

DOCKET No. 10-56521

In the
United States Court of Appeals
For the
Ninth Circuit

RINCON MUSHROOM CORPORATION OF AMERICA,
a California Corporation,

Plaintiff-Appellant,

v.

BO MAZZETTI, JOHN CURRIER, VERNON WRIGHT, GILBERT PARADA,
STEPHANIE SPENCER, CHARLIE KOLB, DICK WATENPAUGH,

Defendants-Appellees,

*Appeal from a Decision of the United States District Court for the Southern
District of California, No. 09-CV-02330 • Honorable William Q. Hayes*

MOTION FOR JUDICIAL NOTICE

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*Attorneys for Appellees, Bo Mazzetti, John Currier, Vernon Wright, Gilbert
Parada, Stephanie Spencer, Charlie Kolb, Dick Watenpaugh*

I. GROUNDS FOR RELIEF SOUGHT

Pursuant to FRE 201, Defendants respectfully request the Court to take judicial notice of pleadings filed and orders issued by the Intertribal Court of Southern California in *Rincon Tribe v. Donius et. al* since the district court's September 21, 2010 order. This request is based upon the points and authorities set forth herein and the declaration of Counsel set forth below.

Declaration of Scott Crowell in Support of Request for Judicial Notice

I, Scott D. Crowell, declare as follows:

1. I am admitted to practice law in this Court.
2. I am one of the attorneys of record for the Appellees/Petitioners in this case.
3. Appellees/Petitioners request this Court take Judicial Notice of the following related Pleadings, Motions, and Orders filed in and issued by the Intertribal Court of Southern California.
4. Attached and designated as Exhibit "A" is a true and correct copy of the Order, certified March 26, 2012, *Rincon Band v. Donius et al*, Intertribal Court of Southern California, Case No. RINCON-02972009.
5. Attached and designated as Exhibit "B" is a true and correct copy of the Stipulation and Order, certified February 23, 2012, *Rincon Band v. Donius et al*, Intertribal Court of Southern California, Case No. RINCON-02972009.

6. Attached and designated as Exhibit “C” is a true and correct copy of the Scheduling Order, certified December 20, 2011, *Rincon Band v. Donius et al*, Intertribal Court of Southern California, Case No. RINCON-02972009.

7. Attached and designated as Exhibit “D” is a true and correct copy of the Joint Motion to Amend and the Order Granting Joint Motion to Amend Scheduling Order, certified August 30, 2011, *Rincon Band v. Donius et al*, Intertribal Court of Southern California, Case No. RINCON-02972009.

8. Attached and designated as Exhibit “E” is a true and correct copy of the Scheduling Order, certified July 12, 2011, *Rincon Band v. Donius et al*, Intertribal Court of Southern California, Case No. RINCON-02972009.

II. STATEMENT OF FACTS

In the interests of brevity, defendants incorporate by this reference the “Statement of the Case” of Appellants’ Brief in this appeal.

III. ARGUMENT

Federal Rule of Evidence of Civil Procedure 201(d) requires a court to take judicial notice of an “adjudicative fact” upon request of a party. As more specifically discussed herein, the Tribe is entitled to judicial notice of the following adjudicative facts: 1) that the above-referenced pleadings, motions and orders were filed and issued, 2) the nature of the allegations raised therein (as opposed to the

truth of those allegations, 3) the nature of the claims raised, and 4) the nature of the prayers for relief.

FRE 201 governs what matters properly may be judicially noticed by federal courts. Courts may only take notice of “adjudicative facts” which are facts “not subject to reasonable dispute in that they are either (1) generally known within the territorial jurisdiction of the trial court or (2) are capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.” FRE 201(a), (b). A court *may* take judicial notice whether it is requested or not. FRE 201(c). However, a court *shall* take judicial notice if requested by a party and supplied with the “necessary information.” FRE 201(d). A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the “tenor” of the matter noticed. FRE 201(e). Finally, a court may take judicial notice of adjudicative facts “at any stage in the proceedings.” FRE 201(f). Judicial notice may be taken at any stage in a case, including for the first time on appeal. *Dawson v. Mahoney*, 451 F.3d 550, 551 (9th Cir. 2006); *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

Judicially noticed facts often consist of matters of public record, such as prior court proceedings. Federal courts may “take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings

have a direct relation to the matters at issue”. *U.S. ex rel Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992). Judicial notice of judicial proceedings within and without the federal judicial system includes judicial notice of pleadings and orders arising out of those proceedings. *Asdar Group v. Pillsbury, Madison & Sutro*, 99 F.3d 289, 290, fn. 1 (9th Cir. 1996). There is, however, an important limitation: judicial notice of pleadings and from other related proceedings is limited to notice of the existence those pleadings; a court cannot take judicial notice of the veracity of arguments or disputed facts. *See, e.g. Lee v. City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001) (a court may take judicial notice of another court’s opinion, but not of the truth of the facts recited therein).

The availability of an evidentiary hearing to afford the Tribe an opportunity to develop an evidentiary record in support of tribal jurisdiction is a material issue in this appeal. *Atwood v. Fort Peck Tribal Court Assiniboine*, 513 F.3d 943, 948 (9th Cir. 2008) (the fact that there is a pending tribal court proceeding weighs in favor of dismissal of a federal action challenging tribal jurisdiction). The Tribal Court records defendants request the court to judicially notice demonstrate the actual availability of tribal court proceedings to which RMCA is an existing party and in which RMCA has a full opportunity to contest the Tribe’s jurisdiction. The Tribal Court records also demonstrate that the extensive discovery related to

jurisdictional issues - which has led to the development of critical facts - has been interrupted by the Panel's April 20, 2012 Decision. Finally, during oral argument, opposing counsel opined that there has been no evidence of contamination at the Mushroom Farm since the EPA-mandated clean up. RMCA has therefore opened the door for the attached documents to be judicially noticed.

IV. CONCLUSION

For the foregoing reasons, Tribal defendants/petitioners request the Court to take judicial notice of the court records, attached as Exhibits A-E.

Dated: May 11, 2012

Respectfully submitted,

s/Scott Crowell

Scott Crowell

s/Scott Wheat

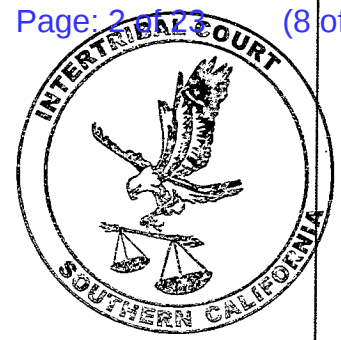
Scott Wheat

s/Karen Graham

Karen Graham

Attorneys for Appellees/Petitioners

EXHIBIT "A"



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CLERK OF THE COURT: *RR*
DATE: 05-20-12 AUSTIN, TEXAS
INTERTRIBAL COURT OF SOUTHERN CALIFORNIA
49002 GOLSH ROAD
VALLEY CENTER, CA 92082

**THE INTERTRIBAL COURT OF SOUTHERN CALIFORNIA
RINCON BAND OF LUISENO INDIANS**

RINCON BAND OF LUISENO INDIANS,
Plaintiff,

v.

MARVIN DONIUS, an individual, and
MUSHROOM EXPRESS, INC., a California
Corporation,
Defendants.

Case No. RINCON-02972009

ORDER

THIS MATTER came before the Court on the Tribe's Motion for Order Compelling Site Access ("Motion"). Specifically, the Tribe seeks an order authorizing the Tribe to be present on the property located at 33777 Valley Center Road, Rincon Reservation, San Diego County ("Former Mushroom Farm" or "FMF"), California from March 26 through April 2, 2012 for the purposes of obtaining soil and groundwater samples pursuant to the Tribal Council approved workplan prepared by Applied Engineering and Geology, Inc ("AEG"). Upon consideration of the Motion, supporting memorandum and exhibits, the declarations of Defendants, and the Court's file in this case, the Court issues the following memorandum opinion and Order:

By order issued June 2, 2009, the Court concluded that the Tribe has civil regulatory jurisdiction over the FMF. The Court's order was not appealed to the Tribal Court of Appeals. However, at the Defendants' request, this Court has agreed to entertain anew, as a motion to

1 reconsider, the Defendants' objections to the Tribe's jurisdiction. At the Parties' request, the
2 Court allowed additional discovery to be taken on issues related to the Tribe's jurisdiction, or
3 lack thereof.

4 A principal argument advanced by the Tribe is that, under the facts and circumstances of
5 this case, the Tribal civil regulatory jurisdiction lies under the second "*Montana*" exception
6 because past and current activities at the FMF pose a direct and substantial threat to the Tribe's
7 federally-reserved Reservation groundwater resources. The Tribe argues, and the Court agrees,
8 that evidence of actual groundwater contamination present upon the FMF is relevant to the
9 establishment of the Tribe's civil regulatory jurisdiction under *Montana's* second exception. The
10 Court also agrees that the soil and groundwater contamination present around the perimeter of
11 the FMF, as revealed in the December 29, 2011 Report ("Report"), warrant the proposed on-site
12 testing. Finally, the Court notes that the authors of the Report and the workplan for on-site
13 testing are registered professional civil engineers ("AEG") and that the workplan has been
14 approved by the Tribal Council ("AEG Workplan").

15
16
17 As evidenced by the Declaration of Marvin Donius, the Defendants advise that they will
18 not consent to the proposed on-site sampling called for in the AEG Workplan, scheduled to take
19 place at the FMF between March 26 and April 2, 2012. In essence, Defendants oppose the AEG
20 Workplan because they maintain permits must be obtained from the San Diego Department of
21 Environmental Health prior to the drilling of any on-site test boreholes or test wells. Defendants
22 argue that by permitting such activities without a County-issued permit, they expose themselves
23 to potential criminal liability under California law.

24
25 Given this Court's prior ruling on jurisdiction, the Court determines that Tribe may
properly enter and remain upon the FMF for the purposes of conducting an investigation of the

1 source of the TPHd and TPHmo contamination detected around the perimeter of the site,
2 pursuant to the tribally-approved AEG Workplan. The Court finds that sufficient evidence exists
3 to warrant the proposed onsite testing, not only for the purpose of accessing evidence material to
4 the Defendants' jurisdictional objections, but also to address community safety concerns
5 associated with soil and groundwater contamination.
6

7 The Court's entry of an order compelling site access should put the Defendants at some
8 ease, as it will make clear that the on-site testing at the FMF is an act of the Tribe, through its
9 agents (over which the County clearly does not have jurisdiction), as opposed to a voluntary act
10 of Defendants. The Court will also require that the Tribe hold Defendants harmless from any
11 liability that may arise because of the Tribe's performance of the on-site testing at the FMF
12 pursuant to this Court's order.
13

14 Based upon the Foregoing, its is hereby ORDERED:

- 15 1. The Tribe and its agents are hereby authorized to access the property located at 33777
16 Valley Center Road, Rincon Reservation, San Diego County ("Former Mushroom Farm" or
17 "FMF"), California from March 26 through April 2, 2012 for the purposes of obtaining soil and
18 groundwater samples pursuant to the approved AEG Workplan. The Tribe and its, officers and
19 agents (to specifically include AEG staff) are authorized to be present on-site during those days
20 from the hours of 6 a.m. through 7 p.m. for the sole purpose of effectuating the AEG Workplan.
21
- 22 2. The Tribe and its agents shall allow Defendants or their designated representatives to be
23 present and to observe all testing performed pursuant to this Order, and Defendants shall further
24 be provided with all associated test results and reports.
- 25 3. The Tribe shall indemnify and hold the Defendants' harmless for any liability that may
arise because of the Tribe's performance of the on-site testing at the FMF pursuant to this Order.

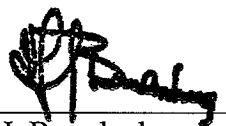
1 4. All prior orders of the Court remain in effect.

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3 So Ordered this 26 Day of March, 2012

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Anthony J. Brandenburg
Chief Judge
Intertribal Court of Southern California

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EXHIBIT "B"

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CLERK OF THE COURT: RR
DATE: 02-23-12 ATT: 58 FILE
INTERTRIBAL COURT OF SOUTHERN CALIFORNIA
4802 GOLSH ROAD
VALLEY CENTER, CA 92082

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THE INTERTRIBAL COURT OF SOUTHERN CALIFORNIA
RINCON BAND OF LUISENO INDIANS

RINCON BAND OF LUISENO INDIANS,
Plaintiff,

v.

MARVIN DONIUS, an individual, and
MUSHROOM EXPRESS, INC., a California
Corporation,
Defendants.

Case No. RINCON-02972009

STIPULATION AND ORDER

THE PARTIES HEREBY STIPULATE to the Court's entry of the following order to address access to the Subject Property on February 27, 2012 to identify test hole sites as part of the ongoing investigation into TPHd and TPHmo contamination identified in the groundwater surrounding the Subject Property:

THIS MATTER came before the Court for the entry of an order allowing the Tribe and its experts and contractors to access the Subject Property at 33777 Valley Center Road, Valley Center, California on February 27, 2012 from 8 am through 5 pm to locate sites for the drilling of boreholes to obtain soil and groundwater samples ("test holes"). The Court issues the following scheduling order:

1. On February 27, 2012, only between the hours of 8 a.m. and 5 p.m., The Tribe, through its employees, experts and contractors, shall be allowed access to the Subject Property, located at 33777 Valley Center Road, Valley Center, California to identify and mark test holes.

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2. The parties agree that Officials from the Bureau of Indian Affairs and the Department of Health and Human Services shall be present on the Subject Property shall be present to observe the siting of the test holes. The parties agree to jointly notify the US Environmental Protection Agency of the February 27, 2012 test hole siting. The parties further agree to jointly request that an official from the US EPA or designee also be present to observe.

3. RMCA and Mr. Donius (the "Owners") shall identify and mark any underground utilities present on the Subject Property prior to February 27, 2012.

4. The Owners shall be entitled to have their representatives/experts present to observe the siting and marking of the test holes.

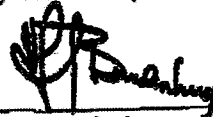
5. The Owners shall be entitled to receive all final reports, including test results, derived from test samples.

6. The Owners agree to utilize good faith efforts to prevent damage to the test hole markings prior to drilling, which is scheduled to commence on March 26, 2012 and to conclude on April 2, 2012.

7. Owners, by executing this stipulation do not waive their continuing objection to the Tribe's attempted or actual exercise of regulatory jurisdiction over Subject Property.


8. All prior orders of the Court remain in effect.

So Ordered this 23 Day of February 2012.




Anthony J. Brandenburg
Chief Tribal Judge of the
Intertribal Court of Southern California

APPROVED AS TO FORM/NOTICE OF PRESENTMENT WAIVED:



Scott Wheat
Scott Crowell
Attorneys for Plaintiffs



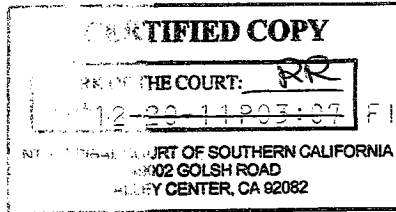
George McGill
Attorney for Defendants

EXHIBIT “C”

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**THE INTERTRIBAL COURT OF SOUTHERN CALIFORNIA
RINCON BAND OF LUISENO INDIANS**

**RINCON BAND OF LUISENO INDIANS,
Plaintiff,**

Case No. RINCON-02972009

v.

SCHEDULING ORDER

**MARVIN DONIUS, an individual, and
MUSHROOM EXPRESS, INC., a California
Corporation,
Defendants.**

THIS MATTER came before the Court for a status conference on December 9, 2011 at 2:30 p.m. Attorneys Scott Crowell and Scott Wheat appeared for Plaintiffs and attorney George McGill appeared for Defendants. Upon review of the file and upon consideration of argument presented by counsel, the Court issues the following scheduling order:

1. The parties shall exchange expert reports by December 20, 2011.
2. The parties shall serve their discovery requests, including notices of deposition, by January 20, 2012.
3. Discovery shall close on February 23, 2012.
4. The parties shall file pre hearing motions by March 20, 2012.
5. Oral argument on pre hearing motions, if any, shall be conducted on April 16, 2012 at 10:00 am.

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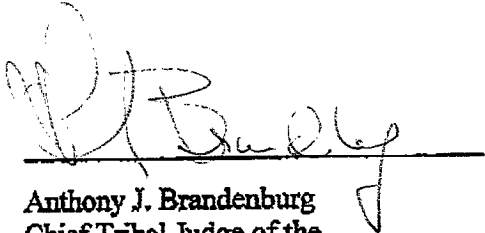
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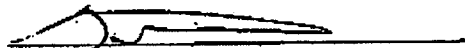
- 6. The evidentiary hearing on jurisdiction shall be held on May 1, 2012 at 10:00 am.
- 7. All prior orders of the Court remain in effect.

So Ordered this 20 Day of December, 2011.

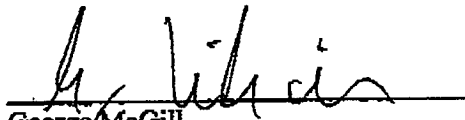


Anthony J. Brandenburg
Chief Tribal Judge of the
Intertribal Court of Southern California

APPROVED AS TO FORM/NOTICE OF PRESENTMENT WAIVED:



Scott Wheat
Scott Crowell
Attorneys for Plaintiff



George McGill
Attorney for Defendants

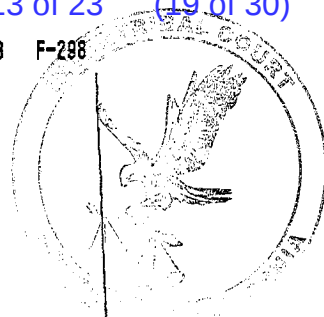
EXHIBIT “D”

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Scott Crowell
Attorney General
Rincon Band of Luiseno Indians
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08-30-11 P12:03 FILE

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*Attorneys for Defendant
Rincon Band of Luiseno Indians*

**THE INTERTRIBAL COURT OF SOUTHERN CALIFORNIA
RINCON BAND OF LUISENO INDIANS**

RINCON BAND OF LUISENO INDIANS,)	
)	
Plaintiff,)	Case No. RINCON-02972009
)	
v.)	
)	
MARVIN DONIUS, an individual, and)	JOINT MOTION TO AMEND
MUSHROOM EXPRESS, INC., a California)	SCHEDULING ORDER
Corporation,)	
)	
Defendants.)	

I. MOTION

COMES NOW, Plaintiff and Defendants, who jointly move the Court to amend the scheduling order entered July 12, 2011.

II. BASIS FOR MOTION

The Tribe has retained water and fire experts. Although the fire expert has completed his report, the water experts have completed a Phase I assessment and based upon those findings, recommend proceeding to a Phase II analysis. A Phase II analysis includes, but is not limited to,

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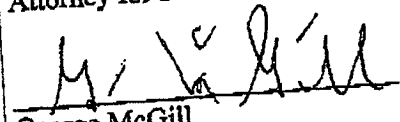
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drilling and monitoring of test wells, obtaining soil samples for lab analysis, and transmigration modeling. Based upon agreement of the parties and the experts need for additional time to conduct further testing and analysis, the parties request that the current scheduling order be amended to allow the experts additional time to finalize their reports, as more specifically set forth in the proposed order, filed concurrently herewith.

Respectfully submitted this 30 day of August, 2011.



Scott Wheat
Attorney for Plaintiffs



George McGill
Attorney for Defendants

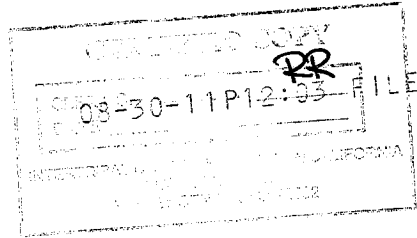
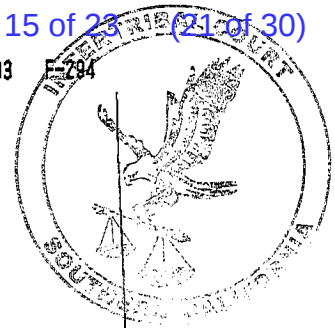
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Scott Crowell
Attorney General
Rincon Band of Luiseno Indians
scottcrowell@hotmail.com

Scott Wheat
Crowell Law Offices
10 N. Post, Ste. 445
Spokane, WA 99201
Phone: 509-474-1265
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wheat.s@frontier.com

*Attorneys for Defendant
Rincon Band of Luiseno Indians*

**THE INTERTRIBAL COURT OF SOUTHERN CALIFORNIA
RINCON BAND OF LUISENO INDIANS**

RINCON BAND OF LUSIENO INDIANS,)

Plaintiff,)

v.)

MARVIN DONIUS, an individual, and)
MUSHROOM EXPRESS, INC., a California)
Corporation,)
Defendants.)

Case No. RINCON-02972009

**ORDER GRANTING JOINT MOTION TO
AMEND SCHEDULING ORDER**

THIS MATTER came before the Court on the party's joint motion to amend the
Scheduling Order entered on July 12, 2011. Based on the foregoing, it is hereby ORDERED:

1. Exchange of Expert Reports November 1, 2011
2. Objections to Expert Reports November 15, 2011.

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Aug-18-11 08:06am From-GEORGE MCGILL

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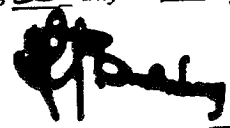
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3. An evidentiary hearing to be held February 6, 7, and 8 at 10:30 a.m./p.m.

DATED this 30 day of August, 2011.

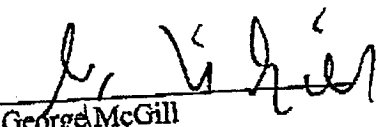


Honorable Anthony J. Brandenburg

APPROVED AS TO FORM/NOTICE OF PRESENTMENT WAIVED



Scott Wheat
Scott Crowell
Attorneys for Plaintiffs



George McGill
Attorney for Defendants

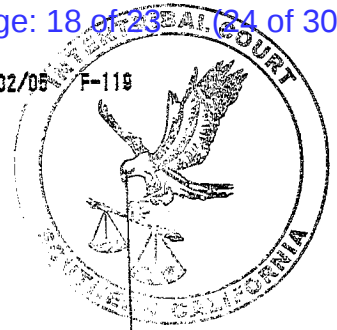
EXHIBIT "E"

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Jul-01-11 12:03pm From-GEORGE MCGILL

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Scott Crowell
Attorney General

Scott Wheat
Crowell Law Offices
10 N. Post, Suite 445
Spokane, WA 99201
Telephone: (509) 474-1265
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*Attorneys for Plaintiff
Rincon Band of Luiseno Indians*

CERTIFIED COPY
CLERK OF PROBATE COURT
DATE 07-12-11 11:23 FILE
INTERTRIBAL COURT OF SOUTHERN CALIFORNIA
PO BOX 2000, RINCON
VALLEY CENTER, CA 92082

**THE INTERTRIBAL COURT OF SOUTHERN CALIFORNIA
RINCON BAND OF LUISENO INDIANS**

RINCON BAND OF LUISENO INDIANS,
Plaintiff,

v.

MARVIN DONIUS, an individual, and
MUSHROOM EXPRESS, INC., a California
Corporation,
Defendants.

Case No. RINCON-02972009

SCHEDULING ORDER

THIS MATTER came before the Court for a status conference on June 24, 2011 at 10:30 a.m. Attorneys Scott Crowell and Scott Wheat appeared for Plaintiffs and attorney George McGill appeared for Defendants.

On June 2, 2009 this Court entered its "Order After Hearing," which reads, in relevant part: "the sole issue before this Court was one of jurisdiction, both personal and subject matter. Following a discussion with the parties and review of the Plaintiff's brief in support of their jurisdictional arguments, it was determined by the Court that the Tribal Court in fact had both

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2 subject matter and personal jurisdiction in this case.” (June 9, 2009 Order, p. 2). Defendant
3 Marvin Donius failed to appeal the Court’s Order and failed to timely file an answer. Plaintiff
4 moved for and obtained a default judgment against Marvin Donius on September 9, 2011.
5 (September 9, 2001 Order on Default). Mr. Donius failed to timely appeal the default judgment.

6
7 Despite this Court’s prior determination of subject matter jurisdiction, on May 6, 2011
8 Defendants entered a Special Notice of Appearance and concurrently filed a motion to dismiss,
9 arguing that this Court lacks subject matter jurisdiction over them.

10 The Band advised the Court of the ongoing federal litigation involving the parties,
11 including the federal District Court’s orders concluding that Defendants herein must first exhaust
12 remedies before this Court prior to seeking federal court review of their challenge to the Band’s
13 jurisdiction to enforce the Band’s land use and environmental ordinances against them (the same
14 ordinances the Band seeks to enforce against Defendants herein). *Rincon Mushroom Corp. of*
15 *America v. Mazzetti*, 2010 WL 3768347 S.D. Cal. September 21, 2010 (NO. 09cv2330 WQH-
16 POR); *Donius v. Mazzetti*, 2010 WL 3868363 S.D. Cal., September 21, 2010 (NO. 10CV591-
17 WQH-POR). Relying on *National Farmers Union Ins. Co. v. Crow Tribe*, 471 U.S. 845, 105
18 S.Ct. 2447, 85 L.Ed.2d 818 (1985) and *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 15, 107 S.Ct.
19 971, 94 L.Ed.2d 10 (1987), the Band has asked the Court to consider the pending Motion to
20 Dismiss as, in effect, a motion for reconsideration of this Court’s June 9, 2009, and to set an
21 evidentiary hearing to allow both parties a full opportunity to present arguments and evidence in
22 support of their respective positions considering the subject matter jurisdiction of the Band and
23 this Court over Defendants. The Band argues that an evidentiary hearing on jurisdiction allows
24 for the development of a complete record in the event this matter comes before the federal
25 district court yet again.
26

SCEDULING ORDER CASE NO. RINCON-02972009

1
2 Defendants argue they are mounting a "facial challenge" to the Band's subject matter
3 jurisdiction, thus rendering an evidentiary hearing unnecessary.

4 The Court will consider Defendant's second motion to dismiss as the equivalent of a
5 motion for reconsideration of this Court's June 11, 2009 Order. Once challenged, it is the Band's
6 burden to establish this Court's subject matter jurisdiction, *Scott v. Breeland*, 792 F.2d 925, 927
7 (9th Cir. 1986). Accordingly, the Court will grant the Band's request for the Court to conduct an
8 evidentiary hearing on jurisdictional issues. See Code of Civil Procedure 1.5.11. At the
9 conclusion of the presentation of the Band's evidence, Defendants may present their challenges
10 to the Band's jurisdiction – facial or otherwise.

11
12 Given the primacy of the jurisdictional issues, the Court shall first conduct an evidentiary
13 hearing on jurisdictional issues. Once it has reached (or after making) the jurisdiction
14 determination, the Court will then determine whether future proceedings, including trial on the
15 merits, will be necessary.

16
17 At the status conference, the Court reminded Counsel for Defendants that pending the
18 Court's decision on Defendants' motion for reconsideration, all existing orders of this Court
19 remain in effect.

20 Given the procedural posture of this case, the Court requested Counsel for Defendants to
21 formally enter a general appearance in these proceedings. Counsel responded by expressing
22 concern that a general appearance may be construed as consent to the subject matter jurisdiction
23 of the Court and of the Band. The Court advised Counsel that he may enter a general appearance
24 while reserving Defendants' right to contest the subject matter jurisdiction of the Band and of
25 this Court.
26

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Jul-02-11 11:25am From-GEORGE MCGILL

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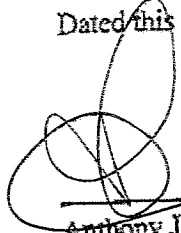
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Based on the foregoing, it is hereby ORDERED that:


1. An evidentiary hearing in this matter shall be held on October 4, 5, and 6 commencing at 10:30 a.m. on each day (the prior dates, August 2, 3, 2011 are hereby vacated).
2. Expert reports shall be exchanged between the parties by August 15, 2011.
3. Objections to expert reports shall be due by September 1, 2011.
4. Pursuant to Code of Civil Procedure §§ 3.3.01 (D), the Court hereby authorizes the parties to take depositions in this case. When taking depositions, the parties shall otherwise comply with Code of Civil Procedure § 3.3.
5. The Court accepts Defendants General Appearance and, by doing so, Defendants' rights are not affected under Code of Civil Procedure §§ 1.6.02 to contest the subject matter jurisdiction of the Band and of this Court.
6. All prior orders of the Court remain in effect.


Dated this 02 Day of June, 2011.



Anthony J. Brandenburg
Chief Tribal Judge of the
Intertribal Court of Southern California

APPROVED AS TO FORM/NOTICE OF PRESENTMENT WAIVED:



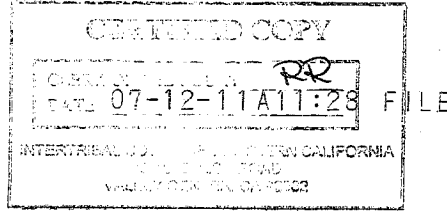
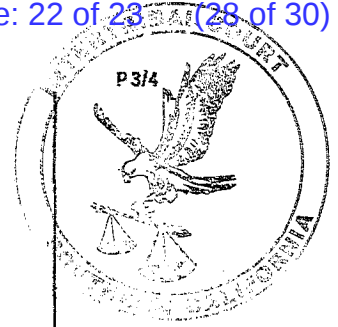
Scott Wheat
Scott Crowell
Attorneys for Plaintiffs

George McGill
Attorney for Defendants

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**THE INTERTRIBAL COURT OF SOUTHERN CALIFORNIA
RINCON BAND OF LUISENO INDIANS**

KENNETH KOLB

Plaintiff,

v.

Rincon Tribal Council, *et al.*

Defendant.

Case No. RINCON-2011060902

SCHEDULING ORDER

THIS MATTER came before the Court on July 24, 2011 for a Status Conference.

Present for Plaintiff was Damian Leone, who appeared with special permission of the Court pending his admission to the Tribal Bar. Present for Defendants were Scott Crowell and Scott Wheat.

Pending before this Court is Plaintiff's Motion for a Preliminary Injunction. Also pending is Defendants' Motion to Dismiss, in which Defendants challenge the Court's subject matter jurisdiction over this case. Defendants argue that their Motion to Dismiss directly bears on a dispositive element in determining Plaintiff's Motion for Preliminary Injunction: a substantial likelihood of success on the merits of the case. See Code of Civil Procedure §§

SCHEDULING ORDER Case No. RINCON-2011060902

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P 4/4

1 1.2.02(C). Defendants request the Court to stay Plaintiff's Motion for Preliminary Injunction be
2 stayed pending the Court's determination of Defendant's Motion to Dismiss. Plaintiff does not
3 oppose.


4 Based on the foregoing, it is hereby ORDERED:


- 5 1. Plaintiff shall file his response to Defendant's Motion to Dismiss by 4:00 p.m. on July 8,
6 2011.
- 7 2. Defendants shall file their reply by 4:00 p.m. on July 15, 2011.
- 8 3. A hearing on Defendants' Motion to Dismiss shall be held on July 27, 2011.
- 9 4. Plaintiff's Motion for Preliminary Injunction is stayed pending the Court's ruling on
10 Defendants' Motion to Dismiss.
11

12
13 DATED this 12 Day of July, 2011.

14 
15 _____
16 Anthony J. Brandenburg

17 APPROVED AS TO FORM/NOTICE OF PRESENTMENT WAIVED

18
19 
20 Scott Wheat
21 Scott Crowell
22 Attorneys for Defendants

23 
24 _____
25 Damian Leone
26 Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2012, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

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

s/Scott Crowell
Scott Crowell
Attorney for Appellees/Petitioners