

February 21, 2013

**BY ELECTRONIC MAIL**

Thomas Cumpston, Esq.  
General Counsel  
El Dorado Irrigation District  
2890 Mosquito Rd.  
Placerville, CA 95667

Re: Further Response To Request For Reconsideration Of El Dorado Local Agency  
Formation Commission Approval Of Reorganization

Dear Tom:

This letter provides a further response to the pending request for reconsideration of the El Dorado Local Agency Formation Commission's ("LAFCO's") December 5, 2012 approval of the reorganization of the Shingle Springs Rancheria.

On January 10, 2013, I sent you a letter providing a detailed response to the request for reconsideration. That letter explained that the arguments in the request for reconsideration (1) have nothing to do with EID, LAFCO, or the reorganization process and (2) are without any merit whatsoever. Instead, the petition for reconsideration is part of Cesar Caballero's efforts to dispute the sovereign status of the Shingle Springs Band of Miwok Indians (the "Tribe").

There have been two important developments since January 10. First, the original petition for reconsideration (filed by Kristen Mackey) was replaced by an amended petition for reconsideration (filed by Mr. Caballero). The amended petition is not substantively different from the original petition for reconsideration. Both petitions focus on (unfounded) criticisms of the Tribe's government and sovereign status.

Second, on February 8, 2013, the United States District Court for the Eastern District of California held that Mr. Caballero's efforts to dispute the Tribe's sovereign status are illegal, and permanently enjoined him from further efforts of that sort. A copy of the court's February 8 order is attached for your convenient reference.

Neither of these two developments changes the analysis in my January 10, 2013 letter. On the contrary, because (1) Mr. Cabello is the proponent of the amended reconsideration request and (2) Mr. Caballero has now been enjoined from further efforts to dispute the Tribe's sovereign status, there is now further reason to reject the petition for reconsideration as irrelevant and baseless.

Please feel free to share this information with LAFCO. And please contact me if you have any questions on this matter or if there is any additional information with which the Tribe can provide you.

Sincerely,



Matthew Adams

Attachment

cc: David Levy, Baird Holm LLP

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SHINGLE SPRINGS BAND OF MIWOK  
INDIANS,

Plaintiff,

v.

CESAR CABALLERO,

Defendant.

No. 2:08-CV-03133-JAM-DAD

**ORDER GRANTING SHINGLE SPRINGS  
BAND OF MIWOK INDIANS' MOTION  
FOR PARTIAL SUMMARY JUDGMENT  
AND ENTRY OF PERMANENT  
INJUNCTION**

The unopposed Motion of Plaintiff Shingle Springs Band of  
Miwok Indians ("Tribe") for Partial Summary Judgment and Entry of  
Permanent Injunction was noticed for hearing on February 6, 2013.  
The Court determined that no hearing was required pursuant to  
Local Rule 230(g). After considering Plaintiff's papers, and all  
other matters presented to the Court, and good cause appearing  
therefor, the Court rules as follows:

THE COURT HEREBY FINDS THAT, for the reasons set forth in  
the Tribe's moving papers, no genuine issue of material fact  
exists, and the Tribe is entitled to partial summary judgment in  
its favor, as to the Tribe's First, Second, Fourth, and Fifth

1 Causes of Action, and as to its unfair competition claim under  
2 its Third Cause of Action, and to an order entering a permanent  
3 injunction against Defendant Cesar Caballero.

4 THE COURT FURTHER FINDS THAT, as between the parties, the  
5 Tribe has superior rights to use the following marks in any  
6 format, regardless of spacing and capitalization, (collectively  
7 the "Marks"): "Shingle Springs Band of Miwok Indians," "Shingle  
8 Springs Rancheria," "Shingle Springs Band of Miwok Indians,  
9 Shingle Springs Rancheria (Verona Tract), California," "Red Hawk  
10 Casino," "Shingle Springs Miwok Tribe," "Shingle Springs Miwok  
11 Chief," "Shingle Springs Reservation," "Shingle Springs Indian  
12 Reservation," marks that consist of or include the terms "Shingle  
13 Springs" and "Band(s)," marks that consist of or include the  
14 terms "Shingle Springs" and "Miwok(s)," marks that consist of or  
15 include the terms "Shingle Springs" and "Indian(s)," and any  
16 other marks confusingly similar to "Shingle Springs Band of Miwok  
17 Indians," "Shingle Springs Rancheria," "Shingle Springs Band of  
18 Miwok Indians, Shingle Springs Rancheria (Verona Tract),  
19 California," or "Red Hawk Casino."

20 THE COURT FURTHER FINDS THAT the Tribe is entitled to  
21 summary judgment on its First, Second, Third, and Fourth Causes  
22 of Action because no genuine dispute exists that (1) the Tribe  
23 owns the Marks, (2) the Tribe is the senior holder of the Marks,  
24 and (3) Caballero's use of the Marks and confusingly similar  
25 terms is likely to cause confusion in the marketplace. The Court  
26 specifically finds that (1) Caballero's use of the exact marks  
27 "Shingle Springs Band of Miwok Indians," "Shingle Springs  
28 Rancheria," and "Red Hawk Casino" is likely to cause confusion in

1 the marketplace; (2) Caballero's use of "Shingle Springs Miwok  
2 Tribe," "Shingle Springs Miwok Chief," "Shingle Springs  
3 Reservation," "Shingle Springs Indian Reservation" is likely to  
4 cause confusion in the marketplace; and (3) Caballero's use of  
5 any other marks that consist of or include the terms "Shingle  
6 Springs" and "Band(s)," marks that consist of or include the  
7 terms "Shingle Springs" and "Miwok(s)," marks that consist of or  
8 include the terms "Shingle Springs" and "Indian(s)," is likely to  
9 cause confusion in the marketplace.

10 THE COURT FURTHER FINDS THAT the Tribe is entitled to  
11 summary judgment on its Fifth Cause of Action because no genuine  
12 dispute exists that Caballero has, with a bad faith intent to  
13 profit, registered, trafficked in, or used domain names that are  
14 identical or confusingly similar to the Tribe's distinctive  
15 Marks.

16 THE COURT FURTHER FINDS THAT no genuine dispute exists that  
17 prevailing on these claims entitles the Tribe to permanent  
18 injunctive relief because (1) Caballero's conduct has caused the  
19 Tribe irreparable injury; (2) remedies available at law, such as  
20 monetary damages, are inadequate to compensate for that injury;  
21 (3) considering the balance of hardships between the Tribe and  
22 Caballero, a remedy in equity is warranted; and (4) the public  
23 interest would not be disserved by a permanent injunction.

24 THE COURT FURTHER FINDS THAT, good cause exists for an  
25 order, pursuant to Rule 41(a)(2) of the Federal Rules of Civil  
26 Procedure, (1) dismissing the Tribe's remaining claims, including  
27 all claims for compensatory and punitive damages, without  
28 prejudice, and (2) preserving the right of the Tribe to reassert

1 those claims within thirty-six months after entry of judgment  
2 (relating back to the date of the original complaint) if  
3 Caballero appeals the judgment or fails to comply with the  
4 Court's injunction. The Court finds that Caballero will suffer  
5 no legal prejudice from such a dismissal.

6 It is, therefore:

7 1. ORDERED that the Tribe's Motion for Partial Summary  
8 Judgment and Entry of Permanent Injunction is granted. Summary  
9 judgment is hereby entered in the Tribe's favor and against  
10 Caballero as to the Tribe's First, Second, Fourth, and Fifth  
11 Causes of Action, and as to its unfair competition claim under  
12 its Third Cause of Action. There is no just cause to delay  
13 enforcement or appeal of this order.

14 2. IT IS FURTHER ORDERED THAT a permanent injunction  
15 hereby issues, effective immediately, as follows:

16 Caballero and any other persons or entities acting under his  
17 direct control or at his direction are permanently enjoined and  
18 restrained from:

- 19 a. Reproducing, copying, counterfeiting, colorably  
20 imitating, or otherwise using in any way without the  
21 express written consent of the Tribe, the Marks.
- 22 b. Registering or applying to register any of the Marks  
23 anywhere in the world.
- 24 c. Opposing, bringing any action against, contesting or  
25 challenging the validity of, or the Tribe's use or  
26 ownership of, any of the Marks or any of the Tribe's  
27 application(s) to register or registration(s) for any  
28 of the Marks anywhere in the world.

- 1 d. Circulating advertising or promotional literature, or  
2 advertising any product or service, bearing the Marks.
- 3 e. Representing that Caballero is in any way associated or  
4 affiliated with, or authorized, approved, or licensed  
5 by, the Tribe.
- 6 f. Representing that Caballero has ownership of, authority  
7 or control over, or entitlement to, the Tribe's  
8 personal property, real property, artifacts or human  
9 remains, trust land held for the Tribe, assets of any  
10 kind, members, government or business operations,  
11 business ventures, customers, employees, officers, or  
12 agents of the Tribe, including, but not limited to,  
13 those of the Shingle Springs Community Health Clinic  
14 and/or the Red Hawk Casino.
- 15 g. Running, or otherwise distributing any television,  
16 radio, print, Internet, electronic correspondence or  
17 other ads containing the Marks.
- 18 h. Using the Marks on <[ShingleSpringsReservation.com](http://ShingleSpringsReservation.com)>,  
19 <[ShingleSpringsMiwokTribe.com](http://ShingleSpringsMiwokTribe.com)>,  
20 <[ShingleSpringsReservation.org](http://ShingleSpringsReservation.org)>,  
21 <[ShingleSpringsRancheria.org](http://ShingleSpringsRancheria.org)>,  
22 <[ShingleSpringsMiwokTribe.org](http://ShingleSpringsMiwokTribe.org)>,  
23 <[ShingleSpringsIndianReservation.com](http://ShingleSpringsIndianReservation.com)>,  
24 <[RedHawkCasino.info](http://RedHawkCasino.info)>, <[RedHawkCasino.net](http://RedHawkCasino.net)>,  
25 <[RedHawkCasino.org](http://RedHawkCasino.org)>, <[ShingleSpringsReservation.info](http://ShingleSpringsReservation.info)>,  
26 <[ShingleSpringsReservation.biz](http://ShingleSpringsReservation.biz)>,  
27 <[ShingleSpringsMiwokTribe.info](http://ShingleSpringsMiwokTribe.info)>, <[facebook.com](http://facebook.com)>,  
28 <[Myspace.com](http://Myspace.com)>, <[Photobucket.com](http://Photobucket.com)>, including but not

1 limited to "championindian's album,"  
2 <[www.championindian.com](http://www.championindian.com)>, <[wildfireprotest.org](http://wildfireprotest.org)>,  
3 <[mewuktribe.com](http://mewuktribe.com)> <[Twitter.com](http://Twitter.com)>, including but not  
4 limited to the Myspace AmericanIndians, MiwokTribe and  
5 ChampionIndian pages, <[YouTube.com](http://YouTube.com)>, including but not  
6 limited to the Miwok Promotions channel, and any other  
7 websites or web pages in Caballero's control.

8 i. Registering, trafficking, or using any domain name  
9 incorporating the Marks or any variation or derivative  
10 thereof, singly, or in combination with any other word  
11 or symbol, or any other domain name confusingly similar  
12 to the Marks, including, but not limited to, any domain  
13 name containing, regardless of capitalization,  
14 "ShingleSpringsMiwokTribe,"  
15 "ShingleSpringsReservation," "ShingleSpringsRancheria,"  
16 "ShingleSpringsIndianReservation," "RedHawkCasino," and  
17 all Caballero's present active and inactive domain  
18 names, or those of his affiliates, that incorporate the  
19 Marks;

20 j. Using any DVDs that use the Marks.

21 k. Distributing in any manner any video, audio, or image  
22 that uses the Marks, or causing or permitting anyone to  
23 use his voice, name or likeness in connection with any  
24 video, audio, or image that uses the Marks.

25 l. Using any publicity and marketing materials, including  
26 flyers, pamphlets, and other such materials that  
27 contain instances of the Marks.

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- 1 m. Using any plaques or other signs that contain the  
2 Marks.
- 3 n. Using the Marks on any deeds, titles, contracts, public  
4 records, or other such documents, including but not  
5 limited to any fictitious business name statement,  
6 business license, or tax identification document  
7 anywhere in the world.
- 8 o. Holding or using a bank account, checks, credit card,  
9 debit card or other financial product under any name  
10 containing the Marks.
- 11 p. This injunction does not preclude Mr. Caballero from  
12 petitioning the Department of Interior for federal  
13 recognition for any tribal entity he represents, so  
14 long as he does not misrepresent that he is authorized  
15 to speak or act for the Tribe;
- 16 3. IT IS FURTHER ORDERED THAT Caballero shall, within 60  
17 days:
- 18 a. Deliver for destruction all articles of merchandise,  
19 displays, signs, plaques, advertisements, packaging,  
20 brochures, order forms, price lists, or any other  
21 materials in Defendant's possession or control or in  
22 the possession or control of Defendant's agents which  
23 bear the marks "Shingle Springs Band of Miwok Indians,"  
24 "Shingle Springs Rancheria," "Shingle Springs  
25 Reservation," "Shingle Springs Gaming Commission," "Red  
26 Hawk Casino," or any other confusingly similar marks.
- 27 b. Abandon, withdraw, or otherwise terminate the legal  
28 effect of any fictitious business name statements,

1 business licenses, public records, or other such  
2 documents that he may have filed in any jurisdiction,  
3 as to which he has used "Shingle Springs Band of Miwok  
4 Indians," "Shingle Springs Rancheria," "Shingle Springs  
5 Reservation," "Shingle Springs Gaming Commission," "Red  
6 Hawk Casino," or any other confusingly similar name.

7 c. Close any bank account, credit card account, debit card  
8 account, or other account held under any name  
9 containing the Marks, including but not limited to  
10 accounts held with El Dorado Savings Bank, JPMorgan  
11 Chase Bank, N.A., and Washington Mutual under the name  
12 "Shingle Springs Band of Miwok Indians" or "Shingle  
13 Springs Band of Miwok Tribe," or permanently change all  
14 names and account titles associated with such accounts  
15 to names that do not contain the Marks; destroy all  
16 checks, credit cards, and debit cards that bear any  
17 name or account title containing the Marks; and destroy  
18 all documents associated with those accounts that bear  
19 any name or account title containing the Marks or  
20 permanently redact all instances of the Marks from such  
21 documents.

22 d. Remove the Marks from any websites or web pages in  
23 Caballero's control, including but not limited to  
24 removing "www.shinglespringsreservation.info" from the  
25 "championindian" Twitter page, available at  
26 <https://twitter.com/championindian>.

27 e. Take any action available under the law, including but  
28 not limited to asserting and enforcing rights under

1 California Civil Code, section 3344, or any other law  
2 prohibiting use of his name, voice, or likeness without  
3 his consent, to prevent distribution and display of any  
4 video, advertisement, or other material containing the  
5 Marks.

6 4. IT IS FURTHER ORDERED THAT Caballero must transfer to  
7 the Tribe, at his own cost, the following domain names  
8 ("Infringing Domains"):

- 9 <[ShingleSpringsMiwokTribe.com](http://ShingleSpringsMiwokTribe.com)>
- 10 <[ShingleSpringsReservation.com](http://ShingleSpringsReservation.com)>
- 11 <[ShingleSpringsReservation.org](http://ShingleSpringsReservation.org)>
- 12 <[ShingleSpringsRancheria.org](http://ShingleSpringsRancheria.org)>
- 13 <[ShingleSpringsMiwokTribe.org](http://ShingleSpringsMiwokTribe.org)>
- 14 <[ShingleSpringsIndianReservation.com](http://ShingleSpringsIndianReservation.com)>
- 15 <[RedHawkCasino.info](http://RedHawkCasino.info)>
- 16 <[RedHawkCasino.net](http://RedHawkCasino.net)>
- 17 <[RedHawkCasino.org](http://RedHawkCasino.org)>
- 18 <[ShingleSpringsReservation.info](http://ShingleSpringsReservation.info)>
- 19 <[ShingleSpringsReservation.biz](http://ShingleSpringsReservation.biz)>
- 20 <[ShingleSpringsMiwokTribe.info](http://ShingleSpringsMiwokTribe.info)>

21 5. IT IS FURTHER ORDERED THAT Caballero shall file with  
22 this Court, and serve on the Tribe within 60 days after this  
23 Order is filed, a report in writing, under oath, setting forth  
24 in detail the manner and form in which Caballero has acted to  
25 comply with all of the foregoing requirements

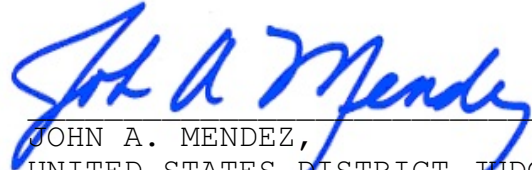
26 6. IT IS FURTHER ORDERED THAT the Tribe's remaining  
27 claims, including all claims for damages, are hereby dismissed,  
28 without prejudice. The Tribe may reassert those claims within

1 thirty-six months after entry of judgment (relating back to the  
2 date of the Tribe's original complaint) if Caballero appeals  
3 the judgment or if Caballero fails to comply with any provision  
4 of this Order.

5 7. IT IS FURTHER ORDERED THAT judgment shall be entered  
6 consistent with this Order.

7 IT IS SO ORDERED.

8 Dated: February 7, 2013

  
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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE

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January 10, 2013

**BY ELECTRONIC MAIL**

Thomas Cumpston, Esq.  
General Counsel  
El Dorado Irrigation District  
2890 Mosquito Rd.  
Placerville, CA 95667

Re: Response To Kristen Mackey Request For Reconsideration By El Dorado Local Agency Formation Commission

Dear Tom:

We have received and reviewed Kristen Mackey's request for reconsideration of the El Dorado Local Agency Formation Commission's ("LAFCO's") December 5, 2012 approval of the "reorganization" of the Shingle Springs Rancheria. As we have discussed on several occasions, the reorganization resolves a long-running dispute about the legality of certain restrictions purportedly imposed by LAFCO on the El Dorado Irrigation District's ("EID's") water service to the Rancheria, federal land held in trust by the United States for the Shingle Springs Band of Miwok Indians ("Tribe"). More specifically, the reorganization would allow EID to provide water service to the Tribe on the same terms available to EID's other customers. This letter provides a brief response to Ms. Mackey's concerns, which (1) are irrelevant to EID, LAFCO, and the reorganization and (2) are without merit in any event.

Ms. Mackey believes that the Tribe is not a sovereign, federally-recognized Indian tribe. She is mistaken. The Tribe is formally recognized by the United States as a sovereign tribal government. A Federal Register notice identifying the Tribe as a federally-recognized tribal government (originally published at 77 Fed. Reg. 47868, 47871 (Aug. 10, 2012)) is attached hereto as exhibit 1.

Ms. Mackey's request for reconsideration is accompanied by excerpts from two documents from *El Dorado County v. Norton* (E.D. Cal. Case No. 02-1818), a decade-old case rejecting a challenge to the Tribe's status as a federally-recognized tribal government.<sup>1</sup> A copy of the United States District Court for the Eastern District of California's decision dismissing the challenge to the Tribe's federally-recognized governmental status is attached hereto as exhibit 2.

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<sup>1</sup> The excerpts come from (i) an unsigned declaration by a William Miles Wirtz and (ii) an amended complaint filed by El Dorado County against the Secretary of the Interior. Neither document has any legal relevance to EID, LAFCO, or water service. Moreover, as explained above, the United States District Court for the Eastern District of California dismissed the arguments raised in those documents.

We note that Ms. Mackey — who is not a member of the Tribe — is currently facing five federal counts of trademark infringement for her participation in a group which has illegally misappropriated the Tribe's name and identity. A copy of the complaint in that lawsuit is attached hereto as exhibit 3.

The lawsuit against Ms. Mackey and her group arose out of another lawsuit between the Tribe and one of Ms. Mackey's cohorts, a man named Cesar Caballero, who accompanied her to LAFCO's December 5 hearing on the reorganization. A copy of the amended complaint against Mr. Caballero is attached as exhibit 4. A federal district court has rejected Mr. Caballero's claims that the Shingle Springs Band of Miwok Indians was not legitimately recognized, dismissing those claims with prejudice, and issuing a preliminary injunction against Mr. Caballero in his misappropriation of the Tribe's name. Copies of the Court's Order dismissing Mr. Caballero's claims, and a copy of the preliminary injunction order, are attached as exhibit 5.

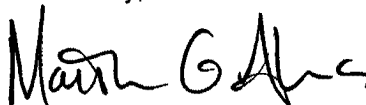
Mr. Caballero has been arrested and jailed on several occasions for his part in usurping the Tribe's name and identity. Copies of one arrest warrant and imprisonment order for Mr. Caballero are attached as exhibit 6.

Finally, Ms. Mackey makes no connection between her claimed grievance and the LAFCO action she challenges. In fact, there is none. Irrespective of the Tribe's federally-recognized status, the Tribe is a customer in the EID service area and it entitled to water service on the same terms and conditions as any other customer.

In sum, Ms. Mackey's concerns (1) have nothing to do with EID, LAFCO, or the reorganization process and (2) are without any merit whatsoever.

Please feel free to share this information with LAFCO. And please contact me if you have any questions on this matter or if there is any additional information with which the Tribe can provide you.

Sincerely,



Matthew Adams

#### Attachments

cc: Chairman Nicholas Fonseca, Shingle Springs Band of Miwok Indians  
Paula M. Yost, SNR Denton LLP  
David Levy, Baird Holm LLP

# EXHIBIT 1



and animal activity as part of a project called *Nature's Notebook*. The *Nature's Notebook* forms are used to record phenology (e.g., timing of leafing or flowering of plants and reproduction or migration of animals) as part of a nationwide effort to understand and predict how plants and animals respond to environmental variation and changes in weather and climate. Contemporary data collected through *Nature's Notebook* are quality-checked, described and made publicly available; data are used to inform decision-making in a variety of contexts, including agriculture, drought monitoring, and wildfire risk assessment. Phenological information is also critical for the management of wildlife, invasive species, and agricultural pests, and for understanding and managing risks to human health and welfare, including allergies, asthma, and vector-borne diseases. Participants may contribute phenology information to *Nature's Notebook* through a browser-based web application or via mobile applications for iPhone and Android operating systems, meeting GPEA requirements. The web application interface consists several components: User registration, a searchable list of 877 plant and animal species which can be observed; a "profile" for each species that contains information about the species including its description and the appropriate monitoring protocols; a series of interfaces for registering as an observer, registering a site, registering plants and animals at a site, generating datasheets to take to the field, and a data entry page that mimics the datasheets.

**Frequency of Collection:** On occasion. During the Spring and Fall seasons when phenology is changing quickly, we recommend respondents make observations twice per week.

**Estimated Number and Description of Respondents:** In addition to those users already registered, we expect an additional 1,027 users will register each year. These respondents are members of the public, registered with *Nature's Notebook*.

**Estimated Annual Responses:** 501,130.

**Estimated Annual burden hours:** 17,032.

**Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden:** We estimate the non-hour cost burden to be \$3.34. This cost applies to new observers and includes material used to mark sites or plants during the first observation. Marking helps to ensure reporting consistency for future observations.

**Public Disclosure Statement:** The PRA (44 U.S.C. 3501, *et seq.*) provides that an

agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

**Comments:** We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

Dated: August 3, 2012.

**William Lellis,**  
*Deputy Associate Director, Ecosystems Mission Area.*

[FR Doc. 2012-19626 Filed 8-9-12; 8:45 am]

BILLING CODE 4311-AM-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Indian Entities Recognized and Eligible To Receive Services From the Bureau of Indian Affairs

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice publishes the current list of 566 tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. The list is updated from the notice published on October 1, 2010 (75 FR 60810) and the October 27, 2010 (75 FR 66124—Supplemental).

**FOR FURTHER INFORMATION CONTACT:** Gail Veney, Bureau of Indian Affairs, Division of Tribal Government Services, Mail Stop 4513-MIB, 1849 C Street

NW., Washington, DC 20240. Telephone number: (202) 513-7641.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103-454; 108 Stat. 4791, 4792), and in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below is a list of federally acknowledged tribes in the contiguous 48 states and in Alaska. This list updates the list published on October 1, 2010, to reflect an addition published in an October 27, 2010 Notice, and one other addition and various name changes and corrections. To aid in identifying tribal name changes, the tribe's former name is included with the new tribal name. To aid in identifying corrections, the tribe's previously listed name is included with the tribal name. We will continue to list the tribe's former or previously listed name for several years before dropping the former or previously listed name from the list.

The listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations and obligations of such tribes. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Dated: August 6, 2012.

**Michael S. Black,**  
*Acting Assistant Secretary—Indian Affairs.*

#### Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma  
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California  
Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona  
Alabama-Coushatta Tribe of Texas (previously listed as the Alabama-Coushatta Tribes of Texas)  
Alabama-Quassarte Tribal Town  
Alturas Indian Rancheria, California  
Apache Tribe of Oklahoma  
Arapaho Tribe of the Wind River Reservation, Wyoming  
Aroostook Band of Micmacs (previously listed as the Aroostook Band of Micmac Indians)  
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana



- Augustine Band of Cahuilla Indians, California (previously listed as the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation)
- Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
- Bay Mills Indian Community, Michigan
- Bear River Band of the Rohnerville Rancheria, California
- Berry Creek Rancheria of Maidu Indians of California
- Big Lagoon Rancheria, California
- Big Pine Paiute Tribe of the Owens Valley (previously listed as the Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California)
- Big Sandy Rancheria of Western Mono Indians of California (previously listed as the Big Sandy Rancheria of Mono Indians of California)
- Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
- Bishop Paiute Tribe (previously listed as the Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California)
- Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
- Blue Lake Rancheria, California
- Bridgeport Indian Colony (previously listed as the Bridgeport Paiute Indian Colony of California)
- Buena Vista Rancheria of Me-Wuk Indians of California
- Burns Paiute Tribe (previously listed as the Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon)
- Cabazon Band of Mission Indians, California
- Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
- Caddo Nation of Oklahoma
- Cahto Tribe (previously listed as the Cahto Indian Tribe of the Laytonville Rancheria, California)
- Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
- California Valley Miwok Tribe, California
- Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
- Capitan Grande Band of Diegueno Mission Indians of California: (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California)
- Catawba Indian Nation (aka Catawba Tribe of South Carolina)
- Cayuga Nation
- Cedarville Rancheria, California
- Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
- Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
- Cherokee Nation
- Cheyenne and Arapaho Tribes, Oklahoma (previously listed as the Cheyenne-Arapaho Tribes of Oklahoma)
- Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
- Chickasaw Nation
- Chicken Ranch Rancheria of Me-Wuk Indians of California
- Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
- Chitimacha Tribe of Louisiana
- Choctaw Nation of Oklahoma
- Citizen Potawatomi Nation, Oklahoma
- Cloverdale Rancheria of Pomo Indians of California
- Cocopah Tribe of Arizona
- Coeur D'Alene Tribe (previously listed as the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho)
- Cold Springs Rancheria of Mono Indians of California
- Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
- Comanche Nation, Oklahoma
- Confederated Salish and Kootenai Tribes of the Flathead Reservation
- Confederated Tribes and Bands of the Yakama Nation
- Confederated Tribes of Siletz Indians of Oregon (previously listed as the Confederated Tribes of the Siletz Reservation)
- Confederated Tribes of the Chehalis Reservation
- Confederated Tribes of the Colville Reservation
- Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians
- Confederated Tribes of the Goshute Reservation, Nevada and Utah
- Confederated Tribes of the Grand Ronde Community of Oregon
- Confederated Tribes of the Umatilla Indian Reservation (previously listed as the Confederated Tribes of the Umatilla Reservation, Oregon)
- Confederated Tribes of the Warm Springs Reservation of Oregon
- Coquille Indian Tribe (previously listed as the Coquille Tribe of Oregon)
- Cortina Indian Rancheria of Wintun Indians of California
- Coushatta Tribe of Louisiana
- Cow Creek Band of Umpqua Tribe of Indians (previously listed as the Cow Creek Band of Umpqua Indians of Oregon)
- Cowlitz Indian Tribe
- Coyote Valley Reservation (formerly Coyote Valley Band of Pomo Indians of California)
- Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
- Crow Tribe of Montana
- Death Valley Timbi-sha Shoshone Tribe (previously listed as the Death Valley Timbi-Sha Shoshone Band of California)
- Delaware Nation, Oklahoma
- Delaware Tribe of Indians
- Dry Creek Rancheria Band of Pomo Indians, California (previously listed as the Dry Creek Rancheria of Pomo Indians of California)
- Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
- Eastern Band of Cherokee Indians
- Eastern Shawnee Tribe of Oklahoma
- Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
- Elk Valley Rancheria, California
- Ely Shoshone Tribe of Nevada
- Enterprise Rancheria of Maidu Indians of California
- Ewiiaapaayp Band of Kumeyaay Indians, California
- Federated Indians of Graton Rancheria, California
- Flandreau Santee Sioux Tribe of South Dakota
- Forest County Potawatomi Community, Wisconsin
- Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
- Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
- Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
- Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
- Fort McDowell Yavapai Nation, Arizona
- Fort Mojave Indian Tribe of Arizona, California & Nevada
- Fort Sill Apache Tribe of Oklahoma
- Gila River Indian Community of the Gila River Indian Reservation, Arizona
- Grand Traverse Band of Ottawa and Chippewa Indians, Michigan
- Greenville Rancheria (previously listed as the Greenville Rancheria of Maidu Indians of California)
- Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
- Guidiville Rancheria of California
- Habematolel Pomo of Upper Lake, California
- Hannahville Indian Community, Michigan
- Havasupai Tribe of the Havasupai Reservation, Arizona
- Ho-Chunk Nation of Wisconsin
- Hoh Indian Tribe (previously listed as the Hoh Indian Tribe of the Hoh Indian Reservation, Washington)
- Hoopa Valley Tribe, California
- Hopi Tribe of Arizona
- Hopland Band of Pomo Indians, California (formerly Hopland Band of Pomo Indians of the Hopland Rancheria, California)

Houlton Band of Maliseet Indians	(previously listed as the Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation)	Tribe of the Muckleshoot Reservation, Washington)
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona		Narragansett Indian Tribe
Iipay Nation of Santa Ysabel, California (previously listed as the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation)	Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada	Navajo Nation, Arizona, New Mexico & Utah
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California	Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota	Nez Perce Tribe (previously listed as Nez Perce Tribe of Idaho)
Ione Band of Miwok Indians of California	Lower Elwha Tribal Community (previously listed as the Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington)	Nisqually Indian Tribe (previously listed as the Nisqually Indian Tribe of the Nisqually Reservation, Washington)
Iowa Tribe of Kansas and Nebraska	Lower Lake Rancheria, California	Nooksack Indian Tribe
Iowa Tribe of Oklahoma	Lower Sioux Indian Community in the State of Minnesota	Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Jackson Rancheria of Me-Wuk Indians of California	Lummi Tribe of the Lummi Reservation	Northfork Rancheria of Mono Indians of California
Jamestown S'Klallam Tribe	Lytton Rancheria of California	Northwestern Band of Shoshoni Nation (previously listed as the Northwestern Band of Shoshoni Nation of Utah (Washakie))
Jamul Indian Village of California	Makah Indian Tribe of the Makah Indian Reservation	Nottawaseppi Huron Band of the Potawatomi, Michigan (previously listed as the Huron Potawatomi, Inc.)
Jena Band of Choctaw Indians	Manchester Band of Pomo Indians of the Manchester Rancheria, California (previously listed as the Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California)	Oglala Sioux Tribe (previously listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota)
Jicarilla Apache Nation, New Mexico	Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California	Ohkay Owingeh, New Mexico (previously listed as the Pueblo of San Juan)
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona	Mashantucket Pequot Indian Tribe (previously listed as the Mashantucket Pequot Tribe of Connecticut)	Omaha Tribe of Nebraska
Kalispel Indian Community of the Kalispel Reservation	Mashpee Wampanoag Indian Tribal Council, Inc. (previously listed as the Mashpee Wampanoag Tribe, Massachusetts)	Oneida Nation of New York
Karuk Tribe (previously listed as the Karuk Tribe of California)	Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan	Oneida Tribe of Indians of Wisconsin
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California	Mechoopda Indian Tribe of Chico Rancheria, California	Onondaga Nation
Kaw Nation, Oklahoma	Menominee Indian Tribe of Wisconsin	Otoe-Missouria Tribe of Indians, Oklahoma
Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo)	Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California	Ottawa Tribe of Oklahoma
Keweenaw Bay Indian Community, Michigan	Mescalero Apache Tribe of the Mescalero Reservation, New Mexico	Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) (formerly Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes))
Kialegee Tribal Town	Miami Tribe of Oklahoma	Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Kickapoo Traditional Tribe of Texas	Miccousukee Tribe of Indians	Pala Band of Luiseno Mission Indians of the Palá Reservation, California
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	Middletown Rancheria of Pomo Indians of California	Pascua Yaqui Tribe of Arizona
Kickapoo Tribe of Oklahoma	Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)	Paskenta Band of Nomlaki Indians of California
Kiowa Indian Tribe of Oklahoma	Mississippi Band of Choctaw Indians	Passamaquoddy Tribe
Klamath Tribes	Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada	Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Kootenai Tribe of Idaho	Modoc Tribe of Oklahoma	Pawnee Nation of Oklahoma
La Jolla Band of Luiseno Indians, California (previously listed as the La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation)	Mohegan Indian Tribe of Connecticut	Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California	Mooretown Rancheria of Maidu Indians of California	Penobscot Nation (previously listed as the Penobscot Tribe of Maine)
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin	Morongo Band of Mission Indians, California (previously listed as the Morongo Band of Cahuilla Mission Indians of the Morongo Reservation)	Peoria Tribe of Indians of Oklahoma
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin	Muckleshoot Indian Tribe (previously listed as the Muckleshoot Indian	Picayune Rancheria of Chukchansi Indians of California
Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan		Pinoleville Pomo Nation, California (previously listed as the Pinoleville
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada		
Little River Band of Ottawa Indians, Michigan		
Little Traverse Bay Bands of Odawa Indians, Michigan		
Lone Pine Paiute-Shoshone Tribe (previously listed as the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California)		
Los Coyotes Band of Cahuilla and Cupeno Indians, California		

- Rancheria of Pomo Indians of California)
- Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherías)
- Poarch Band of Creeks (previously listed as the Poarch Band of Creek Indians of Alabama)
- Pokagon Band of Potawatomi Indians, Michigan and Indiana
- Ponca Tribe of Indians of Oklahoma
- Ponca Tribe of Nebraska
- Port Gamble Band of S'Klallam Indians (previously listed as the Port Gamble Indian Community of the Port Gamble Reservation, Washington)
- Potter Valley Tribe, California
- Prairie Band Potawatomi Nation (previously listed as the Prairie Band of Potawatomi Nation, Kansas)
- Prairie Island Indian Community in the State of Minnesota
- Pueblo of Acoma, New Mexico
- Pueblo of Cochiti, New Mexico
- Pueblo of Isleta, New Mexico
- Pueblo of Jemez, New Mexico
- Pueblo of Laguna, New Mexico
- Pueblo of Nambe, New Mexico
- Pueblo of Picuris, New Mexico
- Pueblo of Pojoaque, New Mexico
- Pueblo of San Felipe, New Mexico
- Pueblo of San Ildefonso, New Mexico
- Pueblo of Sandia, New Mexico
- Pueblo of Santa Ana, New Mexico
- Pueblo of Santa Clara, New Mexico
- Pueblo of Taos, New Mexico
- Pueblo of Tesuque, New Mexico
- Pueblo of Zia, New Mexico
- Puyallup Tribe of the Puyallup Reservation
- Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
- Quapaw Tribe of Indians
- Quartz Valley Indian Community of the Quartz Valley Reservation of California
- Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
- Quileute Tribe of the Quileute Reservation
- Quinault Indian Nation (previously listed as the Quinault Tribe of the Quinault Reservation, Washington)
- Ramona Band of Cahuilla, California (previously listed as the Ramona Band or Village of Cahuilla Mission Indians of California)
- Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
- Red Lake Band of Chippewa Indians, Minnesota
- Redding Rancheria, California
- Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California (previously listed as the Redwood Valley Rancheria of Pomo Indians of California)
- Reno-Sparks Indian Colony, Nevada
- Resighini Rancheria, California
- Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
- Robinson Rancheria Band of Pomo Indians, California (previously listed as the Robinson Rancheria of Pomo Indians of California)
- Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
- Round Valley Indian Tribes, Round Valley Reservation, California (previously listed as the Round Valley Indian Tribes of the Round Valley Reservation, California)
- Sac & Fox Nation of Missouri in Kansas and Nebraska
- Sac & Fox Nation, Oklahoma
- Sac & Fox Tribe of the Mississippi in Iowa
- Saginaw Chippewa Indian Tribe of Michigan
- Saint Regis Mohawk Tribe (previously listed as the St. Regis Band of Mohawk Indians of New York)
- Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
- Samish Indian Nation (previously listed as the Samish Indian Tribe, Washington)
- San Carlos Apache Tribe of the San Carlos Reservation, Arizona
- San Juan Southern Paiute Tribe of Arizona
- San Manuel Band of Mission Indians, California (previously listed as the San Manuel Band of Serrano Mission Indians of the San Manuel Reservation)
- San Pasqual Band of Diegueno Mission Indians of California
- Santa Rosa Band of Cahuilla Indians, California (previously listed as the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation)
- Santa Rosa Indian Community of the Santa Rosa Rancheria, California
- Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
- Santee Sioux Nation, Nebraska
- Sauk-Suiattle Indian Tribe
- Sault Ste. Marie Tribe of Chippewa Indians of Michigan
- Scotts Valley Band of Pomo Indians of California
- Seminole Tribe of Florida (previously listed as the Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations))
- Seneca Nation of Indians (previously listed as the Seneca Nation of New York)
- Seneca-Cayuga Tribe of Oklahoma
- Shakopee Mdewakanton Sioux Community of Minnesota
- Shawnee Tribe
- Sherwood Valley Rancheria of Pomo Indians of California
- Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
- Shinnecock Indian Nation
- Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation (previously listed as the Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington)
- Shoshone Tribe of the Wind River Reservation, Wyoming
- Shoshone-Bannock Tribes of the Fort Hall Reservation
- Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
- Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota
- Skokomish Indian Tribe (previously listed as the Skokomish Indian Tribe of the Skokomish Reservation, Washington)
- Skull Valley Band of Goshute Indians of Utah
- Smith River Rancheria, California
- Snoqualmie Indian Tribe (previously listed as the Snoqualmie Tribe, Washington)
- Soboba Band of Luiseno Indians, California
- Sokaogon Chippewa Community, Wisconsin
- Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
- Spirit Lake Tribe, North Dakota
- Spokane Tribe of the Spokane Reservation
- Squaxin Island Tribe of the Squaxin Island Reservation
- St. Croix Chippewa Indians of Wisconsin
- Standing Rock Sioux Tribe of North & South Dakota
- Stillaguamish Tribe of Indians of Washington (previously listed as the Stillaguamish Tribe of Washington)
- Stockbridge Munsee Community, Wisconsin
- Summit Lake Paiute Tribe of Nevada
- Suquamish Indian Tribe of the Port Madison Reservation
- Susanville Indian Rancheria, California
- Swinomish Indians of the Swinomish Reservation of Washington
- Sycuan Band of the Kumeyaay Nation
- Table Mountain Rancheria of California
- Tejon Indian Tribe
- Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)
- The Muscogee (Creek) Nation
- The Osage Nation (previously listed as the Osage Tribe)
- The Seminole Nation of Oklahoma
- Thlopthlocco Tribal Town
- Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota

Tohono O'odham Nation of Arizona	Yomba Shoshone Tribe of the Yomba Reservation, Nevada	King Salmon Tribe
Tonawanda Band of Seneca (previously listed as the Tonawanda Band of Seneca Indians of New York)	Ysleta Del Sur Pueblo of Texas	Klawock Cooperative Association
Tonkawa Tribe of Indians of Oklahoma	Yurok Tribe of the Yurok Reservation, California	Knik Tribe
Tonto Apache Tribe of Arizona	Zuni Tribe of the Zuni Reservation, New Mexico	Kokhanok Village
Torres Martinez Desert Cahuilla Indians, California (previously listed as the Torres-Martinez Band of Cahuilla Mission Indians of California)	<b>Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs</b>	Koyukuk Native Village
Tulalip Tribes of Washington (previously listed as the Tulalip Tribes of the Tulalip Reservation, Washington)	Agdaagux Tribe of King Cove	Levelock Village
Tule River Indian Tribe of the Tule River Reservation, California	Akiachak Native Community	Lime Village
Tunica-Biloxi Indian Tribe	Akiak Native Community	Manley Hot Springs Village
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California	Alatna Village	Manokotak Village
Turtle Mountain Band of Chippewa Indians of North Dakota	Algaaciq Native Village (St. Mary's)	McGrath Native Village
Tuscarora Nation	Allakaket Village	Mentasta Traditional Council
Twenty-Nine Palms Band of Mission Indians of California	Angoon Community Association	Metlakatla Indian Community, Annette Island Reserve
United Auburn Indian Community of the Auburn Rancheria of California	Anvik Village	Naknek Native Village
United Keetoowah Band of Cherokee Indians in Oklahoma	Arctic Village (See Native Village of Venetie Tribal Government)	Native Village of Afognak
Upper Sioux Community, Minnesota	Asa'carsarmiut Tribe	Native Village of Akhiok
Upper Skagit Indian Tribe	Atqasuk Village (Atkasook)	Native Village of Akutan
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah	Beaver Village	Native Village of Aleknagik
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah	Birch Creek Tribe	Native Village of Ambler
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California	Central Council of the Tlingit & Haida Indian Tribes	Native Village of Atka
Walker River Paiute Tribe of the Walker River Reservation, Nevada	Chalkyitsik Village	Native Village of Barrow Inupiat Traditional Government
Wampanoag Tribe of Gay Head (Aquinnah)	Cheesh-Na Tribe (previously listed as the Native Village of Chistochina)	Native Village of Belkofski
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)	Chevak Native Village	Native Village of Brevig Mission
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona	Chickaloon Native Village	Native Village of Buckland
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma	Chignik Bay Tribal Council (previously listed as the Native Village of Chignik)	Native Village of Cantwell
Wilton Rancheria, California	Chignik Lake Village	Native Village of Chenega (aka Chanega)
Winnebago Tribe of Nebraska	Chilkat Indian Village (Klukwan)	Native Village of Chignik Lagoon
Winnemucca Indian Colony of Nevada	Chilkoot Indian Association (Haines)	Native Village of Chitina
Wiyot Tribe, California (previously listed as the Table Bluff Reservation—Wiyot Tribe)	Chinik Eskimo Community (Golovin)	Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
Wyandotte Nation	Chuloonawick Native Village	Native Village of Council
Yankton Sioux Tribe of South Dakota	Circle Native Community	Native Village of Deering
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona	Craig Tribal Association (previously listed as the Craig Community Association)	Native Village of Diomedea (aka Inalik)
Yavapai-Prescott Indian Tribe (previously listed as the Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona)	Curyung Tribal Council	Native Village of Eagle
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada	Douglas Indian Association	Native Village of Eek
Yocha Dehe Wintun Nation, California (previously listed as the Rumsey Indian Rancheria of Wintun Indians of California)	Egegik Village	Native Village of Ekuk
	Eklutna Native Village	Native Village of Elim
	Ekwook Village	Native Village of Eyak (Cordova)
	Emmonak Village	Native Village of False Pass
	Evansville Village (aka Bettles Field)	Native Village of Fort Yukon
	Galena Village (aka Loudon Village)	Native Village of Gakona
	Gulkana Village	Native Village of Gambell
	Healy Lake Village	Native Village of Georgetown
	Holy Cross Village	Native Village of Goodnews Bay
	Hoonah Indian Association	Native Village of Hamilton
	Hughes Village	Native Village of Hooper Bay
	Huslia Village	Native Village of Kanatak
	Hydaburg Cooperative Association	Native Village of Karluk
	Igiugig Village	Native Village of Kiana
	Inupiat Community of the Arctic Slope	Native Village of Kipnuk
	Iqurmuut Traditional Council	Native Village of Kivalina
	Ivanoff Bay Village	Native Village of Kluti Kaah (aka Copper Center)
	Kaguyak Village	Native Village of Kobuk
	Kaktovik Village (aka Barter Island)	Native Village of Kongiganak
	Kasigluk Traditional Elders Council	Native Village of Kotzebue
	Kenaitze Indian Tribe	Native Village of Koyuk
	Ketchikan Indian Corporation	Native Village of Kwigillingok
	King Island Native Community	Native Village of Kwinhagak (aka Quinhagak)
		Native Village of Larsen Bay
		Native Village of Marshall (aka Fortuna Ledge)
		Native Village of Mary's Igloo
		Native Village of Mekoryuk
		Native Village of Minto
		Native Village of Nanwalek (aka English Bay)

Native Village of Napaimute  
Native Village of Napakiak  
Native Village of Napaskiak  
Native Village of Nelson Lagoon  
Native Village of Nightmute  
Native Village of Nikoliski  
Native Village of Noatak  
Native Village of Nuiqsut (aka Nooiksut)  
Native Village of Nunam Iqua  
(previously listed as the Native  
Village of Sheldon's Point)  
Native Village of Nunapitchuk  
Native Village of Ouzinkie  
Native Village of Paimiut  
Native Village of Perryville  
Native Village of Pilot Point  
Native Village of Pitka's Point  
Native Village of Point Hope  
Native Village of Point Lay  
Native Village of Port Graham  
Native Village of Port Heiden  
Native Village of Port Lions  
Native Village of Ruby  
Native Village of Saint Michael  
Native Village of Savoonga  
Native Village of Scammon Bay  
Native Village of Selawik  
Native Village of Shaktoolik  
Native Village of Shishmaref  
Native Village of Shungnak  
Native Village of Stevens  
Native Village of Tanacross  
Native Village of Tanana  
Native Village of Tatitlek  
Native Village of Tazlina  
Native Village of Teller  
Native Village of Tetlin  
Native Village of Tuntutuliak  
Native Village of Tununak  
Native Village of Tyonek  
Native Village of Unalakleet  
Native Village of Unga  
Native Village of Venetie Tribal  
Government (Arctic Village and  
Village of Venetie)  
Native Village of Wales  
Native Village of White Mountain  
Nenana Native Association  
New Koliganek Village Council  
New Stuyahok Village  
Newhalen Village  
Newtok Village  
Nikolai Village  
Ninilchik Village  
Nome Eskimo Community  
Nondalton Village  
Noorvik Native Community  
Northway Village  
Nulato Village  
Nunakauyarmiut Tribe  
Organized Village of Grayling (aka  
Holikachuk)  
Organized Village of Kake  
Organized Village of Kasaan  
Organized Village of Kwethluk  
Organized Village of Saxman  
Orutsararmiut Native Village (aka  
Bethel)  
Oscarville Traditional Village

Pauloff Harbor Village  
Pedro Bay Village  
Petersburg Indian Association  
Pilot Station Traditional Village  
Platinum Traditional Village  
Portage Creek Village (aka Ohgsenakale)  
Pribilof Islands Aleut Communities of  
St. Paul & St. George Islands  
Qagan Tayagungin Tribe of Sand Point  
Village  
Qawalangin Tribe of Unalaska  
Rampart Village  
Saint George Island (See Pribilof Islands  
Aleut Communities of St. Paul & St.  
George Islands)  
Saint Paul Island (See Pribilof Islands  
Aleut Communities of St. Paul & St.  
George Islands)  
Seldovia Village Tribe  
Shageluk Native Village  
Sitka Tribe of Alaska  
Skagway Village  
South Naknek Village  
Stebbins Community Association  
Sun'aq Tribe of Kodiak (previously  
listed as the Shoonaq' Tribe of  
Kodiak)  
Takotna Village  
Tangirnaq Native Village (formerly  
Lesnoi Village (aka Woody Island))  
Telida Village  
Traditional Village of Togiak  
Tuluksak Native Community  
Twin Hills Village  
Ugashik Village  
Umkumiut Native Village (previously  
listed as Umkumiute Native Village)  
Village of Alakanuk  
Village of Anaktuvuk Pass  
Village of Aniak  
Village of Atmautluak  
Village of Bill Moore's Slough  
Village of Chefornak  
Village of Clarks Point  
Village of Crooked Creek  
Village of Dot Lake  
Village of Iliamna  
Village of Kalskag  
Village of Kaltag  
Village of Kotlik  
Village of Lower Kalskag  
Village of Ohogamiut  
Village of Old Harbor  
Village of Red Devil  
Village of Salamatoff  
Village of Sleetmute  
Village of Solomon  
Village of Stony River  
Village of Venetie (See Native Village of  
Venetie Tribal Government)  
Village of Wainwright  
Wrangell Cooperative Association  
Yakutat Tlingit Tribe  
Yupiit of Andreafski  
[FR Doc. 2012-19588 Filed 8-9-12; 8:45 am]

BILLING CODE 4310-4J-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Advisory Board for Exceptional Children

**AGENCY:** Bureau of Indian Affairs,  
Interior

**ACTION:** Notice of meeting.

**SUMMARY:** The Bureau of Indian  
Education (BIE) is announcing that the  
Advisory Board for Exceptional  
Children (Advisory Board) will hold its  
next meeting in Washington, DC. The  
purpose of the meeting is to meet the  
mandates of the Individuals with  
Disabilities Education Act of 2004  
(IDEA) for Indian children with  
disabilities.

**DATES:** The Advisory Board will meet on  
Thursday, September 27, 2012, from  
8:30 a.m. to 4:30 p.m. and Friday,  
September 28, 2012 from 8:30 a.m. to  
4:30 p.m. Eastern Time.

**ADDRESSES:** The meeting will be held at  
1849 C Street, NW., MS 3609—Main  
Interior Building, Room 3624,  
Washington, DC; telephone number  
(202) 208-6123.

**FOR FURTHER INFORMATION CONTACT:** Sue  
Bement, Designated Federal Officer,  
Bureau of Indian Education,  
Albuquerque Service Center, Division of  
Performance and Accountability, 1011  
Indian School Road NW., Suite 332,  
Albuquerque, NM 87104; telephone  
number (505) 563-5274.

**SUPPLEMENTARY INFORMATION:** In  
accordance with the Federal Advisory  
Committee Act, the BIE is announcing  
that the Advisory Board will hold its  
next meeting in Washington, DC. The  
Advisory Board was established under  
the Individuals with Disabilities Act of  
2004 (20 U.S.C. 1400 *et seq.*) to advise  
the Secretary of the Interior, through the  
Assistant Secretary—Indian Affairs, on  
the needs of Indian children with  
disabilities. The meetings are open to  
the public.

The following items will be on the  
agenda:

- Report from Acting BIE Director
- Report from Supervisory Education  
Specialist, Special Education, BIE,  
Division of Performance and  
Accountability
- Updates from the BIE, Division of  
Performance and Accountability
- Group work on Annual Report
- Discussion on Consultation  
Opportunity
- Public Comment (via conference call,  
September 28, 2012, meeting only\*).
- BIE Advisory Board-Advice and  
Recommendations

# EXHIBIT 2

**FILED**

**MAY 13 2004**

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

EL DORADO COUNTY, a Political  
Subdivision of the State of  
California,

Plaintiff,

v.

GALE A. NORTON, in her Capacity  
as Secretary of the Interior,  
PHILIP N. HOGEN,\* in his Capacity  
as Chairman of the National Indian  
Gaming Commission, NATIONAL INDIAN  
GAMING COMMISSION, AURENE MARTIN,  
in her Capacity as Assistant  
Secretary of the Interior for  
Indian Affairs, and BUREAU OF  
INDIAN AFFAIRS,

Defendants.

SHINGLE SPRINGS BAND OF MIWOK  
INDIANS,

Intervenor.

CIV. S-02-1818 GEB DAD

ORDER

Intervenor Defendant Shingle Springs Band of Miwok Indians  
("the Band") and the Federal Defendants (collectively referenced as  
"Movants") move for dismissal of Counts 13 and 14 in the Second

\* The caption is amended to reflect the correct spelling  
of Defendant Hogen's name.

1 Amended Complaint ("SAC"), arguing the claims are time barred by the  
2 statute of limitations period prescribed in 28 U.S.C. § 2401(a).<sup>1</sup>  
3 They seek dismissal of Count 13 on the additional ground that it  
4 concerns a nonjusticiable political question. Plaintiff County of El  
5 Dorado ("the County") opposes the motions.

6 LEGAL STANDARD

7 Since the § 2401(a) statute of limitations period erects a  
8 procedural bar to suit, the motions are considered under Federal Rule  
9 of Civil Procedure 12(b)(6).<sup>2</sup> See Supermail Cargo, Inc. v. United  
10 States, 68 F.3d 1204, 1206 n.2 (9th Cir. 1995) (holding that a statute  
11 of limitations challenge which is not jurisdictional in nature should  
12 be considered under 12(b)(6)).<sup>3</sup> When ruling on the dismissal motion,

13  
14 <sup>1</sup> Concurrently with its filing of the SAC, the County  
15 filed a motion for reconsideration of an Order filed October 29,  
16 2003 ("October 29 Order"), which dismissed Counts 12 and 13 of  
17 its First Amended and Supplemental Complaint ("FAC"). The  
18 reconsideration motion was denied as moot at the hearing held  
19 February 9, 2004, because the FAC was superseded by the SAC. See  
20 Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc., 896 F.2d  
21 1542, 1546 (9th Cir. 1989) (stating an amended complaint  
22 supercedes the prior complaint).

19 <sup>2</sup> Unless otherwise indicated, all citations to Rules  
20 herein refer to the Federal Rules of Civil Procedure.

21 <sup>3</sup> Section 2401(a)'s statute of limitations period is not  
22 jurisdictional in nature. See Cedars-Sinai Medical Ctr. v.  
23 Shalala, 125 F.3d 765, 770 (9th Cir. 1997) ("Cedars-Sinai I");  
24 see also Washington v. Garrett, 10 F.3d 1421, 1437 (9th Cir.  
25 1993) (stating Irwin v. Dept. of Veterans Affairs, 498 U.S. 89,  
26 96 (1990) "held that federal statutory time limitations on suits  
27 against the government are not jurisdictional in nature"); but  
28 see Nesovic v. United States, 71 F.3d 776, 777-78 (9th Cir. 1995)  
(stating the limitation period in § 2401(a) is a jurisdictional  
bar to suit). As explained in Cedars-Sinai I, the statement in  
Nesovic that the limitations period in § 2401(a) is  
jurisdictional was not necessary to the court's decision.  
Cedars-Sinai I, 125 F.3d at 770; see also Cedars Sinai Medical  
Ctr. v. Shalala, 177 F.3d 1126, 1129 n.1 (9th Cir. 1999)  
("Cedars-Sinai II") (finding UOP v. United States, 99 F.3d 344

(continued...)



1 the allegations in the SAC are accepted as true and construed in the  
2 light most favorable to the County.<sup>4</sup> See Love v. United States, 915  
3 F.2d 1242, 1245 (9th Cir. 1989). "When a motion to dismiss is based  
4 on the running of the statute of limitations, it can be granted only  
5 if the assertions of the complaint, read with the required liberality,  
6 would not permit the plaintiff to prove that the statute was tolled."  
7 Jablon v. Dean Witter & Co., 614 F.2d 677, 682 (9th Cir. 1980). But a  
8 judge is not "required to accept as true allegations that are merely  
9 conclusory, unwarranted deductions of fact, or unreasonable  
10 inferences." Sprewell v. Golden State Warriors, 266 F.3d 979, 988  
11 (9th Cir. 2001).

#### 12 BACKGROUND AND PROCEDURAL HISTORY<sup>5</sup>

13 The County's original Complaint alleges that federal  
14 question jurisdiction exists over this lawsuit "under the National  
15 Environmental Policy Act" ("NEPA"). (Compl. ¶ 1.) The original  
16 Complaint alleges that the Band proposes to develop a gambling casino  
17 resort ("Casino") "in the heart of rural El Dorado County,  
18 California." (Id. ¶ 2.) The development includes a freeway  
19 interchange between the Casino and U.S. Highway 50. (Id.) The County  
20 states in the original Complaint that it brought the action "to ensure  
21 that the federal government complies with NEPA and its implementing  
22

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23 <sup>3</sup>(...continued)  
24 (9th Cir. 1996), unpersuasive for the same reason).

25 <sup>4</sup> Since a Rule 12(b)(6) motion is to be resolved on the  
26 face of the pleadings, the County's request for discovery and an  
evidentiary hearing is denied. (See County's Opp'n at 7.)

27 <sup>5</sup> The allegations of the original Complaint and the FAC  
28 are stated to the extent relevant to the "relation back" and  
"accrual" arguments discussed *infra*.

1 regulations by considering, analyzing, and disclosing all of the  
 2 environmental impacts associated with, and any reasonable alternatives  
 3 to, the proposed Casino and its interchange." (Id. ¶ 7.) The  
 4 original Complaint "challenge[d] the 2001 Draft and Final  
 5 Environmental Assessments ("EA"), and the National Indian Gaming  
 6 Commission's ("NIGC's") January 2002 Finding of No Significant Impact  
 7 ("FONSI") and approval of a Development and Management Contract for  
 8 [the] . . . [C]asino." (Id. ¶ 1.) The County explained its interest  
 9 in bringing the suit as follows:

10 Plaintiff El Dorado County is a political  
 11 subdivision of the State of California.  
 12 California law vests the County with plenary  
 13 authority over land use and development projects  
 14 within its jurisdiction. The County is . . .  
 15 responsible for ensuring that such projects comply  
 16 with applicable environmental disclosure laws.  
 17 The County therefore has a vital interest in  
 18 ensuring that any development within its borders  
 19 is appropriate in scale and context and  
 20 environmentally sensitive, and that its  
 21 environmental impacts are fully disclosed and  
 22 weighed, regardless of whether the County holds  
 23 actual permitting authority over the development.

24 . . . The Casino will impose new and additional  
 25 burdens upon the County's provision of these  
 26 services, to the detriment of the County's  
 27 citizens.

28 (Id. ¶¶ 12-13.)

The two claims at issue in the Movants' pending motions,  
 Counts 13 and 14, were first alleged in the FAC which was filed on  
 March 3, 2003. Count 13 challenges the status of the Band as a  
 federally recognized Indian tribe, (FAC ¶¶ 154-155), and Count 14  
 challenges the status of the Shingle Springs Rancheria ("Rancheria")  
 land as "Indian land" under the Indian Gaming Regulatory Act, 25  
 U.S.C. § 2701 et seq ("IGRA"). (FAC ¶ 166.) The Federal Defendants  
 and the Band moved to dismiss Count 13 in the FAC. The dismissal

1 motions were granted in the October 29 Order since the claim was found  
2 to be barred by the statute of limitations because of its accrual in  
3 1996. But the County was granted leave to amend and it subsequently  
4 filed the SAC.

5 Movants now seek dismissal of Counts 13 and 14 in the SAC.  
6 Count 13 alleges the NIGC's 2002 approval of the Development Component  
7 of the Casino violated the Administrative Procedure Act ("APA")  
8 because it was "based upon and applie[d] the BIA's unlawful  
9 identification of the Band as an Indian tribe pursuant to the List  
10 Act." (Id. ¶ 161.) The County made the following allegations  
11 regarding accrual of Count 13 in the SAC:

12 In November of 1996, the Band began attempting to  
13 develop and operate a 17,000 square-foot illegal,  
14 class III gambling casino on the Rancheria. For  
15 all intents and purposes, this casino was never  
16 legally operated. The County, as well as federal  
17 and state authorities, opposed this venture for  
18 numerous reasons, including but not limited to the  
19 fact that illegal gaming was proposed, the  
20 operation of the casino posed unacceptable  
21 environmental and public health and safety risks  
22 from unsafe and illegal road access, inadequate  
23 water supply and wastewater disposal, substandard  
24 construction, and fire hazards.

19 \* \* \*

20 As a result of the Band's proposal to construct  
21 and operate a casino, the NIGC investigated the  
22 matter and concurred that the proposal had not  
23 properly addressed numerous, serious environmental  
24 and public health and safety problems,  
25 particularly lack of commercial access. The  
26 County intervened in this administrative process  
27 and fully participated until all available  
28 administrative remedies had been exhausted in  
1998.

26 Prior to the November 1996 opening, the U.S.  
27 Attorney again publicly advised that all necessary  
28 action would be taken to close the casino, were it  
to open on the Rancheria. No action was required  
by the County as the U.S. Attorney possessed the  
requisite authority to close such an illegal

1 operation were it to open to the public. On  
2 November 1, 1996, one day prior to the publicly  
3 announced opening of the casino to the public, the  
4 County contacted the Enforcement unit of the NIGC  
5 and advised that illegal class III gaming would be  
6 offered at the casino. On that same day, the  
7 County contacted Congressman Doolittle's office  
8 and was advised that his office was actively  
9 working with the NIGC to resolve the issue of  
10 illegal gaming at the Rancheria. Also, on or  
11 about November 1, 1996, the County contacted the  
12 U.S. Attorney's Office and was advised that all  
13 appropriate action would be taken by the U.S.  
14 Attorney's office to shut down the casino at the  
15 Rancheria if any further attempts were made to  
16 open the casino to the public.

17 Remarkably, on November 2, 1996, in disregard for  
18 the threats of criminal action by the U.S.  
19 Attorney's Office, and the health and safety of  
20 all attendees, the casino opened offering illegal  
21 gaming for approximately ten (10) days at the  
22 Shingle Springs Rancheria by way of the private  
23 Grassy Run roads which prohibited such  
24 commercial/public access. In an immediate  
25 response, on November 2, 1996, the NIGC issued a  
26 Notice of Violation ("NOV"), listing ten (10)  
27 separate violations, including lack of access  
28 which carried fines of up to \$25,000 per day.  
Thus, the illegal casino was shut down before the  
County had a reasonable opportunity to take legal  
action.

17 Undeterred by the lack of legal authority to offer  
18 gaming, in litigation initiated by the Band  
19 itself, the Shingle Springs Rancheria sued its  
20 neighbors to the East (U.S.D.C. Eastern Dist. of  
21 Cal., Case No. Civ-S-96-1414 EJC/PAN, consolidated  
22 with No. Civ-S-96-1234 DLF/JFM [sic], filed  
23 08/01/96) ("Grassy Run litigation"). At no time  
24 during this litigation (which had been stayed by  
25 order of the court prior to and immediately after  
26 the County was named in a cross-complaint) did the  
27 County have the means to perfect standing under  
28 the Acknowledgement Regulations to challenge  
tribal status. As a result of the *Grassy Run*  
litigation, this Court found that the Band's right  
of access to the Rancheria did not authorize  
commercial traffic, except by permission and under  
limited circumstances. On April 25, 1997, in the  
*Grassy Run* litigation, Judge Levi of the U.S.  
District Court for the Eastern District granted  
partial summary adjudication in favor of  
defendants Grassy Run Community Services District  
("GRCSO") declaring Grassy Run roads to be private

1 and thus commercial access to the Rancheria was  
2 legally prohibited. Since there was no other  
3 access in existence other than the private roads  
4 of Grassy Run, legal operation of the casino  
5 became impossible on April 25, 1997 and remains so  
6 today, absent construction of the freeway  
7 interchange whose NEPA compliance this lawsuit  
8 challenges. After granting partial summary  
9 adjudication, Judge Levi, perhaps hoping to avoid  
10 the necessity of issuing a preliminary/permanent  
11 injunction, ordered the parties to conduct  
12 settlement negotiations before the Honorable  
13 Magistrate Judge J. Moulds.

8 Echoing their disregard for the NIGC's NOV in  
9 November 1996, the Shingle Springs Band opened the  
10 casino on the very day Judge Levi granted partial  
11 summary adjudication. The casino still lacked  
12 legal commercial access as a matter of law, a  
13 gaming compact with the state, and an NIGC-  
14 approved management contract.

12 At no time during 1996 or 1997 was there any  
13 agency application of a final agency decision to  
14 the County. These administrative and judicial  
15 rulings ended the first casino venture before it  
16 was ever fully operational. There was no final  
17 agency action until, at earliest, May of 2000 when  
18 the Tribal-State Gaming Compact with California  
19 was approved by the NIGC as noted in the Federal  
20 Register. 65 FR 31189.

17 Following the granting of partial summary  
18 adjudication against the Band, the court ordered  
19 settlement negotiations eventually failed when the  
20 Band rejected the court brokered settlement  
21 (previously agreed upon by the Band's  
22 representative and counsel). As a result, in  
23 December 1997 GRCSO was forced to obtain a  
24 preliminary injunction against all  
25 commercial/public traffic to the Rancheria by way  
26 of the only access (i.e. Grassy Run roads). Thus  
27 by December 1997 when the only road to the casino  
28 was closed by federal court order, whatever rights  
the County might have had to challenge tribal  
status were legally extinguished. By December of  
1997, there was no probability or even possibility  
that gaming of any type would occur on the  
Rancheria.

26 There were two additional short-lived attempts to  
27 gain access to the Rancheria for commercial  
28 purposes. First, the Band attempted to gain  
access by a right-of-way over U.S. Bureau of Land  
Management ("BLM") land to the north of the

1 Rancheria. When the BLM discovered the Band  
2 and/or BIA submitted a misleading NEPA document,  
3 the BLM rejected the request for a right-of-way.  
4 Second, on January 23, 1998 the Shingle Springs  
5 Rancheria sued its neighbors to the east, the  
6 North Buckeye Rancheros Owners Association  
7 ("NBROA") and EDC (U.S.D.C. Eastern Dist. of Cal.,  
8 Case No. Civ-S-98-139 GEB/PAN) in an unsuccessful  
9 attempt to gain access to the private roads of  
10 Shingle Springs Drive, north of Highway 50 and  
11 Tennessee Drive. Realizing that the road was  
12 private, the matter was dismissed on March 2,  
13 1999. No access was ever obtained through the BLM  
14 land or via NBROA roads.

15 Thus, any alleged basis for challenging the first  
16 casino venture, whether against the Shingle  
17 Springs Band or the DOI (including the BIA or  
18 NIGC) was indisputably extinguished in 1997 when  
19 the preliminary injunction was issued. Any  
20 attempt to file an action would have been not ripe  
21 (as Defendants/Intervenor argues to date as noted  
22 below in paragraph 159) and lacking in case and  
23 controversy.

24 Although the Band attempted to conduct class III  
25 gaming in 1996, the Band lacked a Tribal-State  
26 Gaming Compact as required by IGRA. Indeed, a  
27 Tribal-State Gaming Compact was not executed  
28 between the Shingle Springs Band and the State of  
California until September 10, 1999. See  
California Government Code § 12012.26. The  
compact, however, still required approval by the  
NIGC, which did not occur until Tuesday, May 16,  
2000 as noted in the Federal Register. 65 FR  
31189 (2000). . . .

(SAC ¶¶ 148, 150-59 (paragraph numbers omitted).)

Count 14 alleges the NIGC's 2002 approval of the Development  
Component of the Casino violated the APA because the Rancheria does  
not qualify as "Indian lands," and therefore is not land where the  
proposed gaming can be conducted under the IGRA. (Id. ¶¶ 165-66,  
172.) The IGRA defines "Indian lands" as:

(A) all lands within the limits of any Indian  
reservation; and

(B) any lands title to which is either held in  
trust by the United States for the benefit of any

1 Indian tribe or individual or held by any Indian  
2 tribe or individual subject to restrictions by the  
3 United States against alienation and over which an  
4 Indian tribe exercises governmental power.

5 25 U.S.C. § 2703(4). The SAC alleges the "Rancheria does not fit  
6 within [§ 2703(4)(B)'s] definition of the term 'Indian lands,'" and  
7 "Class II and III gaming [thus] may not lawfully occur at the  
8 Rancheria." (SAC ¶ 166.) Section 2703(4)(B) states land may be  
9 deemed "Indian land" if it is "held in trust by the United State[s]  
10 for the benefit of an[] Indian tribe or individual. . . ." The SAC  
11 alleges the Rancheria does not qualify as Indian land for two reasons.  
12 First, the form of title to the Rancheria land which is held by the  
13 United States is "not equivalent to title held 'in trust'" under the  
14 IGRA. (Id. ¶ 168.) Second, the land was "held for the use and  
15 occupancy of the Sacramento-Verona Band of Homeless Indians . . . [,]  
16 not . . . for the use and occupancy of the Shingle Springs Band of  
17 Miwok Indians." (Id. ¶ 171.) Therefore, "[e]ven if the Rancheria was  
18 at one time held in trust, that trust status was extinguished along  
19 with the beneficiary of that trust, i.e., the purported Sacramento-  
20 Verona Band." (Id.)

21 The SAC contains the following general allegations on  
22 accrual:

23 All challenged agency actions and determinations  
24 are final agency actions pursuant to the APA. The  
25 Development Component is final based upon the NIGC  
26 FONSI dated January 22, 2002, and NIGC's approval.  
27 The Interchange Component is final based upon the  
28 BIA FONSI dated December 3, 2002, and BIA's  
approval. The BIA's recognition of the Band as an  
Indian Tribe is final as applied to the County  
through NIGC's approval of the Development  
Component. Lastly, the Rancheria's recognition as

1 Tribal Land is final as applied to the County  
2 through NIGC's approval of the Development  
Component.

3 (SAC ¶ 6.)

4 DISCUSSION<sup>6</sup>

5 The parties agree that the statute of limitations applicable  
6 to Counts 13 and 14 is the six year period prescribed in 28 U.S.C.  
7 § 2401(a).<sup>7</sup> This statute provides in pertinent part: "every civil  
8 action commenced against the United States shall be barred unless the  
9 complaint is filed within six years after the right of action first  
10 accrues." The parties dispute when the claims in Counts 13 and 14  
11 first accrued. Movants contend the claims accrued in 1996.<sup>8</sup> (Band's  
12 Mot. at 6-7; Fed. Defs.' Mot. at 8-9.) The County responds that the  
13 claims accrued instead when the NIGC approved the Development  
14

15 <sup>6</sup> Movants' argument that Counts 13 and 14 are barred by  
16 the statute of limitations is addressed prior to their argument  
17 that Count 13 involves a political question. This is because the  
18 statute of limitations determination here is "not on the merits  
19 in the sense that the underlying substantive claim [will be]  
20 adjudicated," In re Marino, 181 F.3d 1142, 1144 (9th Cir. 1999),  
and thus need not be preceded by a decision on the political  
question issue. See U.S. Dept. of Commerce v. Montana, 503 U.S.  
442, 457-458 (1992) (holding judges must decline to address the  
merits of an issue which presents a political question).

21 <sup>7</sup> The County's argument that Defendants are judicially  
22 estopped from asserting the statute of limitations defense  
23 because they previously contended that the claims were unripe is  
24 rejected. (County's Opp'n at 17). Before judicial estoppel may  
25 be applied, "a party's later position must be [found to be]  
26 'clearly inconsistent' with its earlier position," and the court  
27 must have "relied on, or 'accepted' the party's previous  
28 inconsistent position." Hamilton v. State Farm Fire & Cas. Co.,  
270 F.3d 778, 782-83 (9th Cir. 2001). The elements of judicial  
estoppel are not present here.

26 <sup>8</sup> The Federal Defendants make the alternative argument  
27 that the claims accrued "in 1979 (at the latest) upon the  
28 Interior Department's promulgation in 1979 of its list of  
federally recognized tribes which included this particular  
Tribe." (Fed. Defs.' Mot. at 2 n.2.)



1 Component of the Casino in January 2002.<sup>9</sup> (County's Opp'n at 14.)  
 2 Further, the County argues if "accrual" occurred in 1996, the exact  
 3 date of accrual must be determined because Counts 13 and 14 were  
 4 timely asserted if they accrued after August 21 and "relate back" to  
 5 the filing of the original Complaint on August 21, 2002. (Id. at 9.)  
 6 The "relation back" and "accrual" issues will each be considered in  
 7 turn.

8 I. Relation Back

9 The County argues Counts 13 and 14 relate back to the filing  
 10 date of the original Complaint. Claims asserted for the first time in  
 11 an amended pleading only "relate[] back to the date of the original  
 12 pleading" if they "arose out of the conduct, transaction, or  
 13 occurrence set forth or attempted to be set forth in the original  
 14 pleading." Rule 15(c)(2).

15 The County contends Counts 13 and 14 "relate back" because  
 16 "[t]he claims made in the [original] Complaint arise out of the Band's  
 17 plans to construct a legal, class III casino[, and] . . . the Band is  
 18 allowed to build the Casino only if the Band is a federally recognized  
 19 Indian tribe and if [the Casino] is constructed on Indian lands."  
 20 (County's Opp'n at 15.) This argument is premised on the erroneous  
 21 notion that a claim "relates back" simply because it could achieve the  
 22 ultimate objective sought in the original Complaint, regardless of  
 23 whether it is otherwise related to the legal or equitable claims  
 24 alleged in the original Complaint. The issue is instead whether  
 25 Counts 13 and 14 "arose out of" the same conduct, transaction or  
 26

---

27 <sup>9</sup> "[A]t the earliest," the County alleges the claims  
 28 accrued in "May of 2000 when the Tribal-State Gaming Compact with  
 California was approved by the NIGC. . . ." (SAC ¶ 155.)

1 occurrence as the NEPA claims alleged in the County's original  
2 Complaint.

3           The factual allegations must be evaluated when determining  
4 whether the claims relate back. This is because

5           [t]he *raison d'être* for relation back is that the  
6 opposing party is already on notice of the action  
7 and hence no prejudice results: "Once the  
8 defendant is in court on a claim arising out of a  
particular transaction or set of facts, he is not  
prejudiced if another claim, arising out of the  
same facts, is added."

9 Sierra Club v. Penfold, 857 F.2d 1307, 1315 (9th Cir. 1988) (citation  
10 omitted). The appropriate question is therefore whether Counts 13 and  
11 14 "will likely be proved by the "same kind of evidence" offered in  
12 support of the original pleading.'" In re Dominguez, 51 F.3d 1502,  
13 1510 (9th Cir. 1995) (citations omitted).

14           Resolution of Count 13 will require consideration of the  
15 Interior Department's authority to recognize the Band as an Indian  
16 Tribe on a Tribal Status List published in 1979 in the Federal  
17 Register ("1979 Tribal Status List"), and possibly the appropriateness  
18 of that recognition. These considerations are clearly distinct from  
19 facts relevant to whether NIGC approval of the Development Component  
20 of the Casino in 2002 violated federal environmental standards. It is  
21 evident that the "same kind of evidence" would not be required to  
22 litigate the tribal status claim in Count 13 and the environmental  
23 claims in the original Complaint. Therefore, Count 13 does not relate  
24 back to the time when the original Complaint was filed.

25           Resolution of Count 14 will require consideration of  
26 evidence which may include the Interior Department's authority to  
27 recognize the Band on the 1979 Tribal Status List, the form of the  
28 land title to the Rancheria, and the relationship between the

1 Sacramento-Verona Band of Homeless Indians and the Shingle Springs  
2 Band of Miwok Indians. These factual considerations are distinct from  
3 those relevant to federal environmental claims challenging the  
4 development of the 2002 Casino. The County also argues that an  
5 allegation in the original Complaint gave Defendants notice of the  
6 possibility that the County could mount the land status challenge in  
7 Count 14. Specifically, it argues that the original Complaint stated  
8 the Rancheria was not held in trust by the United States, and thus  
9 gave movants notice of the County's contention that the land was not  
10 "Indian lands." But the allegations of the original Complaint state  
11 only:

12           The United States owns a 160-acre property in a  
13 rural area of western El Dorado County, near U.S.  
14 Highway 50, generally known as the Shingle Springs  
15 Rancheria ("Rancheria"). Land title is held by  
16 the "United States of America, for the use and  
17 occupancy of the Sacramento Verona[]Band of  
Homeless Indians." Notwithstanding this title,  
the Tribe claims this property as its lands and  
has been attempting for several years to develop a  
casino on it.

18 (Compl. ¶ 22.) These allegations do not create notice that the County  
19 would challenge the federally recognized status of the Rancheria as  
20 Indian lands subject to the Band's sovereign governance. Count 14  
21 does not relate back to the original Complaint. Since the APA claims  
22 in Counts 13 and 14 were not commenced until the filing of the FAC on  
23 March 3, 2003, they are untimely if they accrued at any time in 1996.  
24 See 28 U.S.C. § 2401(a).

25 II.           Accrual

26           Movants contend the tribal and land status claims in Counts  
27 13 and 14 accrued in 1996 when the Band exercised its sovereign  
28 authority over Rancheria lands by constructing and briefly operating a

1 class III gaming casino ("the 1996 Casino"). (Fed. Defs.' Mot. at 3,  
2 8-9; Band's Mot. at 6-7.) Under § 2401(a), the claims accrued when  
3 the County "either knew, or in the exercise of reasonable diligence  
4 should have known, that [it] had a claim." Loudner v. United States,  
5 108 F.3d 896, 900 (8th Cir. 1997). Accrual is thus considered in the  
6 context of "the well-established 'discovery rule,'" which provides:

7 a claim accrues when the plaintiff discovers, or  
8 in the exercise of reasonable diligence should  
9 have discovered, the factual basis for the cause  
10 of action. The standard is an objective one, in  
11 order to toll the statute of limitations pursuant  
12 to the discovery rule, the factual basis for the  
13 cause of action must have been "inherently  
14 unknowable" at the time of injury. The factual  
15 basis for a cause of action is "inherently  
16 unknowable" if it is "incapable of detection by  
17 the wronged party through the exercise of  
18 reasonable diligence."

19 Once a plaintiff knows of the injury and its  
20 probable cause, [it] bears the responsibility of  
21 inquiring [in] the . . . legal communit[y] about  
22 whether [it] was wronged and should take legal  
23 action.

24 Gonzalez v. United States, 284 F.3d 281, 288 (1st Cir. 2002)

25 (citations omitted).

26 The allegations of the SAC demonstrate the County knew in  
27 November 1996 that the Band was attempting to develop the 1996 Casino  
28 to offer "illegal gaming," and that the proposed development "posed  
unacceptable environmental and public health and safety risks from  
unsafe and illegal road access, inadequate water supply and wastewater  
disposal, substandard construction, and fire hazards." (SAC ¶ 148.)  
Even though this development was on Rancheria land "in the heart of  
residential El Dorado County, California," (id. ¶ 1), the County did  
not respond to the noted effects by asserting municipal authority over  
the land or requesting intervention by state officials.

1           Instead, the allegations of the SAC demonstrate that the  
2 County sought assistance from the Executive Branch of the federal  
3 government. On November 1, 1996, the County contacted the Enforcement  
4 Unit of the NIGC and the United States Attorney's Office to advise  
5 them that the Band intended to open its 1996 Casino to the public.  
6 (Id. ¶ 151.)<sup>10</sup> The United States Attorney responded as if the Band's  
7 proposed operation of the 1996 Casino was subject to federal rather  
8 than state regulation, "publicly advis[ing] that all necessary action  
9 would be taken to close the Casino, were it to open on the Rancheria."  
10 (SAC ¶ 151.) The NIGC also treated the Band's proposed operation of  
11 the 1996 Casino as if it was subject to federal regulation, the IGRA  
12 in particular. The NIGC allegedly "issued a Notice of Violation"  
13 against the Band on November 2, 1996, which listed "ten (10) separate  
14 violations, including lack of access[,] which carried fines of up to  
15 \$25,000.00 per day" if the Band did not stop operating the 1996  
16 Casino. (Id. ¶ 152.)<sup>11</sup>

17           The United States Attorney's public announcement and the  
18 NIGC's November 2 Notice of Violation evinced that the federal  
19 Executive Branch was exerting federal authority over both the Band and  
20 the Rancheria land. The NIGC regulatory authority is under the  
21 statutory framework of the IGRA. See 25 U.S.C. § 2702(3)  
22 (establishing the NIGC for the purpose of "meet[ing] congressional  
23

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24           <sup>10</sup> The County also contacted Congressman Doolittle's  
25 office, and was advised the office was "working with the NIGC to  
26 resolve the issue of illegal gaming at the Rancheria." (SAC  
27 ¶ 151.)

28           <sup>11</sup> The NIGC also allegedly conducted an administrative  
review of "numerous, serious environmental and public health and  
safety problems" which were caused by the 1996 Casino, in which  
the County intervened and participated. (Id. ¶ 150.)

1 concerns regarding gaming and to protect such gaming as a means of  
2 generating tribal revenue" pursuant to the IGRA). The IGRA  
3 specifically regulates gaming conducted by federally recognized Indian  
4 tribes on Indian lands. See 25 U.S.C. § 2702.<sup>12</sup>

5           Upon the County becoming aware of the United States  
6 Attorney's public announcement of its intention to exert federal  
7 authority over the Band and the NIGC's exercise of federal regulatory  
8 jurisdiction over the Band, the County should have known or discovered  
9 that the federal Executive Branch was at that time recognizing the  
10 Band as an Indian Tribe and the Rancheria land as Indian Land.  
11 Winters v. Diamond Shamrock Chemical Co., 941 F. Supp. 617, 622 (E.D.  
12 Tex. 1996) (finding "[a] plaintiff is charged with knowledge of  
13 information that has been made public through the media" and  
14 indicating this knowledge could also come from other public avenues).  
15 The federal authority asserted by the United States Attorney and the  
16 NIGC over the Band and the Rancheria was sufficient to "mark[]  
17 consummation of the [federal] decision making process" through which  
18 the Band was recognized as an Indian Tribe and the Rancheria as Indian  
19 Lands, and thus a clear point at which the County's claims accrued.  
20 Env'tl. Prot. Info. Ctr. v. Pac. Lumber Co., 266 F. Supp. 2d 1101, 1122  
21 (N.D. Cal. 2003) (describing final agency actions which begin the  
22 statute of limitations running for APA claims).

23  
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25           <sup>12</sup> An "Indian tribe" under the IGRA is defined as "any  
26 Indian tribe, band, nation, or other organized group or community  
27 of Indians which - (A) is recognized as eligible by the Secretary  
28 States to Indians because of their status as Indians, and (B) is  
recognized as possessing powers of self-government." 25 U.S.C.  
§ 2703(5).

1           The County argues that the doctrine in Wind River Mining  
2 Corp. v. United States, 946 F.2d 710 (9th Cir. 1991), delays accrual  
3 of the statute of limitations for Counts 13 and 14 until January 2002,  
4 when the NIGC approved the Development Component of the Casino.<sup>13</sup>  
5 (County's Opp'n at 14.) But Wind River is inapplicable here, since  
6 the doctrine is applicable only to situations where "an agency applies  
7 a regulation to a defendant in an enforcement proceeding," or where a  
8 party "petition[s] the agency to amend or rescind the regulation,  
9 [and] then seeks judicial review of the agency's denial. . . ." <sup>14</sup>  
10 Env'tl. Prot. Info. Ctr., 266 F. Supp. 2d at 1120.

11           The allegation in the SAC that the "illegal gaming casino  
12 was shut down [pursuant to the actions of the United States Attorney  
13 and the NIGC] before the County had a reasonable opportunity to take  
14

15           <sup>13</sup> Wind River states: "[i]f . . . a challenger contests  
16 the substance of an agency decision as exceeding constitutional  
17 or statutory authority, the challenger may do so later than six  
18 years following the decision by filing a complaint for review of  
19 the adverse application of the decision to the particular  
20 challenger. . . . The challenge must be brought within six years  
21 of the agency's application of the disputed decision to the  
22 challenger." 946 F.2d at 715-16.

23           <sup>14</sup> The County argues the ruling in Artichoke Joe's  
24 California Grand Casino v. Norton, 278 F. Supp. 2d 1174 (E.D.  
25 Cal. 2003), demonstrates Wind River is applicable to tribal  
26 status decisions challenged under the APA. (County Opp'n at 13-  
27 14.) But Artichoke Joe's only held "the rationale of the Wind  
28 River decision" was applicable. 278 F. Supp. 2d at 1182-83. And  
even under the Wind River doctrine, the County's claims would  
have accrued when it first should have been apparent to the  
County that the federal Executive Branch had recognized the Band  
as an Indian Tribe and the Rancheria as Indian lands - i.e., when  
the United States Attorney and the NIGC responded to the Band's  
construction and attempted operation of the 1996 Casino - not  
every subsequent time the Executive Branch applied its  
recognition decision. See generally, Florida Keys Citizens  
Coalition, Inc. v. West, 996 F. Supp. 1254, 1256 (S.D. Fla. 1998)  
(indicating the focus under Wind River is not when the federal  
Executive Branch's decision was most recently applied to the  
County but when it was first applied).

1 legal action," (id. ¶ 152), is also unpersuasive. The only reasonable  
 2 inference which may be drawn from the pled facts is that the County  
 3 contacted federal officials because it knew the Band was purporting to  
 4 exercise federal sovereign authority over the Rancheria land. The  
 5 County's tribal and land status claims thus accrued in November 1996,  
 6 when it "either knew, or in the exercise of reasonable diligence  
 7 should have known, that [it] had a claim."<sup>15</sup> Loudner, 108 F.3d at  
 8 900. Since the County did not assert the claims within six years, or  
 9 by November 2002, it is now barred by the statute of limitations from

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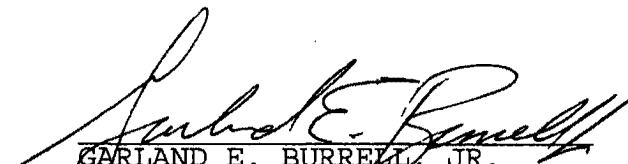
23 <sup>15</sup> The Interior Department's 1979 publication of its  
 24 Tribal Status List in the Federal Register gave the County  
 25 constructive notice of the underlying agency action which it  
 26 seeks to challenge in Count 13. See Friends of Sierra R.R., Inc.  
 27 v. I.C.C., 881 F.2d 663, 667-68 (9th Cir. 1989) ("Publication in  
 28 the Federal Register is legally sufficient notice to all  
 interested or affected persons regardless of actual knowledge or  
 hardship resulting from ignorance."). But since the County's  
 allegations demonstrate the latest possible accrual date for the  
 claims was in 1996, it is unnecessary to decide whether the 1979  
 notice was sufficient to trigger accrual of Count 13.



1 asserting the claims.<sup>16</sup> Therefore, Defendants' motions to dismiss  
2 Counts 13 and 14 of the SAC are granted with prejudice.<sup>17</sup>

3 IT IS SO ORDERED.

4 DATED: May 12, 2004

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7 GARLAND E. BURRELL, JR.  
8 United States District Judge  
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25 <sup>16</sup> Because the motions are resolved on the grounds stated,  
26 the parties' arguments regarding the political question doctrine  
are not reached.

27 <sup>17</sup> The allegations in the County's FAC and SAC make it  
28 apparent that these claims "'could not be saved by any  
amendment.'" Chang v. Chen, 80 F.3d 1293, 1296 (citation  
omitted).

# EXHIBIT 3

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 8 SHINGLE SPRINGS BAND OF MIWOK INDIANS

9 UNITED STATES DISTRICT COURT  
 10 EASTERN DISTRICT OF CALIFORNIA

11 SHINGLE SPRINGS BAND OF MIWOK  
 12 INDIANS, a federally-recognized sovereign  
 13 Indian tribe,

14 Plaintiff,

15 v.

16 THE ASSOCIATION PURPORTEDLY  
 DOING BUSINESS AS THE SHINGLE  
 17 SPRINGS BAND OF MIWOK INDIANS,  
 an unincorporated association; JENNIFER  
 18 BASSFORD; ALBERTA BLACKWELL;  
 LINDA BLACKWELL; ROBERTA  
 19 BLACKWELL; DORIS CARBAJAL;  
 MATTHEW CLARK; VIRGINIA CLARK;  
 REBECCA COLLIER; MARTY  
 20 DANIELS; CLIFFORD FAIRCLOTH;  
 EARNEST FAIRCLOTH; CRAIG  
 21 GUSTAFESSEN; MARY ANN HARPER;  
 RONALDEEN HAYDEN; KRISTEN  
 22 MACKY; CARLA MINOR; LISA  
 23 PERDICHIZZI; BRANDI RUSSELL;  
 LETICIA SALDANA; BARBARA  
 24 SMITH; LOUIS SMITH III; LOUIS  
 SMITH II; RICHARD SMITH; JAMES  
 25 TRIPP; DARLENE URJEVICH; LISA  
 URJEVICH; MARTIN URJEVICH;  
 26 ANTHONY VALDEZ; ERIN YOUNG;  
 and, DOES ONE THROUGH ONE  
 27 HUNDRED.

28 Defendants

CASE NO. 2:12-CV-00548-JAM-DAD

**FIRST AMENDED COMPLAINT FOR  
 TRADEMARK INFRINGEMENT,  
 UNFAIR COMPETITION,  
 DECLARATORY JUDGMENT AND  
 CYBERSQUATTING**

SNR DENTON US LLP  
 525 MARKET STREET, 26<sup>TH</sup> FLOOR  
 SAN FRANCISCO, CALIFORNIA 94105-2708  
 (415) 882-5000

1 By this action, the Plaintiff Shingle Springs Band of Miwok Indians—a sovereign Indian  
2 tribe that is formally recognized by the United States government as “Shingle Springs Band of  
3 Miwok Indians, Shingle Springs Rancheria (Verona Tract), California” (hereinafter referenced as  
4 the “Tribe” or “Plaintiff Tribe”)—seeks to protect its interest in its federally-recognized name, and  
5 alleges as follows:

#### 6 JURISDICTION

7 1. The Court has jurisdiction over this action pursuant to 15 U.S.C. Sections 1114,  
8 1121 and 1125(a) and 28 U.S.C. Sections 1331 and 1367.

#### 9 VENUE

10 2. Venue is proper in this federal judicial district pursuant to 28 U.S.C.  
11 Section 1391(b) because one or more of the Defendants reside in this judicial district and a  
12 substantial part of the events or omissions on which the claims are based occurred in this judicial  
13 district.

#### 14 PARTIES

15 3. The Tribe is a sovereign Indian tribe that is officially recognized and registered by  
16 the United States as the “Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria  
17 (Verona Tract), California.” 75 Fed. Reg. 60810, 60812 (Oct. 1, 2010). The Tribe possesses  
18 sovereign reservation lands in El Dorado County, California—known as the “Shingle Springs  
19 Rancheria”—that the United States holds in trust for the Tribe’s use and benefit. On the Shingle  
20 Springs Rancheria, the Tribe operates a gambling establishment under the name “Red Hawk  
21 Casino.”

22 4. The Tribe is informed and believes, and on that basis alleges, that defendant  
23 Association, which is purportedly doing business as the Shingle Springs Band of Miwok Indians,  
24 and which also uses the name “Historic” Shingle Springs Band of Miwok Indians (hereinafter  
25 referenced as the “Association”), is an unincorporated organization whose principal place of  
26 business is in El Dorado County, California.

27 5. The Tribe is informed and believes, and on that basis alleges, that each of the  
28 defendants—Jennifer Bassford, Alberta Blackwell, Linda Blackwell, Roberta Blackwell, Doris

1 Carbajal, Matthew Clark, Virginia Clark, Rebecca Collier, Marty Daniels, Clifford Faircloth,  
 2 Earnest Faircloth, Craig Gustafesen, Mary Ann Harper, Ronaldeen Hayden, Kristen Mackey,  
 3 Carla Minor, Lisa Perdichizzi, Brandi Russell, Leticia Saldana, Barbara Smith, Louis Smith II,  
 4 Louis Smith III, Richard Smith, James Tripp, Darlene Urjevich, Lisa Urjevich, Martin Urjevich,  
 5 Anthony Valdez and Erin Young—are members and/or representatives of the Association, and are  
 6 thus responsible in some actionable manner for the events, occurrences, injuries and damages  
 7 alleged herein .

8 6. The Tribe is informed and believes, and on that basis alleges, that defendants  
 9 Jennifer Bassford, Alberta Blackwell, Linda Blackwell, Doris Carbajal, Matthew Clark, Virginia  
 10 Clark, Clifford Faircloth, Earnest Faircloth, Craig Gustafesen, Mary Ann Harper, Ronaldeen  
 11 Hayden, Kristen Mackey, Carla Minor, Brandi Russell, Leticia Saldana, Barbara Smith, Louis  
 12 Smith II, Louis Smith III, Richard Smith, Darlene Urjevich, Lisa Urjevich, Martin Urjevich,  
 13 Anthony Valdez and Erin Young are, and at all times relevant were, citizens of California residing  
 14 in El Dorado County, California.

15 7. The Tribe is informed and believes, and on that basis alleges, that defendants Marty  
 16 Daniels and Roberta Blackwell are, and at all times relevant were, citizens of California residing  
 17 in Sacramento County, California.

18 8. The Tribe is informed and believes, and on that basis alleges, that defendant James  
 19 Tripp is, and at all times relevant was, a citizen of California residing in Amador County,  
 20 California.

21 9. The Tribe is informed and believes, and on that basis alleges, that defendant Lisa  
 22 Perdichizzi is, and at all times relevant was, a citizen of California residing in Alameda County,  
 23 California.

24 10. The Tribe is informed and believes, and on that basis alleges, that defendant  
 25 Rebecca Collier is, and at all times relevant was, a citizen of California residing in San Diego  
 26 County, California.

27 11. The Tribe is unaware of the true names and capacities of the defendants sued as  
 28 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names. The

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1 Tribe will amend this Complaint when the true names and capacities of the DOE defendants have  
2 been ascertained. The Tribe is informed and believes, and on this basis alleges, that each of the  
3 DOE defendants are members of the Association and are responsible in some actionable manner  
4 for the events, occurrences, injuries and damages alleged herein.

5 12. The Association and each of the individual defendants, including the DOE  
6 defendants, are collectively referenced herein as “Defendants.” The individual defendants are  
7 joined under California Code of Civil Procedure Section 369.5(b), as members of the Association,  
8 and are also sued for individual conduct, as alleged in this Complaint.

9 13. The Tribe is informed and believes, and on that basis alleges, that the Defendants  
10 are purporting to do business in this judicial district using marks that infringe the Tribe’s “Shingle  
11 Springs Band of Miwok Indians,” “Shingle Springs Rancheria,” and “Red Hawk Casino” marks.

#### 12 GENERAL ALLEGATIONS

13 14. The Tribe has been recognized by the United States government as the “Shingle  
14 Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California,” and has  
15 operated its tribal government under that name for decades. 45 Fed. Reg. 27828, 27830 (April 24,  
16 1980); 75 Fed. Reg. 60810, 60812 (Oct. 1, 2010). The Tribe has used its “Shingle Springs Band  
17 of Miwok Indians” and “Shingle Springs Rancheria” marks in connection with association  
18 services, including promoting the interests of an Indian tribe and its members; providing a web  
19 site with information on government of a tribal community; providing a web site with information  
20 on the government of a tribal community; newsletters featuring tribal community and general  
21 news, updates and information; educational publications, namely, brochures in the field of a tribal  
22 community’s history, government and society; newsletters featuring tribal community and general  
23 news, updates and information; educational publications, namely, brochures in the field of the  
24 tribal community’s history, government and society. The Tribe has used its “Red Hawk Casino”  
25 mark in connection with operating a casino. The Tribe’s “Red Hawk Casino” mark is well-known  
26 and has been featured in a wide array of television, print, billboard, and internet-based advertising.

27 15. As between the parties, the Tribe was first to use the “Shingle Springs Band of  
28 Miwok Indians,” “Shingle Springs Rancheria,” and “Red Hawk Casino” marks (hereinafter

1 collectively the “Shingle Springs Marks”) and its use predates Defendants’ use of the Shingle  
2 Springs Marks.

3 16. On December 23, 2008, the Tribe filed a complaint in this Court against Cesar  
4 Caballero, a member and sometime chief of the Association, for trademark and trademark name  
5 infringement, and unfair competition. That litigation, entitled *Shingle Springs Band of Miwok*  
6 *Indians v. Cesar Caballero*, 2:08-CV-03133-JAM-DAD (the “Caballero Litigation”), is pending.

7 17. On February 29, 2008, before the United States Patent and Trademark Office  
8 (“USPTO”), the Tribe filed a trademark application for “Red Hawk Casino,” Ser. No. 77/410,283,  
9 based on its intent to use the mark in commerce. The USPTO published the mark on July 6, 2010,  
10 and the mark was registered to the Shingle Springs Tribal Gaming Authority, a wholly owned  
11 instrumentality of the Tribe, on December 7, 2010, Registration No. 3886697.

12 18. On January 8, 2009, before the USPTO, Cesar Caballero filed a trademark  
13 application for “Shingle Springs Band of Miwok Indians,” Ser. No. 77/645,341, despite the  
14 Tribe’s prior use of and ownership of that mark. On April 9, 2009, the Tribe filed a notice of  
15 opposition to Mr. Caballero’s trademark application on the grounds, among others, that the mark  
16 falsely suggests a connection to the Tribe, that the mark is likely to cause confusion with the  
17 Tribe’s mark, and that the application is fraudulent.

18 19. On April 6, 2009, the Tribe filed an application, Ser. No. 77/707,568, for “Shingle  
19 Springs Band of Miwok Indians” based on its prior use of and ownership of that mark.

20 20. On August 25, 2009, the Tribe filed an application, Ser. No. 77/812,268, for  
21 “Shingle Springs Rancheria” based on its prior use of and ownership of that mark.

22 21. The proceedings before the USPTO relating to both the Tribe’s and Mr. Caballero’s  
23 applications, Ser. No. 77/645,341, Ser. No. 77/707,568 and Ser. No. 77/812,268, have been  
24 suspended pending the outcome of the proceedings in the Caballero Litigation.

25 22. On February 20, 2008, Cesar Caballero, as “Tribal Chief” of the Association, sent a  
26 letter to the United States Department of the Interior, Office of Federal Acknowledgement,  
27 wherein Mr. Caballero identified defendant Roberta Blackwell as a “tribal elder” of the  
28 Association.

1           23.     The Tribe is informed and believes, and on that basis alleges, that on July 23, 2008,  
2 defendant Kristen Mackey attended and spoke at a meeting of the El Dorado County Local  
3 Agency Formation Commission, purporting to speak on behalf of the Plaintiff Tribe, and also that  
4 Ms. Mackey has held herself out as an Assistant Administrator for the Association.

5           24.     The Tribe is informed and believes, and on that basis alleges, that defendant Lisa  
6 Perdichizzi participated in the preparation of defendant Kristen Mackey's statement to the El  
7 Dorado Local Agency Formation Commission, by communicating with defendant Kristen  
8 Mackey, Cesar Caballero, Benjamin Cadranel, Esq., and Brad Clark, Esq. regarding that statement  
9 as well as other matters regarding the Association. In these communications, defendant Lisa  
10 Perdichizzi repeatedly refers to the Association as "our Tribe."

11           25.     On October 2, 2009, Mr. Caballero submitted to the Tribe his Initial Disclosures in  
12 connection with the Tribe's litigation against him, wherein he identified defendants Martin  
13 Richard Urjevich, Louis Lawrence Smith III, Louis Lawrence Smith II, Carla Minor, Linda  
14 Blackwell, Alberta Blackwell, Leticia Saldana, Doris Carbajal, Mary Ann Harper, and Jim Tripp  
15 as members of the Association.

16           26.     On July 28, 2011, defendants Martin Urjevich, as Acting Chief of the Association,  
17 Jennifer Bassford, as Secretary of the Association, and Darlene Urjevich, as an Elder of the  
18 Association, submitted a letter to the California Gambling Control Commission ("CGCC"),  
19 purporting to act on behalf of the Tribe, and requesting that the CGCC issue funds from the  
20 Revenue Sharing Trust Fund—a depository of funds administered by the State of California  
21 consisting of funds from California's gaming tribes for the benefit of non-gaming California  
22 tribes—to the Association, and in which the Association claimed to hold legal and historic  
23 documents relating to their identity as the "Shingle Springs Band of Miwok Indians/Shingle  
24 Springs Miwok Tribe." The letter bears the name "Shingle Springs Band of Miwok Indians - A  
25 Federally Recognized Tribe" in its header.

26           27.     On September 29, 2011, defendant Martin Urjevich, as Acting Chief of the  
27 Association, submitted another letter to the CGCC, again requesting issuance of funds from the  
28 Revenue Sharing Trust Fund, and again claiming that the Association holds legal and historic



1 documents relating to the Association members' claimed identity as the "Shingle Springs Band of  
2 Miwok Indians/Shingle Springs Miwok Tribe." The letter bears the name "Shingle Springs Band  
3 of Miwok Indians - A Federally Recognized Tribe" in its header.

4 28. Also on September 29, 2011, defendants Martin Urjevich, as Acting Chief of the  
5 Association, Jennifer Nassford, as Secretary of the Association, and Darlene Urjevich, as Elder of  
6 the Association, submitted a letter to the United States Department of the Interior, Assistant  
7 Secretary—Indian Affairs, claiming to be a federally-recognized tribe and requesting issuance of  
8 funds held in trust by the United States. The letter bears the name "Shingle Springs Band of  
9 Miwok Indians - A Federally Recognized Tribe" in its header.

10 29. On November 8, 2011, defendant Rebecca Collier, as Director of Tribal Relations  
11 of the Association, submitted a letter to the Director of the Phoebe A. Hearst Museum of  
12 Anthropology, at the University of California, Berkeley ("Hearst Museum"), in response to the  
13 Hearst Museum's Notice of Inventory Completion (76 Fed. Reg. 54485 (Aug. 29, 2011)), in which  
14 the Hearst Museum provided notification of its intent to repatriate artifacts and human remains to  
15 the Plaintiff Tribe, the Shingle Springs Band of Miwok Indians. In her communications with the  
16 Hearst Museum concerning the repatriation of artifacts and human remains to the Plaintiff Tribe,  
17 Ms. Collier posed as a representative of "The Band of Miwok Indians of the Reservation At  
18 Shingle Springs, El Dorado County, California," and purported to act on the behalf of, and be  
19 directed by, Chairman Marty Daniels and Chairman Cesar Caballero of "The Band of Miwok  
20 Indians of the Reservation At Shingle Springs, El Dorado County, California."

21 30. The November 8, 2011 submission to the Hearst Museum identified defendant  
22 Marty Daniels as a chairman of "The Band of Miwok Indians of the Reservation At Shingle  
23 Springs, El Dorado County, California," and stated that the submission was "approved for form  
24 and content" by defendant Marty Daniels.

25 31. On December 22, 2011, in support of a motion to vacate a contempt order in the  
26 Caballero Litigation, Mr. Caballero filed with the Court seventeen letters purporting to be from  
27 members of the Association, in which the members claimed to be members of, and acting on the  
28 behalf of, the Plaintiff Tribe, and specifically, the Shingle Springs Band of Miwok Indians. These

1 members include defendants Erin Young, Virginia Bassford Clark, Martin Urjevich, Barbara  
2 Smith, Louie L. Smith, Jr., Richard Smith, III., Louie L. Smith, III., Jennifer Bassford, Brandi  
3 Russell, Anthony Lawrence Valdez, Clifford Faircloth, Ernest Faircloth, Ronaldeen Hayden, Craig  
4 Gustafsen, Matthew Ryan Clark, Darlene Urjevich, and Lisa Dyan Urjevich. The letters are  
5 substantially similar, and were signed by each individual, and each bears the name “Shingle  
6 Springs Band of Miwok Indians” in the header.

7 32. The Tribe is informed and believes, and on that basis alleges, that defendant Louie  
8 L. Smith III has, on multiple occasions, submitted a letter to the editor of the *Mountain Democrat*,  
9 a newspaper of general circulation in El Dorado County, purporting to act on behalf of the  
10 Plaintiff Tribe.

11 33. The Tribe is informed and believes, and on that basis alleges, that on or about  
12 August 19, 2008, without asking or notifying the Tribe, Defendants acted in concert with Mr.  
13 Caballero to file with the Office of the El Dorado, California, County Clerk a Fictitious Business  
14 Name Statement (the “Statement”) declaring, under penalty of perjury, that Mr. Caballero is doing  
15 business as “Shingle Springs Band of Miwok Indians.” The Tribe is informed and believes, and  
16 on that basis alleges, that each of the defendants named here claims the Association to which they  
17 belong owns and/or controls the Statement and has the exclusive right and option to withdraw it,  
18 despite orders of this Court to Mr. Caballero to withdraw it.

19 34. The Tribe is informed and believes, and on that basis alleges, that one or more of  
20 the Defendants acted individually and in concert with Mr. Caballero to file with the United States  
21 Internal Revenue Service requests for the issuance of federal employer identification number  
22 accounts using the name “Shingle Springs Band of Miwok Indians, Shingle Springs Miwok  
23 Tribe.” The Tribe is informed and believes, and on that basis alleges, that each of the defendants  
24 named here claims the Association to which they belong owns and/or controls the federal  
25 employer identification number accounts above-referenced, and has the exclusive right and option  
26 to withdraw it.

27 35. The Plaintiff Tribe maintains a significant internet presence. The Tribe has, since  
28 at least as early as 2001, owned and operated a website accessible at the URL

1 <www.shinglespringsrancheria.com>. The “Shingle Springs Band of Miwok Indians” and  
2 “Shingle Springs Rancheria” marks are widely used on this website. Since at least as early as  
3 April 7, 2008, the Tribe has owned and operated a website accessible at the URL  
4 <www.redhawkasino.com>. The Tribe’s “Red Hawk Casino” mark is widely used on this  
5 website, which is used to market the Tribe’s casino products and services.

6 36. The Tribe’s website provides information about the Tribe’s association services,  
7 information services, community services, educational services, and tribal historical services.

8 37. The Tribe is informed and believes, and on that basis alleges, that long after the  
9 Shingle Springs Marks had become well-known to the public, Defendants acted in concert with  
10 Mr. Caballero to obtain multiple domain names confusingly similar to the Shingle Springs Marks  
11 (collectively the “Unauthorized Domain Names”). The Tribe is informed and believes, and on that  
12 basis alleges that Defendants, in concert with Mr. Caballero, registered the domain name  
13 “shinglespringsreservation.com” with GoDaddy.com, Inc. on November 26, 2007;  
14 “shinglespringsreservation.biz,” “shinglespringsreservation.org,” and  
15 “shinglespringsreservation.info” with GoDaddy.com, Inc. on November 27, 2007;  
16 “redhawkasino.info,” “redhawkasino.net” and “redhawkasino.org” with GoDaddy.com, Inc. on  
17 April 13, 2008; “shinglespringsindianreservation.com” with GoDaddy.com, Inc. on July 7, 2008;  
18 “shinglespringsmiwoktribe.com” with GoDaddy.com on February 14, 2009;  
19 “shinglespringsrancheria.org” with GoDaddy.com on July 3, 2010;  
20 “shinglespringsmiwoktribe.org” with GoDaddy on July 4, 2010; and  
21 “redhawkasinoreviews.com” with GoDaddy on April 10, 2011.

22 38. The Tribe is harmed by its inability to use and control the Unauthorized Domain  
23 Names, which are confusingly similar to its well-known Shingle Springs Marks.

24 39. Defendants have designed, produced, and distributed to members of the public,  
25 including governmental agencies, letter head bearing the Shingle Springs Marks, in which they  
26 purport to act as officials of, members of, and/or agents of, the Tribe.

27 40. The Shingle Springs Marks have acquired secondary meaning, and Defendants’  
28 unauthorized use of the Shingle Springs Marks, or any confusingly similar marks, is likely to

1 cause confusion, deception or mistake among members of the public as to the identity or source of  
2 goods, services, or activities associated with the Tribe. Defendants' use of the Tribe's name has in  
3 fact caused such confusion.

4 41. Defendants have no authority or permission to act on the Tribe's behalf in any  
5 capacity or to use the Shingle Springs Marks for any purpose, whatsoever.

6 42. The Tribe is informed and believes that Defendants have used, and will continue to  
7 use, the Shingle Springs Marks in a commercial venture, trade, or business, and/or for solicitation.

8 **FIRST CAUSE OF ACTION**

9 **(Infringement of Registered and Unregistered Trademark and Trade Name and Unfair  
10 Competition In Violation of the Lanham Act, 15 U.S.C. Sections 1114 and 1125(a))**

11 43. The Tribe hereby repeats, repleads, and incorporates herein by reference as though  
12 fully set forth herein each and every allegation contained in paragraphs 1 through 36, inclusive, of  
13 the Complaint.

14 44. The Tribe is the owner of the Shingle Springs Marks and has the exclusive right to  
15 use the marks nationwide. Through the Tribe's extensive use, advertising, and promotion of the  
16 Shingle Springs Marks, the marks are distinctive, well-known, and widely recognized by the  
17 public as identifiers of Tribe as the source of goods and services.

18 45. Despite the Tribe's prior rights in, and prior consumer recognition of, the Shingle  
19 Springs Marks, Defendants adopted and have been infringing them.

20 46. Defendants' use of the infringing marks is without the authorization or consent of  
21 the Tribe.

22 47. Defendants' use of the Shingle Springs Marks constitutes infringement of the  
23 Tribe's registered and unregistered trademark and trade name rights, unfair competition, false  
24 designation of origin and false representations in the Shingle Springs Marks. Defendant's actions,  
25 wrongfully and falsely designating its business as originating from, connected with, or authorized  
26 by the Tribe, constitute utilization of false descriptions or representations in commerce, in  
27 violation of the Lanham Act, 15 U.S.C. Sections 1114 and 1125(a).

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1 48. Defendants' use, advertising, and promotion of the Shingle Springs Marks has  
 2 created and continues to create a likelihood of confusion, mistake, or deception as to the  
 3 affiliation, connection, association, origin, sponsorship, approval, commercial activities, nature,  
 4 characteristics, or qualities of Defendants' business in connection with the Tribe.

5 49. Defendants' use of the Shingle Springs Marks has caused and will continue to  
 6 cause irreparable harm to the Tribe, including but not limited to, detriment to and diminution in  
 7 value of the Shingle Springs Marks.

8 50. As a result of the aforesaid acts, the Tribe is entitled to preliminary and permanent  
 9 injunctive relief to enjoin Defendants' acts infringing the Shingle Springs Marks, and to recover  
 10 its damages and Defendants' gains, profits, and advantages obtained as a result of the acts alleged  
 11 above, and treble damages and enhanced profits in an amount to be determined.

12 51. Defendants knew or had reason to know of the Tribe's widely recognized use of  
 13 Shingle Springs Marks and deliberately copied these marks. Given that Defendants' actions were  
 14 willful, deliberate, and fraudulent, this is an exceptional case, and the Tribe is entitled to damages  
 15 and an award of reasonable attorneys' fees against the Defendants.

## 16 SECOND CAUSE OF ACTION

### 17 (Common Law Trademark and Trade Name Infringement)

18 52. The Tribe hereby repeats, repleads, and incorporates herein by reference as though  
 19 fully set forth herein each and every allegation contained in paragraphs 1 through 45, inclusive, of  
 20 the Complaint.

21 53. Defendants' misappropriation, use, and infringement on the Shingle Springs Marks  
 22 violates California Business and Professions Code, Section 14401 *et seq.*, Section 21300 *et seq.*,  
 23 and common law protection of trademarks and trade names.

24 54. As a result of Defendants' unauthorized and impermissible use of the Shingle  
 25 Springs Marks, the Tribe has been damaged in an amount to be shown at trial.

26 55. In accordance with California Business and Professions Code Sections 14402 and  
 27 14493, California Corporations Code Section 21308(2), and common law protection of the  
 28 Shingle Springs Marks, the Tribe is entitled to injunctive relief to enjoin Defendants, their agents,

1 servants, employees, successors, assigns, and all those controlled by them from using the Shingle  
2 Springs Marks, or any similar mark.

3 **THIRD CAUSE OF ACTION**

4 **(Unfair Competition in Violation of the California Business and Professions Code—**  
5 **Fraudulent Statements/False Advertising)**

6 56. The Tribe hereby repeats, repleads, and incorporates herein by reference as though  
7 fully set forth herein each and every allegation contained in paragraphs 1 through 49, inclusive, of  
8 the Complaint.

9 57. Defendants have made and disseminated, and/or caused to be made and  
10 disseminated, before the public in this state, false and misleading advertising and other statements  
11 including the words “Shingle Springs Band of Miwok Indians,” “Shingle Springs Rancheria,”  
12 “Shingle Springs Reservation,” “Red Hawk Casino,” or a similar name, to mislead customers and  
13 the public into believing Defendants are affiliated with the Tribe, its Shingle Springs Rancheria  
14 reservation, or its Red Hawk Casino.

15 58. The dissemination of such information is likely to deceive members of the public,  
16 has caused harm to the Tribe, and will continue to cause harm to the Tribe as a result of  
17 Defendants’ ongoing deception.

18 59. Defendants’ making and disseminating, and/or causing the making and  
19 disseminating, of false and misleading statements to the public, concerning the business of  
20 Defendants, violates the California Business and Professions Code Sections 17200 *et seq.* and  
21 17500 *et seq.*

22 60. The Tribe has been injured by the unlawful, unfair, and fraudulent business  
23 practices and false advertising of Defendants as described herein and such practices present a  
24 continuing threat to the Tribe. The Tribe is informed and believes that Defendants will not  
25 discontinue their fraudulent conduct and false advertising unless this Court issues an injunction.

26 61. In accordance with California Business and Professions Code Sections 17203 and  
27 17535, the Tribe is entitled to injunctive relief to enjoin Defendants, their agents, servants,  
28 employees, successors, assigns, and all those controlled by them from using the name “Shingle

1 Springs Band of Miwok Indians,” “Historic Shingle Springs Band of Miwok Indians,” “Shingle  
2 Springs Rancheria,” “Shingle Springs Reservation,” “Red Hawk Casino,” or any similar name,  
3 and from falsely representing to the public that any business, product, or activity of Defendant  
4 Association and/or its members is associated in any way with the Tribe, its Shingle Springs  
5 Rancheria reservation, or its Red Hawk Casino.

6 **FOURTH CAUSE OF ACTION**

7 **(Declaratory Judgment)**

8 62. The Tribe hereby repeats, repleads, and incorporates herein by reference as though  
9 fully set forth herein each and every allegation contained in paragraphs 1 through 55, inclusive, of  
10 the Complaint.

11 63. An actual, present controversy exists between the Tribe and Defendants because the  
12 Tribe contends that it is the owner of the Shingle Springs Marks, that its use of the Shingle Springs  
13 Marks predates any use by Defendants, and that Defendants have no rights, and have never had  
14 any such rights, to use the Shingle Springs Marks in any way. On information and belief,  
15 Defendants disagree with this contention.

16 64. Pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C.  
17 Section 2201 *et seq.*, the Tribe therefore seeks a judicial declaration that, notwithstanding  
18 Defendants’ claims and attestations to the contrary, the Tribe is the owner of the Shingle Springs  
19 Marks, that the Tribe used the Shingle Springs Marks prior to any use by Defendants, and that  
20 Defendants have no rights, and have never had any such rights, to use the Shingle Springs Marks  
21 in any way.

22 **FIFTH CAUSE OF ACTION**

23 **(Violations of Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. Section 1125(d))**

24 65. The Tribe hereby repeats, repleads, and incorporates herein by reference as though  
25 fully set forth herein each and every allegation contained in paragraphs 1 through 58, inclusive, of  
26 the Complaint.

27 66. The Tribe owns trademark rights in the Shingle Springs Marks, which marks are  
28 known to and recognized by the public as belonging to the Tribe.

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1           67.     At the time Defendants registered the Unauthorized Domain Names, the Shingle  
2 Springs Marks were distinctive.

3           68.     Defendants have registered, own and control the Unauthorized Domain Names.

4           69.     Defendants have used and are using the Unauthorized Domain Names.

5           70.     The Unauthorized Domain Names are confusingly similar to the Shingle Springs  
6 Marks owned by the Tribe long before Defendants registered or used the Unauthorized Domain  
7 Names.

8           71.     Defendants have no right to use the Shingle Springs Marks.

9           72.     Defendants have not made use of the Unauthorized Domain Names in connection  
10 with the bona fide offering of any goods or services but, instead, have solely used the  
11 Unauthorized Domain Names to confuse and mislead the public into believing that Defendants are  
12 authorized to speak for the Tribe when, in fact, they are not.

13           73.     Defendants have not made any bona fide noncommercial use or fair use of the  
14 Shingle Springs Marks.

15           74.     Defendants' intentional and wrongful use of the Unauthorized Domain Names,  
16 which are confusingly similar to the Shingle Springs Marks, shows Defendants' intent to divert  
17 consumers from the Tribe's online locations in a manner that harms the goodwill represented by  
18 the Shingle Springs Marks by creating a likelihood of consumer confusion as to the source,  
19 sponsorship, affiliation or endorsement of the products and services associated with and offered by  
20 the Tribe.

21           75.     Defendants have a bad faith intent to profit from their unauthorized use of the  
22 Shingle Springs Marks and have registered, trafficked in and/or used the Unauthorized Domain  
23 Names, and/or have demonstrated an intent to use the Unauthorized Domain Names, in bad faith  
24 to profit from or harm the goodwill of the Shingle Springs Marks in violation of the Anti-  
25 Cybersquatting Consumer Protection Act, 15 U.S.C. Section 1125(d).

26           76.     The Tribe has been damaged by Defendants' unauthorized use and registration of  
27 the Unauthorized Domain Names, which are confusingly similar to the Shingle Springs Marks.  
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1           4.       From representing that Defendants are in any way associated or affiliated with, or  
2                   authorized, approved, or licensed by the Tribe.

3           5.       From registering, trafficking in and/or using the Unauthorized Domain Names.

4           B.       That Defendants be ordered to deliver for destruction all articles of merchandise,  
5 displays, signs, plaques, advertisements, packaging, brochures, order forms, price lists, or any  
6 other materials in Defendant's possession or control or in the possession or control of Defendant's  
7 agents which bear the marks "Shingle Springs Band of Miwok Indians," "Historic Shingle Springs  
8 Band of Miwok Indians," "Shingle Springs Rancheria," "Shingle Springs Reservation," "Red  
9 Hawk Casino," or any other confusingly similar marks.

10           C.       That Defendants be ordered to abandon, withdraw, or otherwise terminate the legal  
11 effect of any fictitious business name statements, business licenses, public records, or other such  
12 documents that they may have filed in any jurisdiction, as to which they have used "Shingle  
13 Springs Band of Miwok Indians," "Historic Shingle Springs Band of Miwok Indians," "Shingle  
14 Springs Rancheria," "Shingle Springs Reservation," "Red Hawk Casino," or any other confusingly  
15 similar name.

16           D.       That Defendants be ordered to transfer the Unauthorized Domain Names to the  
17 Tribe as the rightful owner.

18           E.       That Defendants be ordered to file with this Court and serve on the Tribe within 14  
19 days after entry of such order, a report in writing, under oath, setting forth in detail the manner of  
20 Defendants' compliance with all of the foregoing requirements.

21           F.       That Defendants be required to account for and pay over to the Tribe all gains,  
22 profits, and advantages derived by Defendants from Defendants' infringement of the Shingle  
23 Springs Marks.

24           G.       That Defendants be ordered to pay to the Tribe as punitive damages a sum equal to  
25 three (3) times the amount of the Tribe's actual damages, plus interest and costs of this action.

26           H.       That the Tribe recover prejudgment interest on its damages.

27           I.       That Defendants be ordered to pay the Tribe's costs of suit and, as an exceptional  
28 case under the Lanham Act, attorney's fees to the Tribe.

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J. That the Court issue a judicial declaration that, notwithstanding Defendants' claims and attestations to the contrary, the Tribe is the owner of the Shingle Springs Marks, that the Tribe used the Shingle Springs Marks prior to any use by Defendants, and that Defendants have no rights, and have never had any such rights, to use the Shingle Springs Marks in any way.

K. That the Court grant the Tribe such other relief as the Court deems just.

Dated: April 23, 2012

SNR DENTON US LLP

By: \_\_\_\_\_ /s/  
Paula M. Yost  
Ian R. Barker  
Sara Dutschke Setshwaelo

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# **EXHIBIT 4**

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7  
8 Attorneys for Plaintiff  
SHINGLE SPRINGS BAND OF MIWOK INDIANS

9  
10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF CALIFORNIA

12 SHINGLE SPRINGS BAND OF MIWOK  
13 INDIANS,

14 Plaintiff,

15 v.

16 CESAR CABALLERO,  
17 Defendant.

CASE NO. 2:08-CV-03133-JAM-DAD

**THIRD AMENDED COMPLAINT FOR  
TRADEMARK INFRINGEMENT,  
UNFAIR COMPETITION,  
DECLARATORY JUDGMENT AND  
CYBERSQUATTING**

18 By this action, the Plaintiff Shingle Springs Band of Miwok Indians — a sovereign Indian  
19 tribe that is formally recognized by the United States government as “Shingle Springs Band of  
20 Miwok Indians, Shingle Springs Rancheria (Verona Tract), California” (hereinafter referenced as  
21 “Tribe”) — seeks to protect its interest in its federally-recognized name and other trademarks, and  
22 alleges as follows:

23 **JURISDICTION**

24 1. The Court has jurisdiction over this action pursuant to 15 U.S.C. Sections 1114,  
25 1121 and 1125(a) and 28 U.S.C. Sections 1331 and 1367.  
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**VENUE**

2. Venue is proper in this federal judicial district pursuant to 28 U.S.C. Section 1391(b) because Defendant resides in this judicial district and a substantial part of the events or omissions on which the claims are based occurred in this judicial district.

**PARTIES**

3. The Tribe is a sovereign Indian tribe that is officially recognized and registered by the United States as the “Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California.” 75 Fed. Reg. 60810, 60812 (Oct. 1, 2010). The Tribe possesses sovereign reservation lands in El Dorado County, California — known as the “Shingle Springs Rancheria” — that the United States holds in trust for the Tribe’s use and benefit. On the Shingle Springs Rancheria, the Tribe operates a gambling establishment under the name “Red Hawk Casino.”

4. The Tribe is informed and believes, and on that basis alleges, that Defendant Cesar Caballero is, and at all times relevant was, a citizen of California residing in El Dorado County, California.

5. The Tribe is informed and believes, and on that basis alleges, that Defendant is purporting to do business in this judicial district using marks that infringe the Tribe’s “Shingle Springs Band of Miwok Indians,” “Shingle Springs Rancheria,” “Shingle Springs Gaming Commission,” “Shingle Springs Tribal Gaming Authority,” and “Red Hawk Casino” marks.

**GENERAL ALLEGATIONS**

6. The Tribe has been recognized by the United States government as the “Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California,” and has operated its tribal government under that name for decades. 45 Fed. Reg. 27828, 27830 (April 24, 1980); 75 Fed. Reg. 60810, 60812 (Oct. 1, 2010). The Tribe has used its “Shingle Springs Band of Miwok Indians” and “Shingle Springs Rancheria” marks in connection with association services, including promoting the interests of an Indian tribe and its members; providing a web site with information on government of a tribal community; newsletters featuring tribal community and general news, updates and information; educational publications, namely,

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1 brochures in the field of a tribal community's history, government and society; newsletters  
2 featuring tribal community and general news, updates and information; educational publications,  
3 namely, brochures in the field of the tribal community's history, government and society.

4 7. The Tribe has used its "Shingle Springs Gaming Commission" and "Shingle Springs  
5 Tribal Gaming Authority" marks in connection with association services, including promoting the  
6 interests of an Indian tribe and its members; providing a web site with information on government  
7 of a tribal community; and in connection with regulating and overseeing the operation of a casino.

8 8. The Tribe has used its "Red Hawk Casino" mark in connection with operating a casino.  
9 The Tribe's "Red Hawk Casino" mark is well-known and has been featured in a wide array of  
10 television, print, billboard, and internet-based advertising.

11 9. On February 29, 2009, before the United States Patent and Trademark Office  
12 ("USPTO"), the Tribe filed a trademark application for "Red Hawk Casino," Ser. No. 77/410,283,  
13 based on its intent to use the mark in commerce. The USPTO published the mark on July 6, 2010,  
14 and the mark was registered to the Shingle Springs Tribal Gaming Authority, a wholly owned  
15 instrumentality of the Tribe, on December 7, 2010, Registration No. 3886697.

16 10. On January 8, 2009, before the USPTO, Defendant filed a trademark application  
17 for "Shingle Springs Band of Miwok Indians," Ser. No. 77/645,341, despite the Tribe's prior use  
18 of and ownership of that mark. On April 9, 2009, the Tribe filed a notice of opposition to  
19 Defendant's trademark application on the grounds, among others, that the mark falsely suggests a  
20 connection to the Tribe, that the mark is likely to cause confusion with the Tribe's mark, and that  
21 the application is fraudulent.

22 11. On April 6, 2009, the Tribe filed an application, Ser. No. 77/707,568, for "Shingle  
23 Springs Band of Miwok Indians" based on its prior use of and ownership of that mark.

24 12. The proceedings before the USPTO relating to both the Tribe's and the  
25 Defendant's applications, Ser. No. 77/645,341 and Ser. No. 77/707,568, have been suspended  
26 pending the outcome of the proceedings in this Court.

27 13. On August 25, 2009, the Tribe filed an application, Ser. No. 77/812,268, for  
28 "Shingle Springs Rancheria" based on its prior use of and ownership of that mark.

1           14.     As between the parties, the Tribe was first to use the “Shingle Springs Band of  
2     Miwok Indians,” “Shingle Springs Rancheria,” “Shingle Springs Gaming Commission,” “Shingle  
3     Springs Tribal Gaming Authority,” and “Red Hawk Casino” marks (hereinafter collectively the  
4     “Shingle Springs Marks”) and its use predates Defendant’s use of the Shingle Springs Marks.

5           15.     On or about August 19, 2008, without telling the Tribe, Defendant filed with the  
6     Office of the El Dorado, California, County Clerk a Fictitious Business Name Statement (the  
7     “Statement”) declaring, under penalty of perjury, that he is doing business as “Shingle Springs  
8     Band of Miwok Indians.” Attached hereto as Exhibit A, and incorporated herein by this reference,  
9     is a true and correct copy of the Statement.

10          16.     Defendant, who the Tribe is informed and believes, and on that basis alleges, was  
11     born in 1969, also declared in the Statement, under penalty of perjury, that he individually  
12     commenced to transact business under the name “Shingle Springs Band of Miwok Indians” in the  
13     year 1914 (over 50 years before he was born). This declaration is false.

14          17.     Defendant, in the Statement, indicated that his title in the fictitious business  
15     “Shingle Springs Band of Miwok Indians” is that of “Tribal Historian.” Defendant is not  
16     employed by the Tribe in any way and is not the Tribe’s historian.

17          18.     The Tribe is informed and believes, and on that basis alleges, that Defendant has,  
18     on multiple occasions, caused the Statement to be published in the *Mountain Democrat*, a  
19     newspaper of general circulation in El Dorado County.

20          19.     The Tribe is informed and believes, and on that basis alleges, that Defendant has  
21     applied for and has held a business license issued by El Dorado County under the name “Shingle  
22     Springs Band of Miwok Indians.”

23          20.     The Tribe is informed and believes, and on that basis alleges, that on or about  
24     February 5, 2009, Defendant attended a political rally outside the State Capitol Building in  
25     Sacramento, presenting himself as a representative of the “Shingle Springs Band of Miwok” on a  
26     flyer promoting the event. Attached hereto as Exhibit B, and incorporated herein by this  
27     reference, is a true and correct copy of a flyer promoting the February 5th rally. Because of  
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1 Defendant's conduct, a newspaper mistakenly reported that the Tribe had provided a guest speaker  
2 for the rally, when in fact, the Tribe had absolutely no involvement.

3 21. On or about June 22, 2009, Defendant opened a bank account in the name of  
4 "Shingle Springs Band of Miwok Indians." Defendant has continually done business using this  
5 account, including accepting and making payments in the name of the "Shingle Springs Band of  
6 Miwok Indians." The Tribe is informed and believes, and on that basis alleges, that this conduct  
7 has continued to the present.

8 22. At various times as early as June 2010, Defendant has operated a sign making and  
9 graphics business under the names "Shingle Springs Miwok Tribe" and "Shingle Springs Band of  
10 Miwok Indians."

11 23. At various times, as early as July 2010, Defendant has operated a fire clearance and  
12 brush clearing business under the names "Shingle Springs Miwok Tribe" and "Shingle Springs  
13 Band of Indians."

14 24. In June 2012, the Tribe received marketing correspondence from two separate  
15 financial institutions — J.P. Morgan Chase and Citibank — addressed to "Cesar Caballero" of the  
16 "Shingle Spgs. Gaming Cmmsn [sic]," but bearing the street address of the Tribe's government  
17 offices. Neither the Tribe, nor any of its entities, have ever held a bank account with J.P Morgan  
18 Chase or Citibank. The Tribe is informed and believes, and on that basis alleges, that Defendant  
19 has done business as, or represented to third parties such as Chase and Citibank that he is affiliated  
20 with, the "Shingle Springs Gaming Commission."

21 25. The Tribe maintains a significant internet presence. The Tribe has, since at least as  
22 early as 2001, owned and operated a website accessible at the URL  
23 <www.shinglespringsrancheria.com>. The "Shingle Springs Band of Miwok Indians," "Shingle  
24 Springs Rancheria," and "Shingle Springs Gaming Commission" marks are used on this website.  
25 Since at least as early as April 7, 2008, the Tribe has owned and operated a website accessible at  
26 the URL <www.redhawkcasino.com>. The Tribe's "Red Hawk Casino" mark is widely used on  
27 this website, which is used to market the Tribe's casino products and services.

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1           26.     The Tribe’s website provides information about the Tribe’s association services,  
2 information services, community services, educational services, and tribal historical services.

3           27.     The Tribe is informed and believes, and on that basis alleges, that long after the  
4 Shingle Springs Marks had become well-known to the public, Defendant obtained multiple  
5 domain names confusingly similar to the Shingle Springs Marks (collectively the “Unauthorized  
6 Domain Names”). The Tribe is informed and believes, and on that basis alleges, that the  
7 Unauthorized Domain Names include, but are not limited to, “shinglespringsreservation.com,”  
8 “shinglespringsindianreservation.com,” “shinglespringsmiwoktribe.com,” “redhawkcasino.info,”  
9 “redhawkcasino.net,” and “redhawkcasino.org.”

10           28.     Defendant has hosted a website, not authorized by the Tribe, accessible at the  
11 URLs <www.shinglespringsreservation.com> and <www.shinglespringsmiwoktribe.com>, which  
12 he purports to operate as the “Shingle Springs Band of Miwok Indians” of the “Shingle Springs  
13 Reservation.” Both URLs took a user to the same website content. Information on the website  
14 stated that Defendant is operating the website in his capacity as “Tribal Historian.” Additionally,  
15 the website provided an email address to which it invites visitors to submit “Enrollment  
16 Questions.” Defendant’s use of this domain name, and the content on the website, is completely  
17 unauthorized by the Tribe. This use has caused a likelihood of confusion as to the source,  
18 sponsorship, or authorization of Defendant’s website and services and constitutes infringement of  
19 the Shingle Springs Marks. Upon information and belief, Defendant’s use of the URL  
20 <www.shinglespringsreservation.com> shows an intent to harm the Tribe by diverting members of  
21 the public seeking the Tribe’s website and directing them instead to Defendant’s page, frustrating  
22 any such members of the public and generating ill-will toward the Tribe.

23           29.     The Tribe is informed and believes, and on that basis alleges, that Defendant has  
24 never used any of the Unauthorized Domain Names in connection with the bona fide offering of  
25 services but, instead, has solely used the Unauthorized Domain Names to confuse and mislead the  
26 public into believing that Defendant is authorized to speak for the Tribe when, in fact, he is not.

27           30.     The Tribe is harmed by its inability to use and control the Unauthorized Domain  
28 Names, which are confusingly similar to its well-known Shingle Springs Marks. The Tribe is

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1 further being harmed by the tarnishment of the Shingle Springs Marks by Defendant’s diversion of  
 2 members of the public, specifically including the Tribe’s customers and potential customers, to  
 3 Defendant’s website.

4 31. Defendant has designed, produced, and distributed to members of the public  
 5 business cards identifying himself as the “Shingle Springs Miwok Chief” and listing the URL  
 6 <SHINGLESPRINGSRESERVATION.COM>. The Tribe is informed and believes, and on that  
 7 basis alleges, that Defendant has also caused several such business cards to be delivered to an  
 8 employee of the Tribe’s Red Hawk Casino, which were then distributed to casino patrons.  
 9 Attached hereto as Exhibit C, and incorporated herein by this reference, is an accurate copy of the  
 10 bogus and unauthorized business card Defendant has distributed.

11 32. Upon discovering Defendant’s use of the Tribe’s federally-recognized name,  
 12 counsel for the Tribe sent a cease and desist letter to Defendant on or about October 8, 2008, but  
 13 received no response. Despite the Tribe’s requests, Defendant has failed to cease infringing the  
 14 Shingle Springs Marks.

15 33. The Shingle Springs Marks have acquired secondary meaning, and Defendant’s  
 16 unauthorized use of the Shingle Springs Marks, or any confusingly similar marks, is likely to  
 17 cause confusion, deception or mistake among members of the public as to the identity or source of  
 18 goods, services, or activities associated with the Tribe. Defendant’s use of the Tribe’s name has in  
 19 fact caused such confusion.

20 34. Defendant has no authority or permission to act on the Tribe’s behalf in any  
 21 capacity or to use the Shingle Springs Marks for any purpose, whatsoever.

22 35. The Tribe is informed and believes that Defendant has used, and will continue to  
 23 use, the Shingle Springs Marks in a commercial venture, trade, or business, and/or for solicitation.

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**FIRST CAUSE OF ACTION**

**(Infringement of Registered and Unregistered Trademark and Trade Name and Unfair Competition In Violation of the Lanham Act, 15 U.S.C. Sections 1114 and 1125(a))**

36. The Tribe hereby repeats, repleads, and incorporates herein by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 35, inclusive, of the Third Amended Complaint.

37. The Tribe is the owner of the Shingle Springs Marks and has the exclusive right to use the marks nationwide. Through the Tribe’s extensive use, advertising, and promotion of the Shingle Springs Marks, the marks are distinctive, well-known, and widely recognized by the public as identifiers of Tribe as the source of goods and services.

38. Despite the Tribe’s prior rights in, and prior consumer recognition of, the Shingle Springs Marks, Defendant adopted and has been using infringing them.

39. Defendant’s use of the infringing marks is without the authorization or consent of the Tribe.

40. Defendant’s use of the Shingle Springs Marks constitutes infringement of the Tribe’s registered and unregistered trademark and trade name rights, unfair competition, false designation of origin and false representations in the Shingle Springs Marks. Defendant’s actions, wrongfully and falsely designating its business as originating from, connected with, or authorized by the Tribe, constitute utilization of false descriptions or representations in commerce, in violation of the Lanham Act, 15 U.S.C. Sections 1114 and 1125(a).

41. Defendant’s use, advertising, and promotion of the Shingle Springs Marks has created and continues to create a likelihood of confusion, mistake, or deception as to the affiliation, connection, association, origin, sponsorship, approval, commercial activities, nature, characteristics, or qualities of Defendant’s business in connection with the Tribe.

42. Defendant’s use of the Shingle Springs Marks has caused irreparable harm to the Tribe, including but not limited to, detriment to and diminution in value of the Shingle Springs Marks.

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1 43. As a result of the aforesaid acts, the Tribe is entitled to preliminary and permanent  
2 injunctive relief to enjoin Defendant’s acts infringing the Shingle Springs Marks, and to recover  
3 its damages and Defendant’s gains, profits, and advantages obtained as a result of the acts alleged  
4 above, and treble damages and enhanced profits in an amount to be determined.

5 44. Defendant knew or had reason to know of the Tribe’s widely recognized use of  
6 Shingle Springs Marks and deliberately copied these marks. Given that Defendant’s actions were  
7 willful, deliberate, and fraudulent, this is an exceptional case, and the Tribe is entitled to damages  
8 and an award of reasonable attorneys’ fees against Defendant.

9 **SECOND CAUSE OF ACTION**

10 **(Common Law Trademark and Trade Name Infringement)**

11 45. The Tribe hereby repeats, repleads, and incorporates herein by reference as though  
12 fully set forth herein each and every allegation contained in paragraphs 1 through 44, inclusive, of  
13 the Third Amended Complaint.

14 46. Defendant’s misappropriation, use, and infringement on the Shingle Springs Marks  
15 violates California Business and Professions Code, Section 14401 et seq., Section 21300 et seq.,  
16 and common law protection of trademarks and trade names.

17 47. As a result of Defendant’s unauthorized and impermissible use of the Shingle  
18 Springs Marks, the Tribe has been damaged in an amount to be shown at trial.

19 48. In accordance with California Business and Professions Code Sections 14402 and  
20 14493, California Corporations Code Section 21308(2), and common law protection of the  
21 Shingle Springs Marks, the Tribe is entitled to injunctive relief to enjoin Defendant, his agents,  
22 servants, employees, successors, assigns, and all those controlled by them from using the Shingle  
23 Springs Marks, or any similar mark.

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**THIRD CAUSE OF ACTION**

**(Unfair Competition in Violation of the California Business and Professions Code —  
Fraudulent Statements/False Advertising)**

49. The Tribe hereby repeats, repleads, and incorporates herein by reference as though fully set forth herein each and every allegation contained in paragraphs 1 through 48, inclusive, of the Third Amended Complaint.

50. Defendant has made and disseminated, and/or caused to be made and disseminated, before the public in this state, false and misleading advertising and other statements including the words “Shingle Springs Band of Miwok Indians,” “Shingle Springs Rancheria,” “Shingle Springs Reservation,” “Shingle Springs Gaming Commission,” “Shingle Springs Tribal Gaming Authority,” “Red Hawk Casino,” or similar names, to mislead customers and the public into believing Defendant was affiliated with the Tribe, its Shingle Springs Rancheria reservation, or its Red Hawk Casino.

51. The dissemination of such information is likely to deceive members of the public, has caused harm to the Tribe, and will continue to cause harm to the Tribe as a result of Defendant’s ongoing deception.

52. Defendant’s making and disseminating, and/or causing the making and disseminating, of false and misleading statements to the public, concerning the business of Defendant, violates the California Business and Professions Code Sections 17200 et seq. and 17500 et seq.

53. The Tribe has been injured by the unlawful, unfair, and fraudulent business practices and false advertising of Defendant as described herein and such practices present a continuing threat to the Tribe. The Tribe is informed and believes that Defendant will not discontinue its fraudulent conduct and false advertising unless an injunction is issued by this Court.

54. In accordance with California Business and Professions Code Sections 17203 and 17535, the Tribe is entitled to injunctive relief to enjoin Defendant, his agents, servants, employees, successors, assigns, and all those controlled by them from using the names “Shingle

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1 Springs Band of Miwok Indians,” “Shingle Springs Rancheria,” “Shingle Springs Reservation,”  
 2 “Shingle Springs Gaming Commission,” “Shingle Springs Tribal Gaming Authority,” “Red Hawk  
 3 Casino,” or any similar name, and from falsely representing to the public that any business,  
 4 product, or activity of Defendant is associated in any way with the Tribe, its Shingle Springs  
 5 Rancheria reservation, or its Red Hawk Casino.

6 **FOURTH CAUSE OF ACTION**

7 **(Declaratory Judgment)**

8 55. The Tribe hereby repeats, repleads, and incorporates herein by reference as though  
 9 fully set forth herein each and every allegation contained in paragraphs 1 through 54, inclusive, of  
 10 the Third Amended Complaint.

11 56. An actual, present controversy exists between the Tribe and Defendant because the  
 12 Tribe contends that it is the owner of the Shingle Springs Marks, that its use of the Shingle Springs  
 13 Marks predates any use by Defendant, that Defendant did not commence to transact business  
 14 under the Shingle Springs Marks in 1914, and that Defendant has no rights, and has never had any  
 15 such rights, to use the Shingle Springs Marks in any way. On information and belief, Defendant  
 16 disagrees with this contention.

17 57. Pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C.  
 18 Section 2201 et seq., the Tribe therefore seeks a judicial declaration that, notwithstanding  
 19 Defendant’s claims and attestations to the contrary, the Tribe is the owner of the Shingle Springs  
 20 Marks, that the Tribe used the Shingle Springs Marks prior to any use by Defendant, that  
 21 Defendant did not commence to transact business under the Shingle Springs Marks in 1914, and  
 22 that Defendant has no rights, and has never had any such rights, to use the Shingle Springs Marks  
 23 in any way.

24 **FIFTH CAUSE OF ACTION**

25 **(Violations of Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. Section 1125(d))**

26 58. The Tribe hereby repeats, repleads, and incorporates herein by reference as though  
 27 fully set forth herein each and every allegation contained in paragraphs 1 through 57, inclusive, of  
 28 the Third Amended Complaint.

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1           59.     The Tribe owns trademark rights in the Shingle Springs Marks, which marks are  
2 known to and recognized by the public as belonging to the Tribe.

3           60.     At the time Defendant registered the Unauthorized Domain Names, the Shingle  
4 Springs Marks were distinctive.

5           61.     Defendant has registered, owns and controls the Unauthorized Domain Names.

6           62.     Defendant has used and is using the Unauthorized Domain Names.

7           63.     The Unauthorized Domain Names are confusingly similar to the Shingle Springs  
8 Marks owned by the Tribe long before Defendant registered or used the Unauthorized Domain  
9 Names.

10          64.     Defendant has no right to use the Shingle Springs Marks.

11          65.     Defendant has not made use of any of the Unauthorized Domain Names in  
12 connection with the bona fide offering of any goods or services but, instead, has solely used the  
13 Unauthorized Domain Names to confuse and mislead the public into believing that Defendant is  
14 authorized to speak for the Tribe when, in fact, he is not.

15          66.     Defendant has not made any bona fide noncommercial use or fair use of the  
16 Shingle Springs Marks.

17          67.     Defendant's intentional and wrongful use of the Unauthorized Domain Names,  
18 which are confusingly similar to the Shingle Springs Marks, shows Defendant's intent to divert  
19 consumers from the Tribe's online locations in a manner that harms the goodwill represented by  
20 the Shingle Springs Marks by creating a likelihood of consumer confusion as to the source,  
21 sponsorship, affiliation or endorsement of the products and services associated with and offered by  
22 the Tribe.

23          68.     Defendant has a bad faith intent to profit from its unauthorized use of the Shingle  
24 Springs Marks and has registered, trafficked in and/or used the Unauthorized Domain Names,  
25 and/or has demonstrated an intent to use the Unauthorized Domain Names, in bad faith to profit  
26 from or harm the goodwill of the Shingle Springs Marks in violation of the Anti-Cybersquatting  
27 Consumer Protection Act, 15 U.S.C. Section 1125(d).

28



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69. The Tribe has been damaged by Defendant’s unauthorized use and registration of the Unauthorized Domain Names that are confusingly similar to the Shingle Springs Marks.

70. Defendant’s aforementioned activities have caused and will continue to cause the Tribe immediate, irreparable harm and injury in that Defendant’s activities have created and will continue to create a likelihood of confusion, mistake or deception among consumers as to the affiliation or connection of the websites found at the Unauthorized Domain Names with the Tribe, or as to the origin, sponsorship or approval of the websites, based on the Unauthorized Domain Names, which have substantially impaired and will continue to impair the goodwill associated with the Tribe and the Shingle Springs Marks.

71. The Tribe has no adequate remedy at law to redress said violations.

72. As a result of such registration, trafficking, and/or use of the Unauthorized Domain Names, the Tribe is entitled to the forfeiture or cancellation of the Unauthorized Domain Names or transfer of the Unauthorized Domain Names to the Tribe as the owner of the Shingle Springs Marks, and to recover its damages and Defendant’s gains, profits and advantages obtained as a result of the acts alleged above, and treble damages and enhanced profits in an amount to be determined, including, if the Tribe so elects, statutory damages, and the costs of this action.

73. This being an exceptional case, the Tribe is entitled to an award of reasonable attorney fees.

**PRAYER**

**WHEREFORE**, the Tribe prays for judgment as follows:

A. That Defendant, his agents, servants, employees, successors, assigns, and all those controlled by them, or in active concert or participation with them, be preliminary and permanently enjoined:

- 1. From reproducing, copying, counterfeiting, colorably imitating, or otherwise using in any way without the consent of the Tribe, the Shingle Springs Marks.
- 2. From using in any way any other mark, designation, or symbol so similar to the Shingle Springs Marks as to cause likely confusion, or cause mistake, or deceive.

1           3.       From circulating advertising or promotional literature, or advertising any product  
2                   or service bearing the Shingle Springs Marks.

3           4.       From representing that Defendant is in any way associated or affiliated with, or  
4                   authorized, approved, or licensed by the Tribe.

5           5.       From registering, trafficking in and/or using the Unauthorized Domain Names.

6           B.       That Defendant be ordered to deliver for destruction all articles of merchandise,  
7 displays, signs, plaques, advertisements, packaging, brochures, order forms, price lists, or any  
8 other materials in Defendant's possession or control or in the possession or control of Defendant's  
9 agents which bear the marks "Shingle Springs Band of Miwok Indians," "Shingle Springs  
10 Rancheria," "Shingle Springs Reservation," "Shingle Springs Gaming Commission," "Shingle  
11 Springs Tribal Gaming Authority," "Red Hawk Casino," or any other confusingly similar marks.

12           C.       That Defendant be ordered to abandon, withdraw, or otherwise terminate the legal  
13 effect of any fictitious business name statements, business licenses, public records, or other such  
14 documents that he may have filed in any jurisdiction, as to which he has used "Shingle Springs  
15 Band of Miwok Indians," "Shingle Springs Rancheria," "Shingle Springs Reservation," "Shingle  
16 Springs Gaming Commission," "Shingle Springs Tribal Gaming Authority," "Red Hawk Casino,"  
17 or any other confusingly similar name.

18           D.       That Defendant be ordered to transfer the Unauthorized Domain Names to the  
19 Tribe as the rightful owner.

20           E.       That Defendant be ordered to file with this Court and serve on the Tribe within 14  
21 days after entry of such order, a report in writing, under oath, setting forth in detail the manner of  
22 Defendant's compliance with all of the foregoing requirements.

23           F.       That Defendant be required to account for and pay over to the Tribe, all gains,  
24 profits, and advantages derived by Defendant from Defendant's infringement of the Shingle  
25 Springs Marks.

26           G.       That Defendant be ordered to pay to the Tribe as punitive damages a sum equal to  
27 three (3) times the amount of the Tribe's actual damages, plus interest and costs of this action.

28           H.       That the Tribe recover prejudgment interest on its damages.

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I. That Defendant be ordered to pay the Tribe's costs of suit and, as an exceptional case under the Lanham Act, attorney's fees to the Tribe.

J. That the Court issue a judicial declaration that, notwithstanding Defendant's claims and attestations to the contrary, the Tribe is the owner of the Shingle Springs Marks, that the Tribe used the Shingle Springs Marks prior to any use by Defendant, that Defendant did not commence to transact business under the Shingle Springs Marks in 1914, and that Defendant has no rights, and has never had any such rights, to use the Shingle Springs Marks in any way.

K. That the Court grant the Tribe such other relief as the Court deems just.

Dated: July 25, 2012

SNR DENTON US LLP

By: /s/ Ian R. Barker

Paula M. Yost

Ian R. Barker

Sara Dutschke Setshwaelo

Attorneys for Plaintiff  
SHINGLE SPRINGS BAND OF MIWOK  
INDIANS

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# EXHIBIT 5

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7 Attorneys for Plaintiff and Counter-Defendant  
SHINGLE SPRINGS BAND OF MIWOK INDIANS

**FILED**

MAY 20 2009

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY \_\_\_\_\_  
DEPUTY CLERK

9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA

11  
12 SHINGLE SPRINGS BAND OF MIWOK  
INDIANS,

13 Plaintiff,

14 v.

15 CESAR CABALLERO,

16 Defendant.

17 CESAR CABALLERO, on behalf of himself  
18 and those similarly situated,

19 Counter-Plaintiff,

20 v.

21 SHINGLE SPRINGS BAND OF MIWOK  
22 INDIANS,

23 Counter-Defendant.

Case No. 2:08-CV-03133-JAM-DAD

~~RECEIVED~~ ORDER GRANTING  
SHINGLE SPRINGS BAND OF  
MIWOK INDIANS' MOTION TO  
DISMISS OR, ALTERNATIVELY, TO  
STRIKE CESAR CABALLERO'S  
COUNTERCLAIMS

Date: May 20, 2009

Time: 9:00 a.m.

Courtroom: 6

Judge: Hon. John A. Mendez

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1 After full consideration of Shingle Springs Band of Miwok Indians' (the "Tribe") Motion  
 2 To Dismiss or, Alternatively, To Strike Cesar Caballero's Counterclaims, the Supporting  
 3 Memorandum of Points and Authorities, the Declaration of Nicholas Fonseca, the Tribe's  
 4 Request for Judicial Notice, the Tribe's Compendium of Unpublished Cases, all additional  
 5 pleadings and papers filed in this matter, including the papers submitted by Counter-Plaintiff, and  
 6 the arguments of counsel, the Court finds there is good cause to GRANT the motion on the  
 7 ground that the Court lacks subject matter jurisdiction.

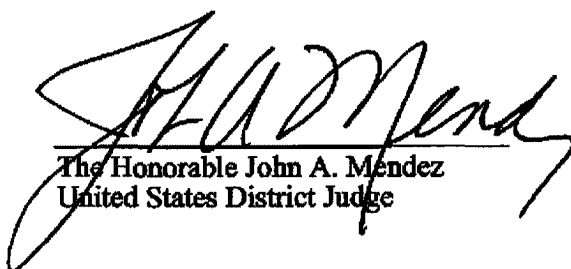
8 First, this Court lacks subject matter jurisdiction over the action because the Tribe  
 9 possesses sovereign immunity to suit, and that immunity has not been waived. Fed. R. Civ. Pro.  
 10 12(b)(1). Second, this Court lacks subject matter jurisdiction to adjudicate a challenge to the  
 11 status of a tribe that appears on the United States' list of federally-recognized tribes, and Mr.  
 12 Caballero, and the "Indigenous Miwoks" he purports to represent, cannot state a claim for relief  
 13 as a matter of law. Fed. R. Civ. Pro. 12(b)(1), (6). Third, Mr. Caballero's challenge to the  
 14 Tribe's federal recognition is simply <sup>not</sup> justiciable, as the Tribe's status in relation to the United  
 15 States is a political question beyond the province of any court. Fed. R. Civ. Pro. 12(b)(1), (6).  
 16 Fourth, to the extent Counter-Plaintiff claims he and the persons he purports to represent were  
 17 wrongfully denied membership in the Shingle Springs Band, this Court's also lacks subject  
 18 matter jurisdiction to adjudicate it, because only the Tribe itself is empowered to grant  
 19 membership, and no claim for federal relief can be stated. Fed. R. Civ. Pro. 12(b)(1), (6). Fifth,  
 20 Mr. Caballero's challenge is time-barred, since, as a matter of law, he and other members of the  
 21 Tribe have been aware of the Tribe's federal recognition for 30 years. Fed. R. Civ. Pro. 12(b)(6).  
 22 Seventh, Mr. Caballero's countersuit cannot state a claim upon which relief can be granted  
 23 because, as a matter of law, a federally-recognized Indian tribe cannot be enjoined from using its  
 24 own federally-recognized name, under the guise of trademark law or otherwise. *Id.* Finally, the  
 25 United States is a necessary and indispensable party to Mr. Caballero's challenge of the United  
 26 States' recognition of the Shingle Springs Band and his claim to their lands, but cannot be joined  
 27 because of its immunity, requiring dismissal. Fed. R. Civ. Pro. 12(b)(7).

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1           Accordingly, pursuant to Federal Rules of Civil Procedure 12(b)(1), the Court hereby  
2 orders that Counter-Plaintiff's complaint is, in its entirety, DISMISSED WITH PREJUDICE for  
3 lack of subject matter jurisdiction. In addition, the Court finds that dismissal also would be  
4 warranted if it had subject matter jurisdiction, because Counter-Plaintiff has failed to state a  
5 claim upon which relief can be granted pursuant to Federal Rules of Civil Procedure 12(b)(6) and  
6 because the United States is an indispensable party that cannot be joined, requiring dismissal  
7 under Rule 12(b)(7).

8           IT IS SO ORDERED.

9  
10  
11 DATED: 5-20-09

  
The Honorable John A. Mendez  
United States District Judge

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**FILED**

SEP 15 2010

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY  CLERK

6 Attorneys for Plaintiff  
7 SHINGLE SPRINGS BAND OF MIWOK INDIANS

8  
9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA

11 SHINGLE SPRINGS BAND OF MIWOK  
12 INDIANS,

13 Plaintiff,

14 v.

15 CESAR CABALLERO,

16 Defendant.

CASE NO. 2:08-CV-03133-JAM-DAD

~~[PROPOSED MODIFIED]~~  
17 **PRELIMINARY INJUNCTION**  
18 **AGAINST DEFENDANT CESAR**  
19 **CABALLERO**

20 Date: September 15, 2010  
21 Time: 9:30 a.m.  
22 Courtroom: 6

23 Judge: Hon. John A. Mendez

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1 Plaintiff filed a Second Amended Complaint alleging, *inter alia*, violations of the Lanham  
 2 Act, trademark infringement, and unfair competition, and seeking preliminary and permanent  
 3 injunctive and other relief as set forth therein. In addition, Plaintiff filed an Application seeking a  
 4 temporary restraining order pending a hearing on a request for a preliminary injunction, and  
 5 submitted evidence in support of that Application. After earlier granting the Tribe's requested  
 6 temporary restraining order, and after now considering the allegations, evidence and arguments  
 7 submitted in support of the Tribe's Application for a preliminary injunction, and all arguments and  
 8 evidence presented in Opposition and at the hearing, the Court hereby finds the following:

9 1. Plaintiff Shingle Springs Band of Miwok Indians is a sovereign Indian tribe  
 10 federally recognized and registered by the United States by that name (and hereinafter referenced  
 11 by "Tribe");

12 2. The evidence indicates that the Tribe has been registered as the "Shingle Springs  
 13 Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California" for over 30 years  
 14 (*see* 45 Fed. Reg. 27828, 27830 (April 24, 1980)), and the Tribe alleges, and has presented  
 15 evidence showing that, the use of the name "Shingle Springs Band of Miwok Indians" by  
 16 defendant Cesar Caballero ("Mr. Caballero"), who all parties agree is not a member of the Tribe,  
 17 does not predate the Tribe's continuous use of the Tribe's name in commerce;

18 3. The Tribe has moved the Court for an order temporarily restraining Mr. Caballero  
 19 from using the Tribe's federally-recognized name, and any confusingly similar variation of said  
 20 name, based on Mr. Caballero's recent misappropriation of the Tribe's name to divert the Tribe's  
 21 mail to Mr. Caballero;

22 4. Specifically, Plaintiff has submitted credible evidence that Mr. Caballero held  
 23 himself out to the United States government to be a representative of the Tribe, for purposes of  
 24 successfully diverting mail that was addressed to the Tribe and that was otherwise to be delivered  
 25 by the United States Postal Service ("USPS") to the Tribal government office on the Shingle  
 26 Springs Rancheria, a federal reservation held for the Shingle Springs Band of Miwok Indians, as  
 27 well as at a post office box assigned to the Tribe. In particular, based on the evidence presented, it  
 28 appears Mr. Caballero, purporting to represent the "Shingle Springs Band of Miwok Indians,"

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1 “Shingle Springs Miwok Tribe” and “Shingle Springs Rancheria,” completed and submitted  
2 paperwork with the USPS for purposes of having the Tribe’s mail forwarded to Mr. Caballero’s  
3 own personal address;

4 5. The Tribe’s evidence shows that Mr. Caballero successfully diverted the Tribe’s  
5 mail; that the Tribe’s mail regularly contains sensitive correspondence, including checks payable  
6 to the Tribe as well as confidential material; and that Mr. Caballero’s misappropriation of the  
7 Tribe’s official mail could interfere with the integrity of the Tribe’s governmental operations;

8 6. The Tribe’s evidence further shows that after the Court issued the temporary  
9 restraining order, Mr. Caballero, with full knowledge of the temporary restraining order,  
10 intentionally violated it, and tried to resurrect the re-routing of the mail deliveries. He apparently  
11 did so with the assistance of a staff member of Mr. Caballero’s attorney’s law office. The  
12 evidence also shows that Mr. Caballero failed to “immediately return” to the Tribe the mail that he  
13 diverted, notwithstanding this Court’s order that he do so;

14 7. Given the serious nature of the apparent actions of Mr. Caballero as supported by  
15 the evidence submitted, the likelihood of the Tribe demonstrating that it has superior rights to its  
16 federally-recognized name and confusingly similar variations thereof, the likelihood the Tribe will  
17 suffer imminent and irreparable harm, the balance of the comparative harms, and the interim and  
18 preliminary nature of the relief requested by the Tribe, the Court hereby grants the Tribe’s  
19 requested preliminary injunction, pending final resolution of this action, as follows:

20 a. Mr. Caballero may not use, or represent to third parties, including the  
21 United States government, that he is associated with or a representative of, the “Shingle Springs  
22 Band of Miwok Indians,” the “Shingle Springs Rancheria,” the “Shingle Springs Miwok Tribe,”  
23 the “Shingle Springs Miwok Indians,” or any confusingly similar variation thereof;

24 b. Mr. Caballero also may not represent that he is associated with, or lives on,  
25 the Shingle Springs Rancheria, the sovereign territory and land base that is held in trust by the  
26 United States for the Tribe;

27  
28

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1 c. This injunction does not seek to preclude Mr. Caballero from petitioning the  
2 Department of Interior for federal recognition for any tribal entity he represents, so long as he does  
3 not misrepresent that he his authorized to speak or act for the Tribe;

4 d. Mr. Caballero must immediately return, without further delay, to the Tribe  
5 any and all mail diverted from the Tribe to Mr. Caballero through the processes of the United  
6 States Postal Service.

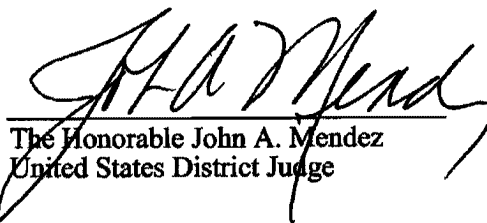
7 ~~7. Given the comparative equities and the potential risk of harm to Mr. Caballero  
8 with the grant of the requested relief, the Tribe is required to post a bond in the amount of~~

9 ~~\_\_\_\_\_~~ ~~Given that the balance of the potential hardships each party would suffer~~  
10 weighs overwhelmingly in favor of the party seeking the preliminary injunction, any bond  
11 requirement is waived.

12 8. This Order shall constitute notice to Mr. Caballero and his legal counsel that, upon  
13 a proper showing that the terms of this preliminary injunction have been violated, either or both  
14 may be held in contempt, with the consequent imposition of appropriate sanctions, including, but  
15 not limited to, monetary sanctions or imprisonment.

16 IT IS SO ORDERED.

17  
18  
19 DATED: 9-15-2010

  
The Honorable John A. Mendez  
United States District Judge

20  
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22  
23 27352841V-5

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# EXHIBIT 6

**FILED**

UNITED STATES DISTRICT COURT

RECEIVED  
UNITED STATES MARSHAL  
2012 FEB 27 AM 10:43  
EASTERN DISTRICT  
OF CALIFORNIA

MAR 12 2012

for the

Eastern District of California

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BY ~~Shirley Springs~~ Band of miwok  
Indians

Case No. 2:08-cv-3133 JAM DAD

Caballero

2785633

Defendant

**ARREST WARRANT**

To: Any authorized law enforcement officer

**YOU ARE COMMANDED** to arrest and bring before a United States magistrate judge without unnecessary delay

(name of person to be arrested) Cesar Caballero

who is accused of an offense or violation based on the following document filed with the court:

- Indictment     Superseding Indictment     Information     Superseding Information     Complaint
- Probation Violation Petition     Supervised Release Violation Petition     Violation Notice     Order of the Court

This offense is briefly described as follows:

28.636 Civil Contempt

Date: 2/27/2012

[Signature]  
Issuing officer's signature

City and state: Sacramento, CA

D. Wiggoner  
Printed name and title

**Return**

This warrant was received on (date) 2-27-12, and the person was arrested on (date) 3-5-12  
at (city and state) EL DORADO CO., CA.

Date: 3-9-12

[Signature]  
Arresting officer's signature  
JARED DELCHER DUSM  
Printed name and title

**FILED**

OCT 31 2011

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY \_\_\_\_\_  
DEPUTY CLERK

1 PAULA M. YOST (State Bar No. 156843)  
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2 IAN R. BARKER (State Bar No. 240223)  
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5 525 Market Street, 26th Floor  
San Francisco, CA 94105-2708  
6 Telephone: (415) 882-5000  
Facsimile: (415)-882-0300

7 Attorneys for Plaintiff  
SHINGLE SPRINGS BAND OF MIWOK INDIANS

8  
9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA

11 SHINGLE SPRINGS BAND OF MIWOK  
12 INDIANS,

13 Plaintiff,

14 v.

15 CESAR CABALLERO,

16 Defendant.

CASE NO. 2:08-CV-03133-JAM-DAD

**ORDER IMPRISONING DEFENDANT  
FOR HIS CONTINUED CONTEMPT  
OF THE COURT'S PRELIMINARY  
INJUNCTION**

Date: October 19, 2011  
Time: 9:30 a.m.  
Courtroom: 6

Judge: Hon. John A. Mendez

17  
18  
19 Upon review and consideration of Plaintiff Shingle Springs Band of Miwok Indians'  
20 ("Tribe") Application for an Order to Show Cause Why Defendant Should Not Be Imprisoned for  
21 His Continued Contempt of Court's Preliminary Injunction ("Application"); the papers filed in  
22 support of the Tribe's Application, including the declarations of Ian Barker and Sara Setshwaelo;  
23 Defendant Cesar Caballero's written opposition to the Application, if any; statements at oral  
24 argument, if any; the court file in the above-captioned case; and other good cause appearing  
25 therefor, it is:

26 ///

27 ///

28 ///

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1 ORDERED AND ADJUDGED, for the reasons stated by the Court at the hearing on  
 2 October 19, 2011, and the reasons set forth in the Tribe's papers in this action, that (1) Cesar  
 3 Caballero remains in contempt of this Court's preliminary injunction order ("Injunction Order")  
 4 issued on September 15, 2010, directing that "Mr. Caballero may not use, or represent to third  
 5 parties, including the United States government, that he is associated with or a representative of,  
 6 the 'Shingle Springs Band of Miwok Indians,' the 'Shingle Springs Rancheria,' the 'Shingle  
 7 Springs Miwok Tribe,' the 'Shingle Springs Miwok Indians,' or any confusingly similar variation  
 8 thereof" and that "Mr. Caballero also may not represent that he is associated with, or lives on, the  
 9 Shingle Springs Rancheria, the sovereign territory and land base that is held in trust by the United  
 10 States for the Tribe" and that (2) Mr. Caballero has failed to purge his contempt by complying  
 11 with the Court's Order Holding Defendant In Contempt For Violating The Court's Preliminary  
 12 Injunction ("Contempt Order"), issued August 1, 2011, which required Mr. Caballero to take  
 13 twelve (12) specific steps to bring himself into compliance with the Injunction Order, none of  
 14 which have been completed;

15 and its is further

16 ORDERED that, rather than complying with the Court's Injunction Order and Contempt  
 17 Order, Mr. Caballero has uploaded new videos entitled "Government Corruption, Part I,"  
 18 "Government Corruption, Part II," and "Government Corruption, Part III," which are accessible at  
 19 <http://www.youtube.com/user/MiwokPromotions#p/u/4/gCo-ebphfYA>,  
 20 <http://www.youtube.com/user/MiwokPromotions#p/u/5/qg5RLPxtDhM>, and  
 21 [http://www.youtube.com/user/MiwokPromotions#p/u/7/ly4zDVTAl\\_8](http://www.youtube.com/user/MiwokPromotions#p/u/7/ly4zDVTAl_8), respectively, which violate  
 22 the Injunction Order and Contempt Order, and two of which appeared after the Court issued the  
 23 Contempt Order on August 1, 2011;

24 and it is further

25 ORDERED that, rather than comply with the Injunction Order, Mr. Caballero contacted  
 26 the University of California, Phoebe Hearst Museum of Anthropology, purporting to be the  
 27 "chief" of the "Shingle Springs Band of Miwok Indians," and demanded that the Museum contact  
 28 him, and not the Tribe, in connection with its efforts to repatriate artifacts and remains;

1 and it is further

2 ORDERED that for the continued contempt of this Court, Cesar Caballero will be purged  
 3 of his contempt by complying with the Contempt Order and Injunction Order by taking all of the  
 4 following steps or causing all the following steps to be taken, by November 14, 2011:

5 1. Withdrawing the Fictitious Business Name Statement that he filed with the Office  
 6 of the County Clerk of El Dorado, California, under the name "Shingle Springs Band of Miwok  
 7 Indians";

8 2. Canceling any business license he holds under the name "Shingle Springs Band of  
 9 Miwok Indians";

10 3. Removing from the @MiwokTribe page on Twitter, currently accessible at  
 11 <http://twitter.com/#!/MiwokTribe>, any language or images in violation of the Injunction Order,  
 12 including but not limited to any logo bearing the name "Shingle Springs Miwok Tribe" and any  
 13 mention of any web address containing the words "Shingle Springs Reservation";

14 4. Removing from the "Championindian" photo sharing website hosted by  
 15 Photobucket, currently accessible at <http://s83.photobucket.com/albums/j307/championindian/> and  
 16 via various pages linked to that page, any language or images in violation of the Injunction Order,  
 17 including but not limited to the following images:

18 TRIBAL\_CORRUPTION\_FEB\_5\_2009\_revis.jpg in the album "championindian's album," and  
 19 Documenttree.jpg and FicticiousPublicationShingleSprings.jpg in the album "championindian's  
 20 album / Native American Movement / Shingle Springs Reservation Allottees 1974";

21 5. Removing from [www.myspace.com/championindian](http://www.myspace.com/championindian) and  
 22 [www.myspace.com/americanindians](http://www.myspace.com/americanindians) any language or images in violation of the Injunction Order  
 23 including but not limited to any use of "Shingle Springs Reservation" and "Shingle Springs Band  
 24 of Miwok Indians," and "Shingle Springs Miwok," a video depicting Mr. Caballero, identifying  
 25 him as the "Shingle Springs Indian Chief," and any logo bearing the name "Shingle Springs  
 26 Miwok Tribe";

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1 6. Removing all content of any kind from the domains shinglespringsreservation.com,  
2 shinglespringsmiwoktribe.com, and shinglespringsindianreservation.com as any display of those  
3 URLs violates the Court's order;

4 7. Removing the words "Shing e [sic] Springs Miwok Tribe [¶] Band of Miwok  
5 Indians" from the mailbox at 6368 Pleasant Valley Road in El Dorado;

6 8. Sending to the Internal Revenue Service, Cincinnati, Ohio 45999, with a copy to  
7 the Tribe's counsel of record, a written request that the business account in the name of "Shingle  
8 Springs Band of Miwok Indians—Shingle Springs Miwok Tribe" be closed, attaching a copy of  
9 the notice indicating "WE ASSIGNED YOU AN EMPLOYER IDENTIFICATION NUMBER,"  
10 appearing as Exhibit B of the Declaration of Cesar Caballero (Doc. 94-1), filed in this Court  
11 September 8, 2010;

12 9. Removing from YouTube, <http://shinglespringsmiwoktribe.com>,  
13 <http://redhawkcasinoreviews.com>, the "Shingle Springs Miwok Tribe" Facebook webpage, and  
14 any other web pages or platforms on which they appear, any videos containing language or images  
15 in violation of the Injunction Order, including but not limited to the videos entitled "Got Mail,"  
16 "Identity Theft," "SEC Filings," "Appeal for Justice," "Just Follow the Money," and "No.  
17 C064919, California Court of Appeal, Third Appellate District";

18 10. Deactivating the "Shingle Springs Miwok Tribe" Facebook webpage through the  
19 process described at <http://www.facebook.com/help/?page=842>, to wit: by logging in as "Shingle  
20 Springs Miwok Tribe," accessing the Account dropdown menu in the upper left corner of the  
21 screen and selecting "Account Settings"; at the bottom of the Settings page, click "deactivate"; on  
22 the next page, click "Confirm."

23 11. Removing from any marketing materials or invoices for "Mow Goats" any  
24 language or images in violation of the Injunction Order, including but not limited to the term  
25 "Shingle Springs Miwok Tribe";

26 12. Removing the videos entitled "Government Corruption, Part I," "Government  
27 Corruption, Part II," and "Government Corruption, Part III," which are accessible at  
28 <http://www.youtube.com/user/MiwokPromotions#p/u/4/gCo-ebphfYA>,

1 <http://www.youtube.com/user/MiwokPromotions#p/u/5/qg5RLPxtDhM>, and  
2 [http://www.youtube.com/user/MiwokPromotions#p/u/7/ly4zDVTAl\\_8](http://www.youtube.com/user/MiwokPromotions#p/u/7/ly4zDVTAl_8), respectively;

3 13. Submitting payment to the Court in the full amount of \$500 per day for each day  
4 since, and including, September 1, 2011 (when his time to purge his contempt without monetary  
5 sanctions expired), through the date that Mr. Caballero fully complies with the Injunction Order;  
6 or, in the alternative, explaining in writing and providing documentation, under oath, that he is  
7 unable presently to pay the full amount due and committing to a plan to pay the full amount due in  
8 monthly installments; and

9 14. Filing with the Court a report in writing, under oath, setting forth in detail the  
10 manner and form in which Mr. Caballero has acted to take the foregoing steps and bring himself in  
11 compliance with the Injunction Order;

12 and it is further

13 ORDERED that, should Cesar Caballero fail to take the steps outlined herein to bring  
14 himself into compliance with the Injunction Order and Contempt Order before November 14,  
15 2011, he shall report to this Court by 2:00 p.m. on November 14, 2011 to be committed to the  
16 custody of the United States Marshal Service, and shall remain in custody for each day thereafter  
17 that Cesar Caballero remains in violation of the Injunction Order and Contempt Order;

18 and it is further

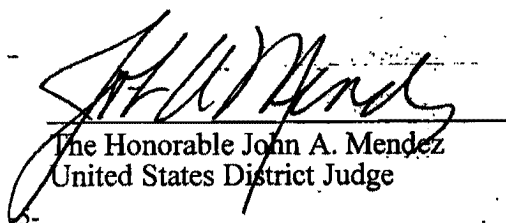
19 ORDERED that, should Cesar Caballero be committed to the United States Marshal  
20 Service for his failure to comply with the Injunction Order and Contempt Order, a hearing shall be  
21 held before this Court on January 4, 2012 at 9:30 a.m. to address Cesar Caballero's continued  
22 contempt of this Court, ~~and to impose further coercive sanctions, as this Court deems necessary~~ *Jan*

23 ~~and appropriate, in order to secure Cesar Caballero's compliance with the Injunction Order and~~ *Jan*

24 ~~Contempt Order.~~ *Jan*

25 IT IS SO ORDERED.

26  
27 DATED: October 28, 2011

  
The Honorable John A. Mendez  
United States District Judge

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