE POMO NATION
19 individually and d/b/a PINOLEVILLE
20 RANCHERIA OF POMO INDIANS
21 OF CALIFORNIA, and
22 PINOLEVILLE BAND OF POMO
23 INDIANS OF CALIFORNIA;
24 PINOLEVILLE ECONOMIC
25 DEVELOPMENT, LLC; LEONA L.
26 WILLIAMS; MICHAEL R.
27 CANALES; CANALES GROUP,
28 LLC; and DOES 1 through 500,
inclusive,

Defendants.

CASE NO.: SCUJ-CVG-16-68514-1

Unlimited Civil Case - Over \$25,000

FIRST AMENDED COMPLAINT FOR:

1. BREACH OF CONTRACT (NOTE);
2. BREACH OF PURCHASE AGREEMENT AND LEASE;
3. FRAUD;
4. CONVERSION; and
5. QUANTUM MERUIT / QUANTUM VALEBANT

Plaintiff Forster-Gill, Inc., a California corporation (referred to hereinafter as "PLAINTIFF") alleges as follows:

PRELIMINARY ALLEGATIONS

1. PLAINTIFF is, and at all times relevant to the times referenced herein was, a California corporation, having its principal place of business in San Luis Obispo County, California.

FIRST AMENDED COMPLAINT

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Plaintiff Forster-Gill, Inc., a California corporation (referred to hereinafter as "PLAINTIFF") alleges as follows:

PRELIMINARY ALLEGATIONS

1. PLAINTIFF is, and at all times relevant to the times referenced herein was, a California corporation, having its principal place of business in San Luis Obispo County, California.

FIRST AMENDED COMPLAINT

1 2. PLAINTIFF is informed and believes and thereon alleges that Defendant
2 Pinoleville Pomo Nation (referred to hereinafter as the "TRIBE") is, and at all times herein
3 mentioned was, a federally recognized Indian tribe residing in Mendocino County,
4 California and doing business as Pinoleville Rancheria of Pomo Indians of California and
5 Pinoleville Band of Pomo Indians of California.

6 3. PLAINTIFF is informed and believes and thereon alleges that Defendant
7 Pinoleville Economic Development, LLC (referred to hereinafter as "PED") is, and at all
8 times herein mentioned was, a California limited liability company duly organized pursuant
9 to the laws of the State of California and doing business in the County of Mendocino and
10 the State of California.

11 4. PLAINTIFF is informed and believes and thereon alleges that Defendant
12 Leona L. Williams (referred to hereinafter as "WILLIAMS") is, and at all times herein
13 mentioned was, an individual residing in Mendocino County, California.

14 5. PLAINTIFF is informed and believes and thereon alleges that Defendant
15 Michael R. Canales (referred to hereinafter as "CANALES"), is, and at all times herein
16 mentioned was, an individual residing in San Diego County, California.

17 6. PLAINTIFF is informed and believes and thereon alleges that Defendant
18 Canales Group, LLC (referred to hereinafter as "CGLLC") is, and at all times herein
19 mentioned was, a California limited liability company duly organized pursuant to the laws
20 of the State of California having its principal place of business in San Diego, California and
21 doing business in the County of Mendocino and the State of California.

22 7. TRIBE, PED, WILLIAMS, CANALES, and CGLLC shall collectively be
23 referred to hereinafter as "DEFENDANTS."

24 8. PLAINTIFF is ignorant of the true names and capacities of the Defendants
25 sued herein as Does 1 through 500, inclusive, and therefore sues these Defendants by
26 such fictitious names. PLAINTIFF will amend this Complaint to allege their true names and
27 capacities when ascertained. PLAINTIFF is informed and believes and thereon alleges that
28 each of such fictitiously named Defendants are responsible in some manner for the

1 occurrences herein alleged, and PLAINTIFF damages as herein alleged were proximately
2 caused by such Defendants.

3 9. At all times herein mentioned, each of the DEFENDANTS was the principal,
4 officer, director, employer, agent or employer of each of the remaining DEFENDANTS, and
5 in doing the things herein alleged, was acting withing the course and scope of such office,
6 agency and/or employment with the permission, knowledge consent and ratification of their
7 co-defendants and each of them.

8 10. PLAINTIFF is informed and believes and based thereon alleges that there
9 now exists, and at all times herein concerned there existed, a unit of interest and
10 ownership between DEFENDANTS such that any individuality and separateness among
11 the DEFENDANTS have ceased, and are each and all the alter ego of each other.

12 11. PLAINTIFF specifically contends that the TRIBE, PED and WILLIAMS are
13 alter egos of each other and that they commingle their money and property so that there
14 is no separation of their identities.

15 12. PLAINTIFF is informed and believes and thereon alleges, that in performing
16 each of the acts herein alleged, each of the DEFENDANTS were the agents, employees
17 and/or servants of each of the other DEFENDANTS.

18 13. PLAINTIFF alleges to the extent that any agent, specifically including
19 WILLIAMS, acted as an agent without full authority of its principal, therefore rendering the
20 agent liable for all damages under the contracts.

21 14. PLAINTIFF alleges that Defendants entered into a conspiracy to defraud
22 PLAINTIFF and that each Defendant acted in furtherance of that conspiracy.

23 15. PLAINTIFF has performed all terms and provisions of the contracts sued
24 upon herein, and have otherwise acted in accordance with the law.

25 **FACTS COMMON TO ALL CAUSES OF ACTION**

26 16. On or about January 23, 2009, at Hopland, California, PLAINTIFF and
27 Defendant Pinoleville Pomo Nation entered into a Commercial Lease Agreement and
28 Commercial Property Purchase Agreement for the real property located at 13401 South

1 Highway 101, Hopland, California 95449. The Commercial Lease contained an option to
2 purchase the property. The original Commercial Lease was between PLAINTIFF, as
3 lessor, and TRIBE and CGLLC, as lessees. PLAINTIFF was informed that the hotel would
4 be operated by PED for which CANALES was the chief executive officer. True and correct
5 copies of the Commercial Lease and Commercial Property Purchase Agreement is
6 attached hereto as Exhibits "A" and "B."

7 17. As part of the Purchase Agreement, PLAINTIFF granted CGLLC and the
8 TRIBE temporary possession of the hotel and liquor licenses needed to operate the
9 hotel/restaurant/bar. See Purchase Agreement Addendum. They were to return the hotel
10 and liquor licenses if the sale was not completed.

11 18. After entry of the original Commercial Property Purchase and Commercial
12 Lease Agreements, the TRIBE, by and through PED, and CGLLC took possession of the
13 Hopland Inn and operated it using their own personnel, made periodic payments due under
14 the Commercial Lease Agreement and accepted all profits and benefits therefrom. All
15 purchase and lease payments are believed to be received from either the TRIBE or PED
16 (signed by CANALES).

17 19. On or about April 30, 2010, the parties negotiated and reached a First
18 Amendment to the Commercial Property Purchase Agreement, Joint Escrow Instructions
19 and First Amendment to Commercial Lease. As set forth in the recitals of the First
20 Amendment to the Commercial Property Purchase Agreement, both the Commercial
21 Property Purchase Agreement and Commercial Lease Agreement were referred to as the
22 Purchase Agreement. True and correct copies of the First Amendments to the Commercial
23 Property Purchase Agreement and Commercial Lease Agreement are attached hereto as
24 Exhibits "C" and "D."

25 20. On or about April 27, 2011, the agreements were again amended by Second
26 Amendments to the Commercial Property Purchase Agreement and Commercial Lease
27 Agreement. Again all parties represented they had authority to sign on behalf of their
28 principals, including the Tribe. A true and correct copy of the Second Amendment to the

1 Commercial Property Purchase Agreement and Commercial Lease Agreement is attached
2 hereto as Exhibit "E" and "F."

3 21. In January of 2012, a water pipe broke at the Hopland Inn causing substantial
4 damages. By September of 2012, the TRIBE and CGLLC wrote a letter requesting that
5 the agreements be modified once again due to existing problems. A true and correct copy
6 of the September 2012 letter is attached as Exhibit "G." Initially the parties were unable
7 to agree on terms to modify the agreements, or on amounts that remained outstanding and
8 due.

9 22. Therefore, Forster-Gill, Inc. filed a complaint against the TRIBE, CGLLC and
10 WILLIAMS on October 25, 2012, under Case No. SCUJ-CVG-12-061105. The complaint
11 sought \$263,000 in damages against the TRIBE, CGLLC and WILLIAMS, including a
12 cause of action for fraud against CGLLC and WILLIAMS since they represented that the
13 TRIBE, would pay all amounts due under the agreements, and then sought to hide behind
14 its immunity and was not willingly accepting liability.

15 23. On or about February 26, 2013, a resolution was reached whereby a Third
16 Amendment to the Commercial Property Purchase Agreement and Joint Escrow
17 Instructions was amended. The Third Agreement included a specific waiver of sovereign
18 immunity by the TRIBE. PLAINTIFF also received a Promissory Note in the amount of
19 \$250,000 for past amounts due under the purchase agreements, including the Commercial
20 Lease Agreement. After the TRIBE claimed it had not waived immunity, PLAINTIFF
21 insisted on this clause which was negotiated by the TRIBE's attorney. True and correct
22 copies of the Promissory Note and Third Amendment to the Purchase Agreement are
23 attached hereto as Exhibits "H" and "I."

24 24. The Promissory Note and Third Amendment both included specific waivers
25 of sovereign immunity. At the time the Third Amendment was reached, WILLIAMS and
26 CANALES both represented that they represented the TRIBE and that the TRIBE would,
27 and did, discuss and adopt a resolution ratifying both the Third Amendment and the
28 Promissory Note.

1 25. On or about February 2016, the TRIBE and CGLLC vacated the Hopland Inn,
2 leaving it in terrible repair.

3 26. PLAINTIFF demanded that DEFENDANTS pay all amounts due under the
4 Commercial Purchase Agreement, Commercial Lease Agreement and Promissory Note.
5 There were thousands of dollars due under the Promissory Note and Agreements. There
6 was hundreds of thousands of dollars of damages to the buildings. Defendants also
7 refused to return the hotel and liquor licenses which are worth approximately \$50,000.

8 **FIRST CAUSE OF ACTION**

9 **(Breach of Contract (Note) Against TRIBE and WILLIAMS)**

10 27. PLAINTIFF realleges and incorporates herein by reference each and every
11 allegation contained in Paragraphs 1 through 26, inclusive, of the Preliminary Allegations,
12 as if hereinafter set forth in full.

13 28. The Promissory Note further provided that upon default, Plaintiff could
14 declare all monies payable thereunder immediately become due, owing, and payable.

15 29. The Promissory Note also contained a late charge provision which provides
16 for a late charge of 6.000% of the regularly scheduled payment, if the payment was
17 received after the date the payment was due.

18 30. DEFENDANTS defaulted in their performance under the Promissory Note by
19 failing to pay the amounts due on or after August 1, 2015.

20 31. As a result of the aforementioned defaults, PLAINTIFF has declared all sums
21 under the Promissory Note to be immediately due, owing, and payable, with interest
22 thereon, plus late charges thereon.

23 32. The amount currently due on the Promissory Note as of December 31, 2016
24 is \$381,367.21. Interest continues to accrue at the Promissory Note at 8%.

25 33. PLAINTIFF has duly performed all of the terms and conditions of the
26 agreements on its part required to be performed.

27 34. The agreements further provide that should DEFENDANTS default on the
28 payment of said Agreements, DEFENDANTS agree to pay late fees and all reasonable

1 attorneys' fees incurred by PLAINTIFF. It has become necessary for PLAINTIFF to
2 engage the services of the offices of Roberts & Connell LLP, Attorneys at Law, in order to
3 prosecute this action.

4 **SECOND CAUSE OF ACTION**

5 (Breach of Purchase Agreement and Lease)

6 35. PLAINTIFF realleges and incorporates herein by reference each and every
7 allegation contained in the Preliminary Allegations and First Cause of Action, as if
8 hereinafter set forth in full.

9 36. On and after March 1, 2013, DEFENDANTS breached the Commercial Lease
10 by failing to pay amounts due under the Commercial Lease and since that time
11 DEFENDANTS have failed and refused, despite demand by PLAINTIFF to pay rents and
12 other charges past due and becoming due under the terms and conditions of the
13 Commercial Lease.

14 37. Paragraph 3 of the Commercial Lease provides that the DEFENDANTS are
15 to pay PLAINTIFF minimum monthly rent for the premises subject to adjustments as stated
16 in the Commercial Lease. Such rent is past due and owing and PLAINTIFF is entitled to
17 the same as damages through December 31, 2016.

18 38. Pursuant to Paragraph 17 of the Commercial Lease, DEFENDANTS are to
19 pay PLAINTIFF, as additional rent, the costs of maintenance of the property. PLAINTIFF
20 is entitled to such costs as damages in the amount according to proof at the time of trial.
21 The amount of rent, late charges and interest at 10% per annum through December 31,
22 2016, is \$362,484.65.

23 39. Under Paragraph 14 of the Commercial Lease, DEFENDANTS were to pay
24 PLAINTIFF, as additional rent, all real property taxes which were levied or assessed
25 against the property during the Commercial Lease. PLAINTIFF is entitled to such costs
26 as damages in an amount according to proof at time of trial. The amount of property taxes
27 not paid by DEFENDANTS and ultimately paid by PLAINTIFF was \$118,505.68.

28 40. Pursuant to Paragraph 17 of the Commercial Lease, DEFENDANTS were

1 to maintain the property. DEFENDANTS, in fact, failed to maintain the property. The
2 damages to the property exceeded \$100,000, which is now due and payable.

3 41. Under the Commercial Property Purchase Agreement, DEFENDANTS were
4 to use its best efforts to close the transaction and to pay all amounts due.

5 42. Pursuant to the Addendum of the Commercial Property Purchase Agreement,
6 DEFENDANTS obtained temporary possession of the hotel and liquor licenses. On or
7 about March 2016, DEFENDANTS breached the Commercial Property Purchase
8 Agreement by failing to close the transaction by surrendering possession of the property,
9 but failing to return possession of the hotel and liquor licenses. The hotel and liquor
10 licenses are valued at \$50,000.

11 43. Under Paragraph 40 of the Commercial Lease provides that in the event
12 PLAINTIFF commences an action to enforce its provisions, the Court shall award the
13 prevailing party a reasonable sum of attorneys' fees and costs. DEFENDANTS have
14 breached the Commercial Lease in the manner set forth above and PLAINTIFF has been
15 compelled to commence litigation to enforce its rights thereunder and has retained the law
16 firm of Roberts & Connell, LLP as its attorneys.

17 44. The amount due and payable for breach of lease total \$580,990.33, plus
18 accrued interest after December 31, 2016. The amount of \$50,000 is also due for the hotel
19 and liquor licenses for a total of \$630,990.33.

20 **THIRD CAUSE OF ACTION**

21 (Fraud Against WILLIAMS, CANALES, PED, and CGLLC)

22 45. PLAINTIFF realleges and incorporates herein by reference each and every
23 allegation contained in the Preliminary Allegations, as if hereinafter set forth in full.

24 46. Prior to the consummation of the purchase and lease agreements,
25 PLAINTIFF's President, Tim Gill, met with CANALES, as Chief Executive Officer of PED
26 and CGLLC, and WILLIAMS on several occasions. Both CANALES and WILLIAMS
27 represented that the TRIBE was in negotiations for a gaming contract and that it wanted
28 the Hopland Inn to operate as a hotel and restaurant to be operated by PED. CANALES

1 also represented that he was the Chief Executive Officer of the PED.

2 47. During those initial meetings, WILLIAMS and CANALES specifically
3 represented to PLAINTIFF's President, Tim Gill, that WILLIAMS was the Chairperson of
4 the TRIBE and had been granted full authority from the TRIBE to enter the transaction.
5 WILLIAMS also represented that the TRIBE and/or PED would pay all amounts due under
6 the Commercial Property Purchase Agreement and Promissory Note.

7 48. WILLIAMS specifically represented to PLAINTIFF's President that the
8 TRIBE's Tribal Council had met and passed a resolution authorizing her to act on both the
9 Promissory Note and Third Amendment and that she would be providing PLAINTIFF with
10 a copy of same. On or about the same time, PLAINTIFF's President, Tim Gill, spoke to
11 CANALES who also represented that he personally attended the TRIBE's Tribal Council
12 meeting in which the Promissory Note and Third Amendment were discussed, approved
13 and ratified by resolution.

14 49. Based on the representations of WILLIAMS and CANALES, PLAINTIFF
15 agreed to accept the Promissory Note and Third Amendment and PLAINTIFF dismissed
16 its initial lawsuit against the TRIBE, WILLIAMS and CGLLC on March 12, 2013.

17 50. By representing that WILLIAMS had the authority to enter into the
18 agreements and amendments thereto with PLAINTIFF, and by representing that the
19 TRIBE's Tribal Council had approved and adopted the agreements, both WILLIAMS and
20 CANALES committed fraud against PLAINTIFF.

21 51. By representing that he had attended the TRIBE's Tribal Council's meeting
22 and that the TRIBE's Tribal Council had approved and adopted the agreements and
23 waived sovereign immunity, CANALES, PED and CGLLC committed fraud against
24 PLAINTIFF.

25 52. PLAINTIFF was also defrauded by WILLIAMS and CANALES'
26 representations that the TRIBE would pay all amounts due under the Promissory Note,
27 Commercial Property Purchase Agreement and Commercial Lease.

28 53. PLAINTIFF relied on the representations of WILLIAMS, CANALES, PED and

1 CGLLC, and therefore acted based on same. Had PLAINTIFF known these
2 representations were false, it never would have agreed to dismiss the 2012 lawsuit or to
3 release the CGLLC, or contracted to lease the Hopland Inn with an option to buy.

4 54. The aforementioned acts of WILLIAMS, CANALES, PED and CGLLC was
5 willful, oppressive, malicious and in reckless indifference and wanton disregard of the rights
6 of PLAINTIFF and justify the award of exemplary and punitive damages in an amount
7 according to proof at trial.

8 **FOURTH CAUSE OF ACTION**

9 (Conversion Against All Defendants)

10 55. PLAINTIFF realleges and incorporates herein by reference each and every
11 allegation contained in the Preliminary Allegations and First Cause of Action, as if
12 hereinafter set forth in full.

13 56. DEFENDANTS were granted temporary possession of the hotel and liquor
14 licenses. Upon return of the property and breach of the Commercial Property Purchase
15 Agreement, Defendants failed and refused to return the hotel and liquor licenses. The
16 hotel and liquor licenses have a value of \$50,000.

17 57. The aforementioned acts of WILLIAMS, CANALES, PED and CGLLC was
18 willful, oppressive, malicious and in reckless indifference and wanton disregard of the rights
19 of PLAINTIFF and justify the award of exemplary and punitive damages in an amount
20 according to proof at trial.

21 **FIFTH CAUSE OF ACTION**

22 (Quantum Meruit / Quantum Valebant Against All DEFENDANTS)

23 58. PLAINTIFF realleges and incorporates herein by reference each and every
24 allegation contained in the Preliminary Allegations and First Cause of Action, as if
25 hereinafter set forth in full.

26 59. DEFENDANTS, and each of them, are indebted to PLAINTIFF for the
27 reasonable value for the use of PLAINTIFF's hotel and liquor licenses which have been
28 damaged and/or not returned.

1 60. PLAINTIFF is entitled to recovery according to proof.

2 WHEREFORE, PLAINTIFF prays for judgment against the DEFENDANTS, and
3 each of them, as follows:

4 1. On the First Cause of Action for Breach of Contract (Note) as follows:

- 5 a. For principal in the amount of \$383,909.66;
- 6 b. For interest thereon at the rate of 8% per annum from and after
7 December 31, 2016; and
- 8 c. For reasonable attorney's fees;

9 2. On the Second Cause of Action for Breach of Purchase Agreement and
10 Lease as follows:

- 11 a. For damages in an amount in excess of \$362,484.65 pursuant to
12 Section 1951.2 of the California Civil Code, according to proof at time
13 of trial;
- 14 b. For common area maintenance charges in an amount according to
15 proof at time of trial;
- 16 c. For real property taxes in an amount of \$118,505.68;
- 17 d. For damages to the real property in the amount of \$100,000;
- 18 e. For damages in the amount of \$50,000 for failing to return the hotel
19 and liquor licenses;
- 20 f. For total damages for Breach of Purchase Agreement and
21 Commercial Lease of \$630,990.33;
- 22 g. For insurance in an amount according to proof at time of trial;
- 23 h. For reasonable attorneys' fees in an amount according to proof at
24 time of trial;
- 25 i. For late charges for all sums found due and owing under the
26 Commercial Lease in an amount according to proof at trial; and
- 27 j. For interest as provided by law.

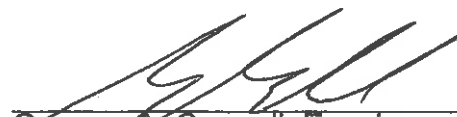
28 3. On the Third Cause of Action for Fraud as follows:

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- a. For damages in the amount of \$1,014,899.99; and
 - b. For exemplary and punitive damages in an amount according to proof at trial.
4. On the Fourth Cause of Action for Conversion as follows:
- a. For the value of the hotel and liquor licenses in the amount of \$50,000; and
 - b. For exemplary and punitive damages in an amount according to proof at trial.
5. On the Fifth Cause of Action for Quantum Meruit / Quantum Valebant as follows:
- a. For damages in an amount according to proof at time of trial;
 - b. For reasonable attorneys' fees in an amount according to proof at time of trial;
6. On All Causes of Action as follows:
- a. For total damages in the amount of \$1,014,899.99, plus interest from and after December 31, 2016, at the legal rate;
 - b. For interest on all damages at the legal rate allowed by law; and
 - c. For such other and further relief as the court may deem just and proper.

Dated: March 31, 2017

ROBERTS & CONNELL LLP



Gregory A. Connell, Esquire
Howard Mark Becker, Esquire
Attorneys for Plaintiff
Forster-Gill, Inc., a California Corporation