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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

BLUE LAKE RANCHERIA, et al., Plaintiffs, **v.** **MARTY MORGENSTERN, et al.,** Defendants.	Case No. 2:11-CV-01124-JAM-JFM **DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS** Date: September 21, 2011 Time: 9:30 a.m. Courtroom: 6 Judge The Hon. John A. Mendez Trial Date Not yet set. Action Filed: April 26, 2011

State official defendants Marty Morgenstern, Pam Harris, Jack Budmark, Talbott Smith, Kathy Dunne, and Sarah Reece (collectively "EDD" [1]), file this memorandum of points and

[1] On September 6, 2011, Defendants voluntarily dismissed the State of California and the California Employment Development Department from this lawsuit. The remaining state official defendants, Marty Morgenstern, Pam Harris, Jack Budmark, Talbott Smith, Kathy Dunne, and Sarah Reece, sued only in their official capacity, are referred to collectively in this Reply as "EDD" because by their complaint Plaintiffs seek declaratory and injunction relief against nonjudicial tax collection activity undertaken by EDD. Under California law only "an executive officer known as the Director of Employment Development is vested with the duties, purposes, responsibilities, and jurisdiction … with respect to … collection of contributions, penalties and interest, including but not limited to filing and releasing liens." Cal. Unemp. Ins. Code § 301(c). For this reason, Pam Harris as EDD's acting director is *arguendo* the sole proper party defendant to this lawsuit, and the remaining individual state official defendants should be dismissed. For reasons explained more fully below, suit against all defendants including Ms. Harris should be dismissed.

authorities in reply to the Memorandum of Points and Authorities in Support of Opposition to Motion to Dismiss by Plaintiffs Blue Lake Rancheria, Blue Lake Rancheria Economic Development Corporation, and Mainstay Business Solutions (Opposition).

DISCUSSION

The Plaintiffs' allege that as a federally recognized Indian tribe, Blue Lake Rancheria enjoys sovereign immunity from suit and the enforced collection actions undertaken by EDD. Complaint for Declaratory and Injunctive Relief, p. 4:5-11 (Apr. 26, 2011). Plaintiffs further allege that the Tribe, EDCo, and Mainstay did not waive sovereign immunity with respect to the unemployment insurance contributions, tax, or assessments imposed or the collection actions taken by the State Official Defendants. *Id*. at p. 6:11-17. Plaintiffs additionally deny that Congress abrogated tribal sovereign immunity with regard to the assessments and enforced collection actions undertaken by Defendants. *Id.* at p. ¶6, ll. 7-10 and 18-19. But a careful review of the legal authority on which Plaintiffs rely shows that no legal authority supports the allegations in their Complaint.

I. PLAINTIFFS ARE NOT IMMUNE FROM DEFENDANT'S FORCED COLLECTION ACTIVITIES BECAUSE SOVEREIGN IMMUNITY DOES NOT BAR NONJUDICIAL COLLECTION.

Plaintiffs err in their contention that the judicial doctrine of tribal sovereign immunity from lawsuit in state and federal court renders them immune from nonjudicial collection action such as that undertaken by EDD. Plaintiffs' reliance on *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.* to support their contention of immunity from nonjudicial collection activity is misplaced because that case stands only for the proposition that Indian tribes are "*subject to suit* only where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.,* 523 U.S. 751, 754-755 (1998) (emphasis supplied) (holding that Indian tribe was immune from lawsuit filed in state court by private party seeking to enforce tribe's obligation on a promissory note signed by the Chairman of its business committee) (*Kiowa*).

"As sovereigns or quasi sovereigns, the Indian Nations enjoyed immunity 'from judicial attack' absent consent to be sued." *Kiowa, supra,* 523 U.S., at p. 757, quoting *United States v.*

United States Fidelity & Guaranty Co., 309 U.S. 506, 513-514 (1940) (*USF&G*). "Sovereign immunity means only that the sovereign may not be sued without its consent." *United States of America v. State of Oregon*, 657 F.2d 1009, 1014 fn. 12 (9th Cir. 1982) (holding that tribe's conduct in entering contract with arbitration clause constituted express waiver of sovereign immunity) (*United States v. Oregon*). None of the activities to which Plaintiffs object in this case, i.e., EDD's tax liens and levies including levies on accounts receivable owed by third parties but not yet paid to Plaintiffs, constitutes a "judicial attack" within *Kiowa* and *USF&G.*

Plaintiffs' reliance on *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991) (*Potawatomi*) to support their contention that they are immune from EDD's nonjudicial collection activity is also misplaced. As the *Kiowa* court observed, *Potawatomi* too stands only for the proposition that Indian tribes have sovereign immunity against lawsuits. *Kiowa*, *supra*, 523 U.S., at p. 751, citing *Potawatomi, supra*, 498 U.S., at 510.

In the *Potawatomi* case, the tribe filed a lawsuit in the district court to enjoin an assessment issued by the State of Oklahoma. Oklahoma counterclaimed, asking the district court to enforce its assessment against the tribe and to enjoin the tribe from selling cigarettes in the future without collecting the taxes on those sales. *Potawatomi, supra,* 498 U.S., at p. 507. The tribe moved to dismiss the counterclaim on the ground that it had not waived its sovereign immunity and therefore was immune from the State's counterclaim. *Id.* at p. 508.

Plaintiffs cite *Potawatomi* to support the contention that this case "makes clear that Indian tribes (and their assets) are protected by sovereign immunity, regardless of where their assets may be located." Opposition, p. 16:18-20, citing *Potawatomi, supra*, 498 U.S., at 514. But in doing so, Plaintiffs misstate the holding in *Potawatomi*. In that case, the Supreme Court upheld the Tribe's sovereign immunity in regards to the counterclaim filed against it and addressed Oklahoma's complaint that cases such as *Moe v. Confederated Salish and Kootenai Tribes of the Flathead Reservation*, 425 U.S. 463 (1976) (*Moe*) and *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980) (*Colville*), essentially give them a right without a remedy. *Potawatomi, supra,* 498 U.S., at p. 514. In doing so, the Supreme Court outlined some alternative nonjudicial remedies, such as, collecting the sales tax from cigarette wholesalers or

seizing unstamped cigarettes off the reservation. *Id*. But nowhere did the Supreme Court state that involuntary collections actions against Indian tribes implicate or violate sovereign immunity. In any event, the case at bar is factually distinguishable from *Potawatomi, Kiowa, Moe* and *Colville* in that it concerns reimbursements to EDD that Plaintiffs agreed to make through their election to finance unemployment insurance under the reimbursable method.

Both *Kiowa* and *Potawatomi* concern lawsuits filed against Indian tribes without an express waiver by Congress or the Indian Tribes. The cases are not applicable to the instant case because California has neither sued Plaintiffs nor counterclaimed to Plaintiffs' lawsuit. Thus, Plaintiffs' err in their reliance on *Kiowa* and *Potawatomi* to support their contention that they are immune from EDD's nonjudicial collection activity. *Cf.* Opposition, pp. 9:9-10:11.

Plaintiffs additionally err in contending that the holding in *Colville* turned on the characterization of the assets seized — in that case, cigarettes — as "contraband." Opposition, p. 16:8-23. In *Colville*, the Supreme Court stated that its holding turned on its agreement with the lower court determination that the challenged Washington state tax could be enforced because its legal incidence "fell on the purchaser in transactions between an Indian seller and a non-Indian buyer":

> Essentially, the court accepted the State's contention that the tax falls upon the first event which may constitutionally be subjected to it. In the case of sales by non-Indians to non-Indians, this means the incidence of the tax is on the seller, or perhaps on someone even further up the chain of distribution, because that person is the one who first sells, uses, consumes, handles, possesses, or distributes the products. But where the wholesaler or retailer is an Indian on whom the tax cannot be imposed under *McClanahan v. Arizona State Tax Comm'n*, 411 U.S. 164 … (1973), the first taxable event is the use, consumption, or possession by the non-Indian purchaser. Hence, the District Court concluded, the tax falls on that purchaser. We accept this conclusion.

Colville, *supra*, 447 U.S., at 142 and fn. 9. The Plaintiffs also err in asserting the assets seized in *Colville* were not the property of the tribe. Rather, the cigarettes seized were the property of the tribes in that case. *Id.* at p. 144 (noting that "[w]hile the Colville, Lummi, and Mekah Tribes function as retailers, retaining possession of the cigarettes until their sale to consumers, the Yakima Tribe acts as a wholesaler. It purchases the cigarettes from out-of-state dealers and then sells them to its licensed retailers.")

The *Colville* court found that "Washington's interest in enforcing its valid taxes [was] sufficient to justify these seizures":

> Although the cigarettes in transit are as yet exempt from state taxation, they are not immune from seizure when the Tribes, as here, have refused to fulfill collection and remittance obligations which the State has validly imposed. It is significant that these seizures take place outside the reservation, in locations where state power over Indian affairs is considerably more expansive than it is within reservation boundaries. Cf. *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 . . . (1973). By seizing cigarettes en route to the reservation, the State polices against wholesale evasion of its own valid taxes without unnecessarily intruding on core tribal interests.

Colville, supra, 447 U.S., at p. 161-162.

In citing *California State Board of Equalization v. Chemehuevi* to support their erroneous contention that Indian tribes are immune from a State's nonjudicial collection activity, Plaintiffs misrepresent both the question presented to the Ninth Circuit Court of Appeal in that case and the ultimate holding by the Supreme Court of the United States. *Chemehuevi Indian Tribe v. California State Board of Equalization*, 757 F.2d 1047 (9th Cir. 1985), rev. sub nom. *California State Board of Equalization v. Chemehuevi*, 474 U.S. 9, 12 (1986).

In *Chemehuevi* the tribe asked the district court for declaratory and injunctive relief against California's nonjudicial collection of the state tax on cigarettes sold by the tribe to non-Indian purchasers:

> The District Court held that [California's] counterclaim was barred by sovereign immunity, 492 F. Supp. 55 (1979), but also held that California could lawfully require the Tribe to collect cigarette excise taxes imposed on cigarettes that it sold to non-Indians. On appeal, the Court of Appeals affirmed the first determination, but reversed the second. 757 F.2d 1047 (CA9 1985).

Chemehuevi, supra, 474 U.S., at p. 10. Thus, the question presented to the Ninth Circuit in *Chemehuevi* was <u>not</u> whether California's nonjudicial collection activity was barred but whether the State's <u>counterclaim</u> against the tribe in the federal district court was barred.[2]

[2] The Ninth Circuit's *Chemehuevi* decision includes dicta inferring that the use of nonjudicial remedies to collect validly assessed taxes like the reimbursements in the instant case are allowed without implicating sovereign immunity. In that intermediate appellate court, California argued that nonjudicial remedies were less effective than judicial remedies. But the court "reject[ed] the Board's contention that the absence of judicially enforceable remedies should lead to a relaxation of the sovereign immunity bar in a case of this sort" because it was unclear whether nonjudicial remedies were less effective:

(continued…)

On certiorari review, the Supreme Court held that California had the right to require the tribe to collect an excise tax on cigarettes sold by the tribe to non-Indian purchasers, even though Cal. Rev. & Tax. Code § 30107 [1979] did not expressly require that the tax be passed through to the ultimate purchasers, where the incidence of the tax fell upon the purchasers). Cf. Opposition, at pp. 9:20-10:4 and fn. 6, with *Chemehuevi, supra,* 474 U.S., at p. 12 (holding that "[i]nsofar as the Court of Appeals held that respondent might not be required to collect the cigarette tax imposed by California on non-Indian purchasers at tribal smoke shops, its judgment is [r]eversed.")

Thus, *Chemehuevi* does not stand for the proposition that Indian tribes are immune from EDD's nonjudicial collection. Indeed, the Supreme Court expressly recognized California's authority to impose the "collection and pass through" obligation on the tribe. 474 U.S., at pp. 10-11. In doing so, the Supreme Court ruled that the Ninth Circuit applied "a mistaken standard" to the question whether the California tax was "sufficiently like" that in *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980), for that case to control. The Supreme Court ruled that the Washington and California taxes were sufficiently similar and therefore reversed the Ninth Circuit's decision. *Chemehuevi, id.*

In sum, Plaintiffs' allegation that they are immune from EDD's nonjudicial collection activity lacks legal support. Their complaint should therefore be dismissed for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).

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(…continued)

> It is unclear if judicially sanctioned "self help," such as seizing goods in transit to the reservation, see *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134, 161-162 … (1980), is in fact less effective than judicial remedies. But more significantly, sovereign immunity is not a discretionary doctrine that may be applied as a remedy depending on the equities of a given situation.

Chemehuevi Indian Tribe v. California State Board of Equalization, 757 F.2d 1047, 1052 fn. 6 (9th Cir. 1985).

II. CONGRESS INTENDED TO ALLOW THE STATES TO TAKE REASONABLE MEASURES TO PROTECT THE STATES UNEMPLOYMENT INSURANCE FUNDS AND SPECIFICALLY DELEGATED THE AUTHORITY TO THE STATES TO DETERMINE WHAT REASONABLE MEASURES TO TAKE

Congress through the 2001 Amendments to FUTA purposely left it to the states to determine, what if any, measures would be taken to protect the Unemployment Insurance funds of the states. The text of section 3309(a)(2) includes Indian tribes in its definition of "a governmental entity" otherwise liable for UI contributions which may elect to participate in a State's reimburseable program and states that "State law may provide safeguards to ensure that governmental entities or other organizations so electing will make the payments required under such election." 26 U.S.C. § 3309(a)(2). Section 3309(d) gives states the option either to impose a bond requirement "or take other reasonable measures to assure the making of payments[.]" 26 U.S.C. § 3309(d).

Section 3309(d) gives the States the right to chose whether to require Indian tribes "to post a payment bond *or* to take other reasonable measures to assure the making of payments in lieu of contributions[.]" 26 U.S.C. § 3309(d) (emphasis supplied). As a matter of statutory construction, Congress' use of the disjunctive "or" shows that the "other reasonable measures" it expressly authorized the states to use are not limited to bonds. If such were the case, Congress' use of the disjunctive "or" would be mere surplusage. Further, the text of Section 3309(d) expressly makes Indian tribes liable to the contemplated collection activity: "*This subsection shall apply to an Indian tribe within the meaning of section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).*" 26 U.S.C. § 3309(d) (emphasis supplied).

California declined to impose a payment bond and instead chose "to take other reasonable measures to assure the making of payments" by amending Unemployment Insurance Code section 803(f).[3] These "reasonable measures" include the nonjudicial collection activity challenged by Plaintiffs' complaint underlying this action. The intent expressed in the FUTA amendments is clear. By authorizing the states to provide safeguards to ensure that the tribes pay

[3] Section 803 (f) applies to non-profits and other governmental units to the same extent it applies to Indian tribes, including the collection actions at issue in this case.

their delinquent UI taxes and to take reasonable measures to assure the making of payments required by the reimbursable election, congress expressed "with the requisite clarity" its intention to allow the states to take whatever reasonable measures available to them to collect delinquent reimbursable liabilities, including forced collection actions against an Indian tribe.

III. PLAINTIFFS' ELECTION TO PARTICIPATE IN CALIFORNIA'S REIMBURSABLE PROGRAM CONSTITUTES PLAINTIFFS CONSENT TO THE UNEMPLOYMENT INSURANCE CODE AND TO DEFENDANTS INVOLUNTARY COLLECTION ACTIONS AS CODIFIED THEREIN

Assuming, *arguendo*, that EDD's collection actions implicate sovereign immunity,[4] Plaintiffs' claims fail because they consented to EDD's collection actions by their election to

[4] And further assuming, *arguendo,* that the doctrine should continue to be recognized. The *Kiowa* court declined to overturn the doctrine of tribal sovereign immunity from suit. But in doing so it reviewed Justice Stevens' cogent criticism in *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991) (*Potawatomi*), in which he called for the abandonment or narrowing of that doctrine as an anachronism that was no longer needed "to protect nascent tribal governments from encroachments by the States[]":

> The doctrine of tribal immunity came under attack a few years ago in *Potawatomi, supra*. The petitioner there asked us to abandon or at least narrow the doctrine because tribal businesses had become far removed from tribal self-governance and internal affairs. We retained the doctrine, however, on the theory that Congress had failed to abrogate it in order to promote economic development and tribal self-sufficiency. *Id.* at 510[.] The rationale, it must be said, can be challenged as inapposite to modern, wide-ranging tribal enterprises extending well beyond traditional tribal customs and activities. Justice Stevens, in a separate opinion, criticized tribal immunity as 'founded upon an anachronistic fiction' and suggested it might not extend to off-reservation commercial activity. *Id.* at 514-515 … (concurring opinion).
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> There are reasons to doubt the wisdom of perpetuating the doctrine. At one time the doctrine of tribal immunity from suit might have been thought necessary to protect nascent tribal governments from encroachments by States. In our interdependent and mobile society, however, tribal immunity extends beyond what is needed to safeguard tribal self-governance. This is evident when tribes take part in the Nation's commerce. Tribal enterprises now include ski resorts , gambling, and sales of cigarettes to non-Indians.

Kiowa, supra, 523 U.S., at p. 757. See, 523 U.S., at pp. 760-766 (Stevens, J., with whom JJ Thomas and Ginsburg join, dissenting) (concluding that the doctrine of tribal sovereign immunity "is unjust.") Tribal enterprises also include, as in the case at bar, the operation of a temporary staffing agency employing at one time approximately 39,000 employees in three states. *Blue Lake Rancheria v. United States*, __ F.3d ___ , 2011 WL 3506092, * 1 (9th Cir. 2011) (noting that the Blue Lake Rancheria Tribe has only 53 members). In this context, it is indeed unjust to (continued…)

participate in the UI Reimbursable Program and its averments as a petitioner before the California Unemployment Insurance Appeals Board (CUIAB) in *Blue Lake Rancheria v. Employment Development* Department, CUIAB Case No. 1367761 (T) (Dec. 2, 2005). At the time of their election, Plaintiffs were aware of the collection remedy available against it under California Unemployment Insurance Code section 803(f). Thus the election itself manifests intent by Plaintiffs to comply with and to be bound by the provisions of the Unemployment Insurance Code. See *Bittle v. Bahe*, 192 P.3d 810, 826 (Okla. 2008) (holding that the tribe had waived its "shield of sovereign immunity" when it agreed to be bound by state law in its application for a liquor license.)

Although dealing with consent of the Yakima Indian Tribe, the case of *United States v. Oregon, supra,* 657 F.2d 1009, is illustrative of the proposition that an Indian tribe has the ability and may consent to suit. In that case the Ninth Circuit addressed the question of "whether the Yakima Tribe has manifested its consent to suit." 657 F.2d 1009 at 1014. The Ninth Circuit held that Indian tribes may consent to suit without explicit Congressional authority. *Id.* at p. 1013. The Ninth Circuit further "found that the Yakima Tribe had expressly consented to suit on two independent grounds: first, by intervening in the original action; and second, by agreeing to submit all disputes over fishing rights to the federal district court." *Id.* at p. 1014.

Here, Plaintiffs through their actions consented to the provisions of the Unemployment Insurance Code when they elected the Reimbursable Method of financing their unemployment insurance obligations and litigated their right to that election to the CUIAB.

IV. NEITHER CONGRESSIONAL ABROGATION NOR WAIVER BY INDIAN TRIBES OF TRIBAL SOVEREIGN IMMUNITY REQUIRES USE OF THE EXPLICIT WORDS "SOVEREIGN IMMUNITY."

Plaintiffs err as a matter of law in their contention that an "unequivocally express" Congressional abrogation of tribal sovereign immunity occurs only if Congress includes the explicit words "sovereign immunity" in the text of the federal statute. Opposition, pp. 10:14-15,

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(…continued)
permit the Tribe to simply walk away from a $19.285 million debt that it was able to incur based on its promise to pay.

citing *Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 58 (1978) (*Santa Clara Pueblo*) (noting "that a waiver of sovereign immunity ' "cannot be implied but must be unequivocally expressed[,]"'citing in support *United States v. Testan*, 424 U.S. 392, 399 [1976], quoting *United States v. King*, 394 US. 1 [1966].)

In *C & L Enterprises, Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 532 U.S. 411 (2001) (*C & L Enterprises*), a case decided more than 40 years after the cases on which the *Santa Clara Pueblo* court relied in its reiteration of the standard for waiver of sovereign immunity, the Supreme Court of the United States held that tribal sovereign immunity could be waived without the explicit use of the words "sovereign immunity[]":

> The [tribal immunity] waiver … is implicit rather than explicit only if a waiver of sovereign immunity, to be deemed explicit, must use the words "sovereign immunity." No case has ever held that.

C & L Enterprises, supra, 532 U.S. at 420-421, quoting *Sokaogon Gaming Enterprise Corp. v. Tushie-Montgomery Associates, Inc.,* 86 F.3d 656, 659- 660 (7th Cir. 1996). "That cogent observation holds as well for the case we confront." *C & L Enterprises, id.* And it holds for the instant case. Similarly, to relinquish its immunity, a tribe's waiver must be "clear." *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla.*, 498 U.S. 505, 509 … (1991). We are satisfied that the Tribe in this case has waived, with the requisite clarity, immunity from the suit C & L brought to enforce its arbitration award. *C & L Enterprises, supra*, 432 U.S., at 418.

The procedural posture of *C & L Enterprises* is distinguishable from that of the instant case because in *C & L Enterprises* the contractor sued the tribe in state court to enforce an arbitral award, while in this case EDD has taken no action implicating tribal sovereign immunity from suit. But the governing "express waiver by conduct" principle of *C & L Enterprises* applies here. That is, in this case, as in *C & L Enterprises*, the tribe's conduct in entering an agreement constitutes an express waiver of sovereign immunity. In this instance the agreement was its election to participate in California's Reimbursable Program rather than a standard form construction contract. But the principle is the same and Plaintiffs' lawsuit should be dismissed under *C & L Enterprises* because, even if sovereign immunity applies, Plaintiffs have waived it in this instance.

The questioned presented in *C & L Enterprises* was "whether the Tribe waived its immunity from suit in state court when it expressly agreed to arbitrate disputes with C & L relating to the contract [to govern installation of a foam roof on a building located in Shawnee, Oklahoma], to the governance of Oklahoma law, and to the enforcement of arbitral awards in any court having jurisdiction thereof." *C & L Enterprises, supra,* 532 U.S., at p. 414 (internal quotation marks omitted). The Supreme Court held that "by the clear import of the arbitration clause, the Tribe is amenable to a state-court suit to enforce an arbitral award in favor of contractor C & L." *Id.* No explicit invocation of the words "sovereign immunity" was necessary to this sound result. *Id.* at 420-421.

The Plaintiffs consented through their conduct to EDD's collection actions, therefore the complaint should be dismissed for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6).

V. TITLE 25, UNITED STATES CODE, SECTION 476, IS NOT A SOURCE OF SUBSTANTIVE RIGHTS.

Plaintiffs allege in their Complaint, but do not brief in opposition to EDD's motion, that Defendants' nonjudicial collection activity violates 25 U.S.C. section 476. Complaint for Declaratory and Injunctive Relief, p. 6:7-10 (Apr. 26, 2011). Plaintiffs do not cite nor have Defendants found any case holding that section 476 is a source of substantive rights. The complaint must therefore be dismissed for failure to state a claim as to which relief may be granted under 25 U.S.C. section 476.

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CONCLUSION

For the foregoing reasons, Defendants' motion to dismiss should be granted.

Dated: September 14, 2011

Respectfully Submitted,

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CERTIFICATE OF SERVICE

Case Name: **Blue Lake Rancheria v. Morgenstern** No. **2:11-CV-01124-JAM-JFM**

I hereby certify that on September 14, 2011, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 14, 2011, at Sacramento, California.

Gloria Montano	*/s/ Gloria Montano*
Declarant	Signature