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10 **UNITED STATES DISTRICT COURT**

11 **NORTHERN DISTRICT OF CALIFORNIA**

12 MAURICE LARIMER,

13 Plaintiff,

14 vs.

15 KONOCTI VISTA CASINO RESORT,  
16 MARINA & RV PARK; and ANTHONY  
17 JACK, an individual,

18 Defendants.

Case No.: CV-11-1061-NJV

**NOTICE OF MOTION AND MOTION  
TO DISMISS PLAINTIFF'S SUMMON  
AND COMPLAINT FOR LACK OF  
PERSONAL AND SUBJECT MATTER  
JURISDICTION AND INSUFFICIENCY  
OF SERVICE OF PROCESS (FRCP  
12(b)(1), FRCP 12(b)(2), FRCP 12(b)(5));  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION**

19 Date: June 7, 2011  
20 Time: 10:00 a.m.  
21 Courtroom: 2<sup>nd</sup> Floor

Honorable Nandor J. Vadas

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NOTICE OF MOTION AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S SUMMONS AND COMPLAINT FOR LACK OF PERSONAL AND SUBJECT MATTER JURISDICTION AND INSUFFICIENCY OF SERVICE OF PROCESS (FRCP 12(b)(1), FRCP 12(b)(5))

CASE NO. CV-11-1061-NJV

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12 FRCP 12(b)(5) .....i, v

1 TO PLAINTIFF MAURICE LARIMER AND HIS ATTORNEY OF RECORD:

2 PLEASE TAKE NOTICE THAT on June 7, 2011, at 10:00 a.m., or as soon thereafter as  
 3 the matter may be heard in the Second Floor Courtroom of the above-entitled court, located at  
 4 514 H Street, Eureka, California 95501, Defendants Konocti Vista Casino Resort, Marina & RV  
 5 Park and Anthony Jack (collectively "Defendants") will move the court to dismiss the action  
 6 pursuant to FRCP 12(b)(1), FRCP 12(b)(2) and FRCP 12(b)(5). This motion is made after a  
 7 meet and confer with Plaintiff's counsel and on the grounds that without the Big Valley Band of  
 8 Pomo Indians of the Big Valley Rancheria's consent, which consent has not been given, this  
 9 Court has not acquired and cannot acquire jurisdiction over the Tribe, or its Tribal officials, who  
 10 have acted within the scope of their Tribal authority, because there is no personal or subject  
 11 matter jurisdiction over the Defendants due to a lack of waiver of sovereign immunity, and thus  
 12 rendering service of process ineffective.  
 13

14 This motion will be based on this Notice of Motion and Motion, the Memorandum of  
 15 Points and Authorities filed herewith, the Declarations of Anthony Jack and Nicole St. Germain,  
 16 and the pleadings and papers filed herein.

17  
 18 RESPECTFULLY SUBMITTED this 13th day of April, 2011

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20  
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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION**

**INTRODUCTION**

By this motion, Defendant Konocti Vista Casino Resort, Marina & RV Park and Defendant Anthony Jack (collectively "Defendants") appear to file this motion to dismiss Maurice Larimer's (hereinafter referred to as "Plaintiff") Complaint for lack of personal jurisdiction, lack of subject matter jurisdiction, and insufficient service of process pursuant to Federal Rule of Civil Procedure 12(b), subsections (1), (2), and (5). The Konocti Vista Casino Resort, Marina & RV Park ("Konocti Vista") is a Tribal business enterprise wholly owned by the Big Valley Band of Pomo Indians of the Big Valley Rancheria ("Tribe"), a federally-recognized Indian tribe, and operated entirely within the jurisdiction of the Tribe.

This is a wage dispute allegedly brought under the Fair Labor Standards Act and includes a state breach of contract cause of action. However, the Tribe's unwaived sovereign immunity precludes this Court from acquiring jurisdiction over both the federal and state law claims, and the Complaint should be dismissed. This motion to dismiss the Plaintiff's Complaint is on the grounds that the Tribe is cloaked with unwaived sovereign immunity and that this Court lacks and cannot acquire jurisdiction over the Tribe or the subject matter of this action against the Tribe.

The doctrine of sovereign immunity is a mandatory doctrine that the Court must honor and invoke. This sovereign immunity extends to the individually named defendant, Anthony Jack, the Tribal Administrator, because Anthony Jack acted within the scope of his duties and authority as the Tribal Administrator. Moreover, Plaintiff's requested relief against the individually-named Anthony Jack would seek payment of money and specific performance from the Tribe itself, which extends the Tribe's sovereign immunity to the individual defendant. As a result, the Plaintiff's transparent attempt to evade the barrier of sovereign immunity is barred and there exists no personal or subject matter jurisdiction over either the Tribe's wholly owned business or the individually named Anthony Jack. Thus, Defendants' motion to dismiss should be granted.

## FACTUAL BACKGROUND

Defendant Konocti Vista is wholly owned by the Big Valley Band of Pomo Indians of the Big Valley Rancheria, a federally recognized Indian tribe, and is operated entirely within the jurisdiction of the Tribe. *See* Declaration of Tribal Administrator Anthony Jack in Support of Defendants' Motion to Dismiss Plaintiff's Summons and Complaint for Lack of Personal and Subject Matter Jurisdiction and Insufficiency of Service of Process (FRCP 12(b)(1), (b)(2), and (b)(5)), ("Anthony Jack Decl.") at ¶ 1; Exh. A.

Konocti Vista operates for the benefit of the Tribe and its membership, and all efforts and fruits of the business inure to the benefit of the Tribe. Further, Konocti Vista employs individuals to help operate its business. On or about August 12, 2009, Plaintiff was hired as the Food and Beverage Manager. *See* Anthony Jack Decl. at ¶¶ 14-15. He was a salaried employee until he was terminated on or about December 13, 2010. *Id.*

## ARGUMENT

### I. FEDERAL RULE 12(b) MANDATES THE DISMISSAL OF A COMPLAINT WHEN THE COURT LACKS PERSONAL OR SUBJECT MATTER JURISDICTION AND WHEN THERE HAS BEEN INSUFFICIENT SERVICE OF PROCESS.

The Defendants may properly challenge this Court's personal jurisdiction over them, as well as this Court's subject matter jurisdiction over the cause of action alleged against the Defendants under Federal Rules of Civil Procedure 12(b)(1), 12(b)(2) and 12(b)(5). Rule 12(b) specifically states, "every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion: (1) Lack of subject-matter jurisdiction; (2) Lack of personal jurisdiction; and (5) Insufficient service of process." Thus, a motion to dismiss is proper to challenge the Plaintiff's Complaint.

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1           **II.     THE DEFENDANTS ARE IMMUNE TO UNCONSENTED SUIT UNDER**  
 2           **THE DOCTRINE OF TRIBAL SOVEREIGN IMMUNITY AND THIS**  
 3           **COURT LACKS PERSONAL AND SUBJECT MATTER JURISDICTION.**

4           Absent a waiver of the Tribe's sovereign immunity, this lawsuit has been filed without the  
 5 consent of the Tribe. Pursuant to the doctrine of tribal sovereign immunity, this Court lacks the  
 6 requisite personal and subject matter jurisdiction over this action because: 1) this Court must  
 7 recognize the Tribe's sovereign immunity, 2) such tribal sovereign immunity extends to tribal  
 8 officials acting in their official capacity, 3) Plaintiff has failed to identify a valid and unequivocal  
 9 waiver of the Tribe's immunity allowing Plaintiff to bring this suit, 4) the Court lacks personal  
 10 jurisdiction over Defendants because they have not consented to suit and service was improper,  
 11 and 5) the Court lacks subject matter jurisdiction over the issue because Defendants have not  
 12 consented to suit nor has there been an express abrogation of tribal sovereign immunity by  
 13 Congress in the Fair Labor Standards Act. As a result, this Court must dismiss this action.

14           **A. Tribal Sovereign Immunity is a Mandatory Doctrine Courts Must Recognize**  
 15           **Unless There is a Valid Waiver of the Tribe's Immunity.**

16           Tribal sovereign immunity is a mandatory doctrine that a court *must* honor and invoke.  
 17 The Ninth Circuit Court of Appeals has specifically stated that "sovereign immunity involves a  
 18 right which Courts have no choice, in the absence of a waiver, but to recognize. It is not a remedy,  
 19 as suggested by California's argument, the application of which is within the discretion of the  
 20 Court." *People of the State of California v. Quechan Tribe of Indians* (9th Cir. 1979) 595 F.2d  
 21 1153, 1155 ("*Quechan*"). This means that a court must recognize a tribe's inherent immunity  
 22 from suit irrespective of the merits of the alleged claims. See *Pan American Company v. Sycuan*  
 23 *Band of Mission Indians* (9th Cir. 1989) 884 F.2d 416 ("*Pan America*"); *Quechan, supra*, 595  
 24 F.2d at 1155. It is a threshold issue that must be satisfied before even addressing the merits of any  
 25 factual allegations made in a complaint. Moreover, inclusion of a group of Indians on the Federal  
 26 Register list of recognized tribes is sufficient to establish entitlement to immunity. *Cherokee*  
 27 *Nation of Oklahoma v. Babbitt* (D.C. Cir. 1997) 117 F. 3d 1489, 1499.



1 United States Indian tribes and tribal entities are immune from civil suit unless there is a  
 2 clear and unequivocally expressed waiver of the Tribe's sovereign immunity or a clear abrogation  
 3 by Congress. *C & L Enterprises, Inc. v. Citizen Band of Potawatomi Indian Tribe of Oklahoma*  
 4 (2000) 532 U.S. 411, 418; *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of*  
 5 *Oklahoma* (1991) 498 U.S. 505, 509. The principle that Indian tribes enjoy the sovereign's  
 6 common law immunity from suit is well established. In *Kiowa Tribe of Oklahoma v.*  
 7 *Manufacturing Technologies, Inc.* (1998) 523 U.S. 751, 754-756, the U.S. Supreme Court stated,  
 8 "[a]s a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized  
 9 the suit or the tribe has waived its immunity.... tribal immunity is a matter of federal law and is  
 10 not subject to diminution by the States."

11 *Kiowa Tribe* follows a long line of Supreme Court jurisprudence holding that Indian tribes  
 12 are immune from suit absent explicit tribal consent or Congressional authorization. See  
 13 *Oklahoma Tax Comm'n, supra*, 498 U.S. at 509 (holding that tribal sovereign immunity barred  
 14 the State of Oklahoma from suing a tribe to collect a sales tax); *Santa Clara Pueblo v. Martinez*  
 15 (1978) 436 U.S. 49, 58 (holding that suit against a tribe to enforce federal statutory rights was  
 16 barred by tribal sovereign immunity); *Puyallup Tribe v. Washington Dept. of Game* (1977) 433  
 17 U.S. 165, 172 (holding that tribal sovereign immunity barred a State agency from suing a tribe);  
 18 *United States v. U.S. Fidelity & Guaranty Co.* (1940) 309 U.S. 506, 512-514 (comparing tribal  
 19 sovereign immunity to the sovereign immunity of the United States). Tribal immunity also  
 20 extends to claims for declaratory and injunctive relief, not merely damages, and it is not defeated  
 21 by a claim that the tribe acted beyond its power. *Imperial Granite Co. v. Pala Band of Mission*  
 22 *Indians* (9th Cir. 1991) 940 F.2d 1269.

24 No valid waiver of the Tribe's sovereign immunity exists, and Plaintiff's Complaint fails  
 25 to demonstrate, or even refer to a clear and unequivocal waiver. In fact, Plaintiff's Complaint  
 26 fails to reference the fact that the Konocti Vista is a business entity wholly owned by the Tribe,  
 27 though Plaintiff worked there for over one year and certainly knew the ownership status of the  
 28

business and Plaintiff's counsel had actual knowledge.<sup>1</sup> Despite this, the Complaint merely alleges that Konocti Vista failed to pay according to federal overtime pay requirements. There is no factual or legal allegation that the Tribe has waived its sovereign immunity or that the Fair Labor Standards Act applies to Konocti Vista. Further, Defendant Anthony Jack is simply named as the "Chief Executive Officer" of Konocti Vista with no independent basis to support naming him individually in Plaintiff's Complaint; his status as Tribal Administrator is never referenced, let alone any allegation that he was acting outside the scope of his duties or official capacity in a way that would preclude him from the protection of the Tribe's sovereign immunity afforded to tribal leaders acting in their official capacity. The Tribe and its officials are entitled to protection under the doctrine of tribal sovereign immunity; such immunity must be applied and entitles Defendants to dismissal of Plaintiff's Complaint for lack of personal and subject matter jurisdiction.

#### **B. The Doctrine of Sovereign Immunity Extends to Tribal Officials.**

Case law makes clear that a creative plaintiff cannot subvert or sidestep the doctrine of tribal sovereign immunity simply by naming individual defendants when there is no evidence to suggest they were acting outside the scope of their official duties. Tribal sovereign immunity extends to intertribal councils. *Taylor v. Alabama Intertribal Council* (11th Cir. 2001) 261 F.3d 1032. If tribal officials act within the scope of their lawful authority and *relief would run against the tribe itself, they share the tribe's immunity from suit* because the suit is one against the officials in their official capacity. See *Fletcher v. United States* (10th Cir. 1997) 116 F.3d 1315, 1324 (emphasis added). A suit for damages against an individual tribal employee in his or her official capacity is in effect a suit against the tribe, from which recovery is sought; the individual is therefore immune. *Cook v. Avi Casino Enterprises, Inc.* (9th Cir. 2008) 548 F.3d 718, 726-727.

<sup>1</sup> On March 25, 2011, and April 7, 2011, Plaintiff's counsel admitted knowledge of Konocti Vista's Tribal ownership status prior to filing the Complaint and wished to move forward with Plaintiff's alleged claims, thus forcing the Tribe to act to protect its sovereign immunity and interests. See Declaration of Nicole St. Germain in Support of Defendants' Motion to Dismiss Plaintiff's Summons and Complaint for Lack of Personal and Subject Matter Jurisdiction and Insufficiency of Service of Process (FRCP 12(b)(1), (b)(2), and (b)(5)) at ¶¶ 2-8.

1 Further, a plaintiff cannot escape sovereign immunity by denominating the suit as one against  
 2 officers in their individual capacities when relief would amount to specific performance or  
 3 payment of money from the tribe. *See Tamiami* (11th Cir. 1999) 177 F.3d 1212, 1225-1226. As a  
 4 result, when a suit actually seeks payment of money from the tribe, as is the case here, an  
 5 individual-capacity suit against tribal officers cannot proceed. *Id.*

6 Anthony Jack, as Tribal Administrator, acted within his Tribal authority and therefore  
 7 cannot be sued for damages for any of his alleged actions. *Id.*; *See Chayoon v. Chao* (2nd Cir.  
 8 2004) 355 F.3d 141. Further, the allegations and claims asserted by Plaintiff against Anthony  
 9 Jack make clear that the basis for naming him individually is because he exercised control over  
 10 the employment relationship. However those duties are undertaken in Anthony Jack's official  
 11 capacity, and thus a suit brought against him for damages is, in essence, a suit against the Tribe.  
 12 As a result, a suit against Anthony Jack in his official capacity as Tribal Administrator is, in  
 13 effect, a suit against the Tribe itself from which recovery is sought, and thus barred. *See Cook*,  
 14 548 F.3d 718, 726-727.

15 In sum, claims against Anthony Jack in his official capacity wherein any relief awarded  
 16 would run against the Tribe itself are barred. Because Anthony Jack was acting within his official  
 17 capacity and within the scope of his duties as Tribal Administrator, he shares the Tribe's  
 18 immunity from suit. *See Fletcher*, 116 F.3d 1315, 1324. Thus, Defendants' motion to dismiss  
 19 should be granted because the court lacks subject matter jurisdiction.

20 **C. The Defendants Have Not Waived Sovereign Immunity with Respect to the**  
 21 **Claims Asserted by the Plaintiff.**

22 To successfully initiate a suit against the Defendants, the Plaintiff has the burden to  
 23 demonstrate that the Tribe and Anthony Jack waived their immunity from suit with respect to his  
 24 claims. *Kiowa Tribe, supra*, 523 U.S. at 754; *See Cheyenne Arapahoe Gaming Comm'n v.*  
 25 *National Indian Gaming Comm'n* (N.D. Okla. 2002) 214 F. Supp. 2d 1155, 1164, citing *McNutt*  
 26 *v. General Motors Acceptance Corp.* (1936) 298 U.S. 178, 188 ("Because immunity is assumed  
 27 until proven otherwise the plaintiff bears the burden of proving that sovereign immunity has been  
 28 waived...."). Absent sufficient proof of a waiver, the Defendants are inherently immune from

1 suit. *See Kiowa*, 523 U.S. at 754; *Cheyenne Arapahoe Gaming Comm'n, supra*, 214 F. Supp. at  
2 1164.

3 Unless the Court can find on the face of the Complaint facts that, as a matter of law, would  
4 constitute an express and unequivocal waiver of defendants' immunity, the Court should find that  
5 it lacks both personal and subject matter jurisdiction, and grant the motion to dismiss. It is well  
6 settled that a waiver of tribal sovereign immunity cannot be implied but must be unequivocally  
7 expressed. *See Kiowa, supra*, 523 U.S. 751; *Santa Clara Pueblo, supra*, 436 U.S. at 58-59;  
8 *Puyallup Tribe, supra*, 433 U.S. at 172-173; *Pan American Co., supra*, 884 F.2d at 419;  
9 *Chemehuevi, supra*, 757 F.2d 1047; *Great Western Casinos, Inc v. Morongo Band of Mission*  
10 *Indians, et al.* (1999) 74 Cal.App.4th 1407.

11 To effectively invoke this Court's jurisdiction over the Tribe and Anthony Jack for the  
12 cause of action alleged in the Complaint, the Plaintiff has the burden to allege facts sufficient to  
13 enable this Court to find as a matter of law that the Tribe expressly and unequivocally waived (or  
14 that Congress has abrogated) its sovereign immunity. *Chemehuevi*, 757 F.2d 1047. The  
15 Complaint does not on its face allege facts sufficient to enable the Tribe or this Court to find as a  
16 matter of law that the Tribe consented to the Plaintiff's instant action, and thus this Court does not  
17 have, and cannot have acquired, jurisdiction over either the Tribe's person or the purported cause  
18 of action alleged against the Tribe or Anthony Jack.

19 As of the date of this motion, the Tribe's General Community Council has not waived the  
20 Tribe's sovereign immunity as required by the Tribe's Constitution. *See Anthony Jack Decl.* ¶¶ 6-  
21 7; Exh. B. As a result, the Plaintiff has failed to establish the existence of any waiver of tribal  
22 sovereign immunity.

23 Nothing on the face of the Complaint can be viewed as a credible attack against the  
24 Tribe's sovereign immunity or the extension of that immunity to Tribal Administrator Anthony  
25 Jack (in fact the Complaint is silent to both the Tribe's existence and the sovereign immunity  
26 issue entirely). It merely claims that Konocti Vista failed to pay overtime compensation the  
27 Plaintiff was supposedly due. As for the individually named Defendant, Plaintiff's Complaint  
28 simply alleges that Anthony Jack "was ultimately responsible for handling labor and employment

1 matters” and that he exercised “economic and operational control over the employment  
 2 relationship.” See Plaintiff’s Complaint ¶ 12. By Plaintiff’s own words, the allegations lodged  
 3 against Anthony Jack put him squarely within the scope of his official capacity as a Tribal  
 4 Administrator, and thus protected by the Tribe’s sovereign immunity. As a result, the Defendants’  
 5 sovereign immunity remains intact and prevents the Plaintiff from litigating this action before this  
 6 Court.

7 **D. The Court Lacks Personal Jurisdiction Over the Defendants Because the**  
 8 **Defendants Have Not Consented to Be Sued in this Court, Nor Have the**  
 9 **Defendants Been Properly Served.**

10 This Court does not have personal jurisdiction over the Defendants, because the  
 11 Defendants have neither consented to be sued in this Court, nor are the Defendants subject to  
 12 service of process made pursuant to State law. The Ninth Circuit has consistently stated that tribal  
 13 sovereign immunity is “coextensive with that of the United States.” *Pan American Co. v. Sycuan*  
 14 *Band of Mission Indians* (9th Cir. 1989) 884 F.2d 416, 418; *Chemehuevi v. California State*  
 15 *Board of Equalization* (9th Cir. 1985) 757 F.2d 1047, 1050; *Kennerly v. United States* (9th Cir.  
 16 1983) 721 F.2d 1252, 1258; *Hamilton v. Nakai* (9th Cir. 1971) 453 F.2d 152, 158-159.

17 Proper service of process (or consent) is a necessary prerequisite to this Court’s exercise of  
 18 personal jurisdiction over a defendant. The United States, by virtue of its sovereign immunity, is  
 19 not subject to State law governing service of process and may only be served subject to its  
 20 consent<sup>2</sup>; the sovereign immunity of the Tribe which is *coextensive* with that of the United States  
 21 is also not subject to State law governing service of process.

22 The Defendants have not consented to be sued in this Court, there has been no waiver of  
 23 tribal sovereign immunity nor is a waiver alleged in the Complaint. There is nothing in the Fair  
 24 Labor Standards Act that speaks of consent by Tribes to sue or be sued. Moreover, the attempted  
 25 service upon the Tribe was deficient insofar as it was not made pursuant to its consent. Anthony  
 26 Jack Decl. at ¶¶ 7, 16. As a result, service of process is insufficient. For these reasons, this Court  
 27 has not and cannot acquire personal jurisdiction over the Tribe and the Defendants’ motion to

28 <sup>2</sup>See Federal Rule of Civil Procedure 4(i), which governs service of process upon the United States, its agencies, corporations, officers, or employers.



1 dismiss should be granted.

2 **E. The Court Lacks Subject Matter Jurisdiction Because the Defendants Have Not**  
 3 **Consented to the Right of Action Alleged in the Complaint.**

4 This Court lacks subject matter jurisdiction over the Defendants because the Defendants  
 5 have not consented to, and Congress has not authorized, the right of action alleged in the  
 6 Complaint to be enforceable against the Tribe.

7 In *United States v. Testan* (1976) 424 U.S. 392, 400, the U.S. Supreme Court held that  
 8 even though the United States had explicitly waived immunity to be sued for damages in the  
 9 Court of Claims under the Tucker Act (28 U.S.C. § 1491), sovereign immunity barred the action  
 10 in that case because the United States did not confer a substantive right to bring the cause of  
 11 action alleged by the plaintiffs. In *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, the Court held  
 12 that even when Congress enacted federal legislation conferring substantive rights to individual  
 13 Indians vis-a-vis their tribal governments in the Indian Civil Rights Act (25 U.S.C. § 1308), an  
 14 action for injunctive and declaratory relief to enforce those rights against a tribe in a federal court  
 15 was barred by tribal sovereign immunity, because there was no tribal consent or Congressional  
 16 authorization for such a remedy in that forum. Similarly, in *Florida Paralegic Association v.*  
 17 *Miccosukee Tribe* (11th Cir. 1999) 166 F.3d 1126, 1130 the Eleventh Circuit held that even  
 18 though the Americans with Disabilities Act (42 U.S.C. § 12181) *applied* to the defendant tribe, an  
 19 action against the tribe to *enforce* the ADA was barred by tribal sovereign immunity, holding  
 20 "...whether an Indian tribe is subject to a statute and whether the tribe may be sued for violating  
 21 the statute are two entirely different questions."

22 Here, Plaintiff has failed to allege a provision in the Fair Labor Standards Act that  
 23 demonstrates that Congress has expressly abrogated tribal immunity thus allowing individuals to  
 24 bring suit against the Tribe or that the Defendants, as a tribal entity and tribal officers, consented  
 25 to the right to sue or be sued. The Defendants have not consented to be sued in this Court nor  
 26 have they consented to be subject to the cause of action alleged in the Complaint. For all of the  
 27 reasons stated above, the Plaintiff is without any substantive right of action under which he may  
 28 sue the Defendants, and, therefore, this Court lacks subject matter jurisdiction in this case.

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**CONCLUSION**

For the reasons set forth above, the Defendants' motion to dismiss must be granted, because under the well-established doctrine of tribal sovereign immunity, this Court does not have personal jurisdiction over this federally-recognized Indian tribe or subject matter jurisdiction over a cause of action alleged against it or its Tribal officials.

RESPECTFULLY SUBMITTED this 13th day of April, 2011.

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