No. S194878

IN THE SUPREME COURT OF CALIFORNIA

NATIVE WHOLESALE SUPPLY COMPANY,

Specially Appearing Defendant and Petitioner,

v.

THE PEOPLE ex rel. KAMALA D. HARRIS, as Attorney General, etc.,

Plaintiff and Respondent.

REPLY TO ANSWER TO PETITION FOR REVIEW

After a Decision of the California Court of Appeal
Third Appellate District, No. C063624

From a Judgment of the Superior Court of California
Sacramento County Superior Court No. 34-2008-00014593-CU-CL-GDS
The Honorable Shelleyanne W.L. Chang

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INTRODUCTION

Though California asserts in its Answer that this is a straightforward case, it is not. This case raises complicated issues of law involving the interplay of tribal, federal and state jurisdictional boundaries. The Court of Appeal in its Opinion (the "Opinion," Exhibit A to Petition) found that Big Sandy Rancheria's status as a federally recognized Indian tribe, a sovereign government with territorial boundaries, was irrelevant to the issue of personal jurisdiction. Personal jurisdiction requires that NWS engage in some act by which NWS purposely avails itself of the privilege of conducting activities within the forum State, thus invoking the benefits and protection of its laws. This requires an examination of the territorial limits of California's regulatory jurisdiction involving Indian country, as limited by the due process clause of the United States Constitution and principles of federal Indian law. Rather than examine these complex issues, the Opinion dismisses the application of Indian law altogether and merely adopts wholesale a decision by the Oklahoma Supreme Court. The State in its Answer goes even further than the Opinion in dismissing the applicable federal due process issues by asserting that this Court should ignore the two most recent U.S. Supreme Court decisions concerning personal jurisdiction. This case presents important questions of Constitutional law that require examination by the California Supreme Court.

RESPONSE TO COUNTERSTATEMENT OF FACTS AND DECISION BELOW

The relevant facts of this case are simple and undisputed. (See People's Opposition to NWS's Motion to Strike Portions of Reply Brief at p. 5.) NWS did not sell any products to California residents. NWS did not advertise in, send goods to, or in any relevant sense target the general public in California. (See Superior Court Order [hereafter "Order"], Exhibit B to Petition, at pp. 1-2.) An independent sovereign entity, Big Sandy Rancheria (a federally recognized Indian tribe) purchased products from NWS outside California. There are no allegations nor is there any evidence in the record that Big Sandy Rancheria is or was under NWS's control. There is no evidence in the record that NWS sold product to anyone other than Big Sandy Rancheria. (See Order at pp. 1-2). The State's Answer disregards Big Sandy Rancheria as "merely a non-party middleman, against who the State seeks no relief." (Answer at pp. 1-2, 9.) This is simply disingenuous on the State's part, as Big Sandy Rancheria is not "merely a middleman;" it is a federally recognized Indian tribe with sovereign rights, and is intentionally the only entity within California's borders with which NWS transacted business.

THE PETITION SHOULD BE GRANTED

I. Petitioner's First Proposed Issue Concerns the Out-of-State Nature of NWS's Activities.

Contrary to the State's Answer, the first issue raised in NWS's Petition for Review (the "Petition") was raised before the Court of

Appeal. The State asserts "the People never have argued that jurisdiction is based on any contract between NWS and Big Sandy Rancheria, and the Court of Appeal's decision does not reference, much less depend on, any contract." (Answer at p. 3.) The term "contract" in this context refers to the out-of-state "transaction" or "sale of goods" between NWS and Big Sandy Rancheria, which is NWS's only relevant connection to any entity within California. The issue is discussed in NWS's Petition at pages 20-28.

II. The Court of Appeal's Decision is Contrary to Recent U.S. Supreme Court Decisions.

This matter requires review and consideration given two recent U.S. Supreme Court decisions concerning the standards for a court to consider when determining personal jurisdiction.

A. The Opinion is Inconsistent with *Goodyear*'s Definition of Specific Jurisdiction.

Goodyear Dunlop Tires Operations, S.A. v. Brown (June 27, 2011, No. 10-76) ___U.S.___ [131 S.Ct. 2846] expressed the standard for specific personal jurisdiction as follows: "Specific jurisdiction ... depends on an 'affiliatio[n] between the forum and the underlying controversy,' principally, activity or an occurrence that takes place in the forum State and is therefore subject to the State's regulation." (*Id.* at p. 2851.) Though the case concerned general jurisdiction, any new formulation of a legal standard by the U.S.

Supreme Court is noteworthy.[1] In the context of this case, *Goodyear*'s formulation is consistent with NWS's argument below and inconsistent with the Opinion. That is, "the forum State" is a place where the defendant's "activity" or the "occurrence" is "subject to the State's regulation." The Opinion is at odds with the rule as expressed in *Goodyear*, inasmuch as it "express[es] no views on the Indian commerce clause, the interstate commerce clause, federal law preemption, or Indian self-government." (Opn. at p. 13, fn. 3.) These principles of law are critical to determining whether NWS purposefully availed itself of the privileges of conducting activities within the jurisdiction of California. The Court of Appeal refused to determine whether NWS's activity is "subject to the State's regulation." (*Goodyear* at p. 2851.)

B. Review of the Opinion is Necessary in Light of *McIntyre*.

1. *McIntyre* Requires the Court to Re-Examine its Personal Jurisdiction Test.

Contrary to the State's assertion (see Answer at pp. 5-6), California courts must address *J. McIntyre Machinery, Ltd. v. Nicastro* (June 27, 2011, No. 09-1343) ___U.S.___ [131 S.Ct. 2780]. First, a total of six Justices agree that the defendant's intentional

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[1] The *Goodyear* court did not invent this formulation entirely anew. *International Shoe Co. v. Washington* (1945) 326 U.S. 310, saw the connection between the "obligations" which arise from a defendant's enjoying "the benefits and protections of the laws of [a] state" and the procedure for enforcing such obligations in the state's courts. (*Id.* at p. 319; see also Petition at pp. 4-5.)

contact with the forum is the essential inquiry, and that a defendant's amenability to suit does not travel with the chattel as independent entities bring defendant's products into the forum state, rejecting the stream-of-commerce theory relied upon in the Opinion. (*McIntyre* at p. 2793 (conc. opn. of Breyer, J.); see *Panetti v. Quarterman* (2007) 551 U.S. 930, 949 ["Where there is no majority opinion, the narrower holding controls."].) The Opinion is at odds with this holding, and this Court's review is necessary to address application of the rule in light of *McIntyre*.

Second, reliance on a plurality opinion of the U.S. Supreme Court by lower courts is commonplace. (See, e.g., *Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 458, 476, 477 [hereafter *Vons*]; *Pavlovich v. Superior Court* (2002) 29 Cal.4th 262, 276; *Core-Vent Corp. v. Nobel Industries AB* (9th Cir. 1993) 11 F.3d 1482, 1488-1489; *Tuazon v. R.J. Reynolds Tobacco Co.* (9th Cir. 2006) 433 F.3d 1163, 1175-76, all citing *Asahi Metal Industry Co. v. Superior Court* (1987) 480 U.S. 102, 112-114 (plur. opn. of O'Connor, J.).)

Third, other courts have recognized *McIntyre* as having precedential value. Cases that cite and rely upon *McIntyre*'s plurality opinion include: *CollegeSource, Inc. v. AcademyOne, Inc.* (9th Cir., Aug. 8, 2011, No. 09-56258) ___ F.3d ____ [2011 WL 3437040], *7-*8; *Mavrix Photo, Inc. v. Brand Technologies, Inc.* (9th Cir., Aug. 8, 2011, No. 09-56134) ___ F.3d ____ [2011 WL 3437047], *8; *Adelson v. Hananel* (1st Cir., July 13, 2011, No. 09-2231) ___ F.3d

____ [2011 WL 2698330], *3-*4; and *S.E.C. v. Compania Internacional Financiera S.A.* (S.D.N.Y., July 29, 2011, No. 11 Civ. 4904) 2011 WL 3251813, *5.

Finally, the U.S. Supreme Court recently vacated a decision of the Second Appellate District of California that was based on a stream-of-commerce analysis and remanded the case for further consideration in light of *McIntyre*. (*Dow Chemical Canada ULC v. Fandino* (June 28, 2011, No. 10-250) ___ S.Ct. ____ [2011 WL 2535075].)

2. The Opinion is Inconsistent with *McIntyre*.

Contrary to the State's argument, the Opinion is not consistent with *McIntyre*. The quotations the State pulls out of context from *McIntyre* and *Vons*, *supra*, 14 Cal.4th 434, do not conflict with the Petition. (Answer at p. 5, quoting *McIntyre* at p. 2790 and *Vons* at p. 473.) In the quoted passages, both *Vons and McIntyre* were referring to "choice of law" issues. (*McIntyre* at p. 2790, quoting *Hanson v. Denkla* (1958) 357 U.S. 235, 254 ["'The issue is personal jurisdiction, not choice of law'"]; *Vons* at p. 473, citing *Keeton v. Hustler Magazine, Inc.* (1984) 465 U.S. 770, 778; *Kulko v. Superior Court* (1978) 436 U.S. 84, 98; *Shafer v. Heitner* (1977) 433 U.S. 186, 215, and two law review articles, all of which are concerned with distinguishing personal jurisdiction from choice of law.)[2]

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[2] *Vons* is distinguishable from the instant case on numerous grounds. First, the only issue in *Vons* was "the necessary

The Opinion is at odds with *McIntyre* concerning the standard for personal jurisdiction over an out-of-state defendant in two critical respects. First, the Opinion did not require the *intent* to *target the forum state* that *McIntyre* emphasized as "the principal inquiry in cases of this sort." (*McIntyre* at p. 2788.) Second, the Opinion did not acknowledge the *connection* between the forum state's right to regulate the transaction at issue and the forum court's right to compel the presence of the out-of-state defendant engaged in such transaction. (*Id.* at p. 2789.) The second point can be seen as a facet of the first: the place NWS intended to target, because California has no relevant regulatory authority there, was not the forum state. NWS intentionally targeted Indian Country, and intentionally avoided targeting California. *McIntyre* saw such distinctions as paramount; the Opinion did not see them at all.

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relationship between the plaintiff's cause of action and the defendant's contacts in the forum." (*Id.* at p. 453.) The defendant in *Vons* undeniably had minimum contacts with California – an ongoing contractual franchise relationship with a California corporation. (*Id.* at p. 456.) Here, the question is whether minimum contacts with the forum exist at all. Moreover, this is not a tort action like *Vons*, but an action by the state to enforce its regulatory laws, which may well produce a different conclusion regarding the state's interest in providing a judicial forum. (See *id.* at p. 473.) Furthermore, this Court should reexamine *Vons* after the decisions in *Goodyear* and *McIntyre*, as the Court's conclusions in *Vons* appear inconsistent with those opinions. (Compare, e.g., *Vons* at p. 474 [identifying "the real issue of evaluating jurisdiction in terms of fundamental fairness"] with *McIntyre* at p. 2789 [rejecting Justice Brennan's *Asahi* concurrence "advocating a rule based on general notions of fairness and foreseeability [as] inconsistent with the premises of lawful judicial power"].)

a. *McIntyre* Rejected the Stream-of-Commerce Theory.

The State's Answer quotes a portion of the Opinion that equates being "part of a distribution channel" with the requisite minimum contacts for personal jurisdiction. (Opn. at p. 10, quoting *State ex rel. Edmondson v. Native Wholesale Supply* (Ok. 2010) 237 P.3d 199; see Answer at p. 7.) However, this borrowed analysis is a far cry from the finding of intent required by *McIntyre*. A defendant's being "part of a distribution channel" that intentionally serves the forum state is emphatically not the same as the defendant itself intentionally serving the forum state. The intent of the defendant itself, as manifested in the defendant's acts, is what matters – not the intent seen in the entire "distribution channel" from manufacture to consumption. (*McIntyre* at p. 2788 ["The principal inquiry in cases of this sort is whether the defendant's activities manifest an intention to submit to the power of a sovereign."].) Relying on the intent of the "distribution channel" is exactly the same as employing the stream-of-commerce standard in Justice Brennan's *Asahi* opinion that *McIntyre* rejected. (See *McIntyre* at pp. 2788-89.)

McIntyre rejected the notion that being part of a distribution channel at one end, the intent of which is to serve every customer it can, is sufficient to create jurisdiction in the forum state that finds itself at the channel's other end. In *McIntyre*, the foreign manufacturer of a metal shearing machine provided "direction and guidance" to its exclusive U.S. distributor, which sold and shipped

the machine to a customer in New Jersey, the forum state. (*Id.* at p. 2786; *id.* at p. 2791 (conc. opn. of Breyer, J.); *id.* at p. 2797 (dis. opn. of Ginsburg, J.).) Following such guidance and acting "closely in concert" with the manufacturer, the U.S. distributor marketed and advertised the machine at trade shows throughout the country, "hoping to reach 'anyone interested in the machine from anywhere in the United States.'" (*Id.* at pp. 2796, 2797 (dis. opn. of Ginsburg, J.); see *id.* at p. 2790 [defendant "directed marketing and sales efforts at the United States"].) It was foreseeable the product would end up in New Jersey, which processes more scrap metal than any other state in the nation. (*Id.* at p. 2795 (dis. opn. of Ginsburg, J.).) Yet the Supreme Court held the foreign manufacturer was not subject to personal jurisdiction in New Jersey because it had not "engaged in conduct purposefully directed at New Jersey;" the facts did not show the defendant had "purposefully availed itself of the New Jersey market." (*Id.* at p. 2790.)

Significant facts in the instant case are similar to those in *McIntyre*. NWS is a foreign defendant whose products allegedly entered the forum state through the actions of other persons in the stream of commerce. "[T]he only entity in this state to which NWS has directly sold cigarettes is Big Sandy Rancheria, a recognized Indian tribe. Big Sandy Rancheria, in turn, has sold cigarettes purchased from NWS to other Indian and non-Indian persons and entities in California." (Order at pp. 1-2.)

Indeed, in comparison with *McIntyre* the connection between NWS and the forum state is even more distant. Here, there is no evidence of "direction and guidance" from NWS to Big Sandy Rancheria. There is no evidence that NWS and Big Sandy Rancheria acted "closely in concert," as did the foreign defendant and local distributor in *McIntyre*. The record shows: (1) NWS's cigarettes entered Indian Country within the exterior boundaries of California only through the independent actions of Big Sandy Rancheria; and (2) if NWS's cigarettes entered California beyond Indian Country, this occurred only through the independent actions of other downstream entities. (Order at p. 4.)

Applying *McIntyre* to these facts, California cannot exercise personal jurisdiction over NWS because NWS's intent and NWS's activities are what matter, not the intent and activities of other actors in the stream of commerce. The Oklahoma Supreme Court, and the Opinion, found intent in the "distribution channel" by way of the activities of people other than NWS. Under *McIntyre*, the Due Process Clause requires more than this.

b. *McIntyre* Emphasized the Importance of Place.

McIntyre emphasized not only the importance of the defendant's intent, but also the importance of the *place* toward which the defendant directs its actions. *McIntyre* held that "jurisdiction is in the first instance a question of authority rather than fairness." (*McIntyre* at p. 2789.) The U.S. Supreme Court explained that

"implicit" in this conclusion is the rule that "personal jurisdiction requires a forum-by-forum, or sovereign-by-sovereign, analysis." (*Ibid.*) Here the U.S. Supreme Court recognized issues that both the Oklahoma Supreme Court and the Opinion failed to address: to establish jurisdiction, an out-of-state defendant's actions must be purposefully directed *toward the sovereign that possesses authority over the forum*. That is, the "question is whether defendant has followed a course of conduct directed at the society or economy existing within the jurisdiction of a given sovereign, so that the sovereign has the power to subject the defendant to judgment concerning that conduct." (*Ibid.*; see also Petition at pp. 21-28.) In *McIntyre*, the defendant's conduct was directed at the United States, "a distinct sovereign" (*McIntyre* at p. 2789); the requisite relationship with the sovereign authority of New Jersey was absent, so New Jersey lacked personal jurisdiction over the defendant. (*Id.* at p. 2790.)

In the present case, the record shows that NWS directed its conduct toward Indian Country. "[T]he evidence that each package of cigarettes sold by NWS was stamped 'for reservations sales only' indicates NWS intended to sell its cigarettes only to Indian reservations and not the wider California market." (Order at p. 4.) In California, NWS's only customer was Big Sandy Rancheria. (Order at pp. 1-2.) Like the United States in relation to New Jersey, Big Sandy Rancheria is "a distinct sovereign." (*Worcester v. Georgia* (1832) 31 U.S. 515, 561; *Bryan v. Itasca County* (1976) 426 U.S.

373, 392; *Agua Caliente Band of Cahuilla Indians v. Superior Court* (2006) 40 Cal.4th 239, 247; *In re M.M.* (2007) 154 Cal.App.4th 897, 908-09 [Indian tribes "have a status higher than that of states ... [and] possess a kind of sovereignty superior to that of states...."]; cf. *McIntyre* at p. 2789.) NWS directed its conduct toward the set of distinct sovereigns which make up Indian Country. The states in which such sovereigns are situated do not possess authority to regulate Indian commerce. (U.S. Const., art. I, § 8, cl. 3; see Petition at pp. 20-22 and cases cited therein.) Therefore no relationship between NWS and California's sovereign authority exists. The Court's review is necessary to ensure that the State does not exceed its sovereign authority as to jurisdiction over out-of-state defendants, consistent with *McIntyre* and the U.S. Constitution.

III. This Case Involves Important Questions of Law.

This case involves important questions of law that require review by the California Supreme Court. The State in its Answer asserts that "[t]his contention has no merit for several reasons," and sets out three arguments. Each argument fails.

First, the State asserts that "the Court of Appeal did not omit consideration of these issues [of Indian law].... (Opn. at p. 13, fn. 3.)" (Answer at p. 8.) NWS agrees with the State that the Court of Appeal did not "omit" the Indian law issues, but found Federal Indian law limitations on state jurisdiction irrelevant to personal jurisdiction. NWS does not claim an omission by the Court of Appeal, it disputes

the Opinion's unreasoned conclusion as to the relevance of the Indian law issues to personal jurisdiction over out-of-state entities who conduct business with Indian tribes on the reservation. The Opinion's summary dismissal of these issues requires review as it raises a critical issue of law, particularly in light of *McIntyre.* Therefore the State's first argument fails.

Second, the State argues that to the extent the Court of Appeal did omit discussion of the Indian law issues, NWS waived review by failing to petition the Court of Appeal for a rehearing. (Answer at p. 8.) This second argument also fails for the reasons stated above, as NWS does not assert (nor does the State) that the Court omitted discussion of these issues. NWS has not waived review as to the Indian law issues before the Court.

The State's third argument attempts to ignore the issue before the court, by claiming that "this action does not involve California regulating Indians, tribes, or conduct in Indian Country." (Answer at p. 8.) However, the State's purpose in filing this action was to attempt to regulate Indian commerce. This premise does not change merely because the State chose to sue the out-of-state entity conducting business with the Indian tribe rather than the tribal entity itself. The effect is the same. Jurisdiction cannot be created without consideration of due process rights merely to provide the State a convenient avenue of enforcement. (See *McIntyre*, *supra*, at p. 2791 ["the Constitution commands restraint before discarding liberty in the name of expediency"].)

The Opinion equates any action in Indian country to action in California. This ignores the two long-standing principles of federal Indian law: 1) preemption; and 2) infringement. (*White Mountain Apache Tribe v. Bracker* (1980) 448 U.S. 136, 142; see also discussion in Petition at pp. 21-28.) In order to find personal jurisdiction the Court must examine the facts of this particular case as applied to these principles,[3] then determine whether Indian country is a separate forum outside of California's jurisdiction.

The Superior Court found there were no California authorities directly on point and then considered other jurisdictions' authorities that apply the minimum contacts analysis, each of which found there was no personal jurisdiction where transactions occurred between the Tribe and/or tribal members and out-of-state entities on the reservation. (Order at p. 2.) The Opinion failed to consider any of these cases and instead quipped "Oklahoma is OK" on this point, referring to the irrelevance of Indian law issues in this matter. (Opn. at p. 11.)

This case requires review by this Court because the exercise of personal jurisdiction over an out-of-state defendant that has no minimum contacts with the forum State "offend[s] 'traditional notions of fair play and substantial justice.'" *International Shoe Co. v. Washington*, *supra*, 326 U.S. at p. 316. Whether the defendant's

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[3] This includes consideration of whether the exercise of personal jurisdiction here unduly burdens or discriminates against Indian Commerce.

activities manifest an intention to submit to the power of a sovereign is critical in determining whether personal jurisdiction exists. (See *McIntryre*, *supra*, at pp. 2788-89.) The Opinion disregarded the relevance of where the actions occurred (outside of California and in Indian country), and among whom the conduct occurred (an Indian tribe and an out-of-state Indian owned entity). These issues cannot be addressed without considering the sovereign status of Big Sandy Rancheria.

If the State does not have jurisdiction over the Tribe conducting business on the reservation or outside California, how can it exercise jurisdiction over an out-of-state entity that has no contacts with California, only contacts with the Tribe outside California? In *Spirits, Inc. v. Superior Court* (1980) 104 Cal.App.3d 918, the Second Appellate District held that California had no personal jurisdiction over an out-of-state defendant that relied on sales to California residents as its primary source of income, finding the "economic reality" test of *Buckeye Boiler Co. v. Superior Court* (1969) 71 Cal.2d 893, (which the Opinion here relies upon) inapplicable. Instead, the court in *Spirits, Inc.* held that "California's approach to jurisdiction is still tied to the reality of state territorial sovereignty and requires a literal interpretation of the criterion of 'activities *within* the forum.'" (*Spirits, Inc.* at p. 925.) The Fourth Appellate District has found that an out-of-state entity conducting business solely with a federal agency on federal land does not provide a sufficient connection to create personal jurisdiction in

California. (See *As You Sow v. Crawford Laboratories, Inc.* (1996) 50 Cal.App.4th 1859.) These cases examine the *place* where the conduct at issue occurs. In this case NWS's conduct occurred outside California and its contacts were with an Indian tribe that operates outside the regulatory forum of the State.

The Opinion found that the Indian law issues are irrelevant and in doing so undermined the sovereignty of Big Sandy Rancheria and allowed the State to create a backdoor mechanism to assert otherwise unlawful regulatory authority over tribal entities. This issue deserves more than a footnote. (Opn. at p. 13, fn.3.)

Contrary to recent U.S. Supreme Court decisions, and numerous decisions concerning matters of Indian law cited by the Superior Court (see Order at pp. 2-3), the Opinion ignored NWS's conduct and the place the conduct occured. (Opn. at p. 8.) The Opinion found that NWS sold products "in California" to California consumers, without analyzing whether the sovereign status of Big Sandy Rancheria had any implications as to a determination of the forum boundaries for purposes of personal jurisdiction. (Order at pp. 2-4 and Opn. at p. 11.)

IV. The Opinion Is in Conflict with the Fourth Appellate District's Opinion in *As You Sow*.

The State's effort to distinguish *As You Sow*, *supra*, 50 Cal.App.4th 1859, is misguided. In *As You Sow*, the court introduced the issue as one of general jurisdiction, but immediately

began analyzing the question in terms of specific jurisdiction. (*Id.* at pp. 1868-69.) The court stated, "The critical focus is 'the degree to which a foreign corporation interjects itself into the forum state' and *purposefully avails itself of the benefits of the forum state*. [Citation.] No evidence showed Crawford *intended to serve a market in California* with the products it shipped to the G.S.A." (*Id.* at p. 1869, citing *Felix v. Bomoro Kommanditgesellschaft* (1987) 196 Cal.App.3d 106, 115-116, a specific jurisdiction case; emphasis added.) Therefore, when the court found that "the sales to G.S.A. provided an insufficient connection between California and Crawford" (*id.* at fn. 16), its analysis showed that there was an insufficient connection to establish the purposeful availment required for specific jurisdiction, rather than general jurisdiction. The court's confusion in mislabeling its analysis as one of general jurisdiction rather than specific jurisdiction should not obscure the reality of its holding: when, pursuant to an out-of-state contract or transaction, an out-of-state defendant sells goods to an entity on federal land within California, to which the relevant California substantive law does not apply, the defendant has not purposefully availed itself of the benefits of the forum state, and there is no specific jurisdiction over such defendant. Therefore, an apparent conflict exists between the Third and Fourth Appellate Districts over whether personal jurisdiction exists in matters involving transactions that occur out-of-state between an out-of-state entity and a federal entity (here, a federally recognized Indian tribe) located on federal land.

CONCLUSION

This Court's review of the Opinion is necessary to settle important questions of law, particularly in light of recent U.S. Supreme Court decisions.

Dated: September 7, 2011

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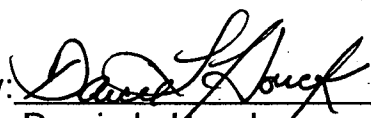
By: 
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CERTIFICATE OF COMPLIANCE PURSUANT TO CAL. RULES OF COURT, RULE 8.504(d)(1)

I certify that:

Pursuant to California Rules of Court, rule 8.504(d)(1) that attached Petition For Review is printed in Arial typeface with 13 point font and contains 4,194 words (excluding cover, tables, and certificate of service and compliance), according to the count of the computer program Microsoft Word used to prepare the brief.

September 7, 2011

Darcie L. Houck
Attorney

CERTIFICATE OF SERVICE

I am a resident of the County of Sacramento, California. I am over the age of eighteen years and not a party to the within action. My business address is 2020 L Street, Suite 250, Sacramento, CA 95811. On the date stated below, I served the within **REPLY TO ANSWER TO PETITION FOR REVIEW** to the following recipients via Federal Express Mail:

Counsel for Plaintiff/Respondent, People of the State of California

Kamala D Harris, Attorney General
Manuel M. Medeiros, State Solicitor General
Karen Leaf, Senior Assistant Attorney General
Michelle Hickerson, Deputy Attorney General
Michael M. Edson, Deputy Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101
One (1) copy

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797
Original and thirteen (13) copies

California Court of Appeal
Third Appellate District
621 Capitol Mall, 10th Floor
Sacramento, CA 95814-4719
One (1) copy

Superior Court of California
County of Sacramento
Attn: Court Clerk, Dept. 54
720 9th Street
Sacramento, CA 95814-1398
One (1) copy

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: September 7, 2011

Sally Eredia

SALLY EREDIA