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IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE EASTERN DISTRICT OF CALIFORNIA

SHINGLE SPRINGS BAND OF MIWOK
INDIANS,

Plaintiff,

v.

CESAR CABALLERO,

Defendant.

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

**ANSWER OF DEFENDANT
CESAR CABALLERO;**

**CLASS ACTION CROSS COMPLAINT;
AND
DEMAND FOR JURY TRIAL**

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

Cross-Complainants,

v.

SHINGLE SPRINGS BAND OF MIWOK
INDIANS,

Cross-Defendant.

COMES now Defendant CESAR CABALLERO, by and through his attorney BRAD
CLARK, and in Answer to the Complaint, filed December 23, 2008, herein and alleges:

1. In response to paragraph 1 of the Complaint, Defendant admits all allegations.

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1 2. In response to paragraph 2 of the Complaint, Defendant admits all allegations
2 therein.

3 3. In response to paragraph 3, Defendant denies that Plaintiff is a sovereign Indian
4 Tribe officially recognized and registered by the United States as the “Shingle Springs Band of
5 Miwok, Shingle Springs Rancheria (Verona Tract).” Defendant denies that the Plaintiff
6 possesses sovereign lands in El Dorado County, California, which the United States holds in
7 trust. Defendant admits that there is a publication in 73 Fed. Reg. 18553, 18556 (2008).

8 4. In response to paragraph 4 of the Complaint Defendant admits all allegations
9 therein.

10 5. In response to paragraph 5 of the Complaint, Defendant admits only that there are
11 publications in 47 Fed. Reg. 53130, 53133 (1982) and in 73 Fed. Reg. 18553, 18556 (2008).
12 Defendant denies all other allegations therein.

13 6. In response to paragraph 6 of the Complaint, Defendant admits that the Plaintiff
14 has used the name “Red Hawk Casino” in connection with its commercial ventures and that the
15 Plaintiff has provided unknown and unspecified services to its members. Defendant denies all
16 other allegations therein.

17 7. In response to paragraph 7 of the Complaint, Defendant denies that Defendant
18 signed the statement declaring under penalty of perjury. Defendant admits all allegations
19 therein.

20 8. In response to paragraph 8 of the Complaint, Defendant is without sufficient
21 knowledge or information to form a belief as to the truth of the allegations contained in said
22 paragraph, and on that basis denies each and every allegation contained therein.

23 9. In response to paragraph 9 of the Complaint, Defendant admits all allegations
24 therein.

25 10. In response to paragraph 10 of the Complaint, Defendant admits all allegations
26 therein.

27 11. In response to paragraphs 11 of the Complaint, Defendant denies all allegations
28 therein.

1 12. In response to paragraph 12 of the Complaint, Defendant admits the allegations
2 therein.

3 13. In response to paragraphs 13 of the Complaint, Defendant is without sufficient
4 knowledge or information to form a belief as to the truth of the allegations contained in said
5 paragraph and on that basis denies each and every allegation contained therein.

6 14. In response to paragraph 14 of the complaint, Defendant admits the allegations
7 therein.

8 15. In response to paragraph 15 of the complaint, Defendant admits the allegations
9 therein.

10 **RESPONSES TO FIRST CAUSE OF ACTION**

11 16. In response to paragraph 16 of the Complaint, Defendant incorporates herein by
12 reference the responses to paragraphs 1-15 of the Complaint.

13 17. In response to paragraphs 17-24 of the Complaint, Defendant denies all the
14 allegations therein.

15 **RESPONSES TO SECOND CAUSE OF ACTION**

16 18. In response to paragraph 25 of the Complaint, Defendant incorporates herein by
17 reference the responses to paragraphs 1-24 of the Complaint.

18 19. In response to paragraph 26-28 of the Complaint, Defendant denies all allegations
19 therein.

20 **RESPONSES TO THIRD CAUSE OF ACTION**

21 20. In response to paragraph 29 of the Complaint, Defendant incorporates herein by
22 reference the responses to paragraphs 1-28 of the Complaint.

23 21. In response to paragraphs 30-34 of the Complaint, Defendant denies all allegations
24 therein.

25 **RESPONSES TO FOURTH CAUSE OF ACTION**

26 22. In response to paragraph 35 of the Complaint, Defendant incorporates herein by
27 reference the responses to paragraphs 1-34 of the Complaint.

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1 23. In response to paragraph 36 of the complaint, Defendant denies all allegations
2 therein except as to the allegation that there is a controversy between Defendant and Plaintiff,
3 which is admitted.

4 24. In response to paragraph 37 of the Complaint, regarding venue, Defendant denies
5 all allegations therein.

6 **AFFIRMATIVE DEFENSES**

7 **FIRST AFFIRMATIVE DEFENSE**
8 (Trademark is Descriptive or Generic)

9 25. Plaintiff is not entitled to maintain this suit or to assert infringement of a
10 trademark, since the name "Shingle Springs Band of Miwok" is the common descriptive name
11 for a particular band of the Native American Miwok tribe. No secondary meaning indicating the
12 origin of goods has been acquired by Plaintiff by its use of the name in advertising its product.
13 The name, being merely descriptive, is in the public domain. Alternatively, the mark is generic
14 and cannot be protected by trademark law. As the Plaintiff has not registered the mark in
15 question, it is Plaintiff's burden to prove that the mark is not generic.

16 **SECOND AFFIRMATIVE DEFENSE**
17 (Failure to State Facts Sufficient for Causes of Action)

18 26. Defendant alleges that the Complaint, and each cause of action contained therein,
19 fails to state facts sufficient to constitute a cause of action.

20 **THIRD AFFIRMATIVE DEFENSE**
21 (Laches)

22 27. Plaintiff is not entitled to maintain this suit or to assert infringement by reason of
23 laches. Defendant's trademark having been in open, continuous, and extensive use by Defendant
24 and Defendant's Miwok tribe for more than 90 years prior to the filing of this action, to the
25 knowledge of Plaintiff, with no attempt on the part of Plaintiff to obtain a judicial determination
26 of its alleged rights in respect to use by Defendant of the mark now complained of. Defendant
27 has relied upon Plaintiff's acquiescence and delay and has continued its use of its trademark and
28 has invested large sums in reliance thereon. Plaintiff is thereby estopped to allege that any acts
of the Defendant constitute an infringement of Plaintiff's alleged trademark rights.

1 **FOURTH AFFIRMATIVE DEFENSE**
2 (Sovereign or Qualified Immunity)

3 28. Insofar as Plaintiff prays for money damages, Defendant is immune from such
4 damages on the basis of the doctrine of sovereign immunity or qualified and the Eleventh
5 Amendment.

6 **FIFTH AFFIRMATIVE DEFENSE**
7 (Unclean Hands)

8 29. Plaintiff, holding itself out as “Shingle Springs Band of Miwok,” does so
9 fraudulently and improperly. Plaintiff has improperly obtained federal registration of its tribe
10 under the Miwok name despite not being of Miwok ancestry. Because of this fraudulent and
11 improper conduct on the part of Plaintiff in obtaining and utilizing the name and mark “Shingle
12 Springs Band of Miwok,” Plaintiff has unclean hands and is estopped from obtaining any
equitable relief.

13 **SIXTH AFFIRMATIVE DEFENSE**
14 (Defendant is Senior User of the Trademark)

15 30. Defendant is the senior user of the trademark in question. Defendant is of Miwok
16 ancestry whereas Plaintiff is not. Plaintiff, therefore, may not maintain a suit for trademark
infringement or unfair competition against Defendant.

17 **SEVENTH AFFIRMATIVE DEFENSE**
18 (Fair Use)

19 31. Plaintiff is not entitled to maintain this suit or to assert infringement of a
20 trademark, since the use of the mark by Defendant is a fair use.

21 **EIGHTH AFFIRMATIVE DEFENSE**
22 (Trademark Invalidity)

23 32. Plaintiff is not entitled to maintain this suit or to assert infringement of a trademark
24 because the mark identified by Plaintiff in this suit is invalid or nonexistent as it purports to
25 assign Plaintiff a monopoly over the name of a federally recognized Native American Tribe.
26 Plaintiff cannot be permitted to hold a trademark which identifies an entire group of people.

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1 **NINTH AFFIRMATIVE DEFENSE**
2 (No Likelihood of Confusion)

3 33. Plaintiff is not entitled to maintain this suit or to assert infringement of a trademark
4 because there is no likelihood of confusion by Defendant's use of the mark "Shingle Springs
5 Band of Miwok" when Defendant is not involved in any way in the business of casinos and the
6 parties are not in competition.

7 **TENTH AFFIRMATIVE DEFENSE**
8 (Waiver)

9 34. Defendant is informed and believes and thereof alleges that the Complaint, and
10 each cause of action contained therein, is barred by the equitable Doctrine of Waiver and
11 Plaintiff is also estopped from maintaining this action.

12 **ELEVENTH AFFIRMATIVE DEFENSE**
13 (Good Faith)

14 35. Defendant is informed and believes and thereof alleges that all his actions were
15 taken in good faith and with a reasonable belief that such actions were lawful and privileged.

16 **TWELFTH AFFIRMATIVE DEFENSE**
17 (Superseding and Intervening Cause)

18 36. Plaintiff's claims are barred by the Doctrine of Superseding and Intervening Cause.

19 **THIRTEENTH AFFIRMATIVE DEFENSE**
20 (Offset or Set off)

21 37. Defendant is entitled to offset or set off against an award to Plaintiff, if any.

22 **FOURTEENTH AFFIRMATIVE DEFENSE**
23 (Negligence)

24 38. Defendant is informed and believes and thereof alleges that other persons or
25 entities and each of them, named and unnamed in the Complaint were guilty of negligence, or
26 other acts or omissions in the matters set forth in the Complaint, which proximately caused or
27 contributed to the damages or loss complained of, if any, and that Defendant is liable, if at all,
28 only for the amount of non-economic damages allocated to fault, and that the Court is requested

1 to determine and allocate the percentage of negligence attributable to each of the other persons
2 or entities at fault.

3
4 **FIFTEENTH AFFIRMATIVE DEFENSE**
(Acts or Omissions)

5 39. At all times and places alleged in the Complaint, the willful acts or omissions of
6 Plaintiff were the proximate cause of the damages, if any, complained of by Plaintiff in the
7 Complaint. Damages, if any, awarded against Defendant must be reduced in an amount
8 proportional to the relative responsibility of Plaintiff's causing said damages.

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10 **SIXTEENTH AFFIRMATIVE DEFENSE**
(Unlawful and Wrongful Conduct)

11 40. Defendant is informed and believes and thereon alleges that the acts complained of
12 by Plaintiff were provoked by Plaintiff and Plaintiff' unlawful and wrongful conduct.

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15 **CLASS ACTION CROSS-COMPLAINT**

16 I.

17 **PARTIES**

18 1. The Cross-Complainants, CESAR CABALLERO on behalf of himself and those
19 similarly situated hereinafter complain of Cross-Defendant (who refers to themselves as the
20 "Shingle Springs Band of Miwoks" who in actuality are a group of Maidu Indians and
21 Hawaiians), and each of them, and allege as follows:

22 II.

23 **JURISDICTION**

24 2. Jurisdiction of this matter is granted to this court by 28 U.S.C. §§1331 (federal
25 question).

26 3. This Court has supplemental jurisdiction over causes of action brought under state
27 law pursuant to 28 U.S.C. §1367, as such claims are so related to the claims arising under
28 federal law that they form part of the same case or controversy under Article III of the United

1 States Constitution. Federal law specifically contemplates that the remedies available under the
2 federal statutes and regulations implicated here are in addition to “remedies existing under
3 another law or common law.” 49 U.S. C. §13103.

4 III.

5 **VENUE**

6 4. Venue is proper in this federal district because Cross-Defendant currently occupies
7 land and operate a casino; and, a substantial part of the events or omissions on which claims are
8 based occurred in this judicial district.

9 IV.

10 **PARTIES**

11 5. The Cross-Complainant, Cesar Caballero elected Chief of the Shingle Springs
12 Miwoks by a vote of elders at all material times has been a resident of El Dorado County,
13 California.

14 6. Cross-Defendant, the Casino Indians, purporting themselves to be the Shingle
15 Springs band of Miwoks (despite being of Maidu Indian ancestry combined with many of
16 Hawaiian ancestry deriving from Sacramento and Sutter counties) are on information and belief
17 occupants of land in El Dorado County, California, which the United States holds in fee.

18 V.

19 **CLASS ACTION ALLEGATIONS**

20 7. Cross-Complainant Cesar Caballero on behalf of himself and those similarly
21 situated brings this suit as a class action pursuant to Rules P 23(a), (b)(1), and (b)(3) of the
22 Federal Rules of Civil Procedure, on behalf of himself and a Cross-Complainant Class
23 composed of the indigenous tribe The Shingle Springs Band of Miwoks.

24 8. **Class Description.** Cross-Complainants need Cesar Caballero to represent a class
25 consisting of all those members in the indigenous tribe of the true Shingle Springs Band of
26 Miwoks whose members have been denied beneficiary interest in the 240 acres of land in
27 Shingle Springs, California, owned in fee by the United States purchased for the use and
28 occupancy of the El dorado Indians and the Sacramento-Verona Band of Homeless Indians.

1 Cross-Complainants also have been denied federal benefits, gaming profits and future profits by
2 the intentional and unjustified assumption and control by the Cross-Defendant of a name held
3 out as a Federal Recognized tribe called the “Shingle Springs Band of Miwok Indians.”

4 9. **Impracticability of Joinder.** On information and belief, there are 250 or more
5 individuals who are members of this class. These individual members are widely dispersed
6 geographically. Thus, joinder of all potential class members would be impractical.

7 10. **Commonality.** Cross-Defendants have acted toward Class Members in a way that
8 affects all members of the Class similarly and, accordingly, questions of fact and law are
9 common to the Class, as are questions of the liability and the appropriate nature of equitable
10 relief.

11 11. **Typicality.** The claims of the Cross-Complainants are typical of the claims of the
12 potential Class as a whole.

13 12. **Fair and Adequate Representation.** Cross-Complainants are capable of fairly and
14 adequately protecting the interests of the Class.

15 13. **Class Certification Appropriate Under Rule 23(b) (2).** Cross-Defendants have
16 acted and/or failed to act on grounds personally applicable to the potential class as a whole as
17 described further herein. Thus, injunctive, declarative and equitable relief is appropriate with
18 respect to the potential class as a whole, making class certification appropriate under Fed. R.
19 Civ. P. 23(b)(2).

20 14. **Class Certification Appropriate Under Fed. R. Civ. P. 23(b)(3).** The questions
21 of law enumerated in the counts below are common to all class members which are essentially
22 limited to the amount of damages due each member. Therefore, a class action is superior to
23 other available methods for the fair and efficient adjudication of the claims herein.

24 15. **Additional Factors Favoring Class Certification.** Other factors favoring the
25 certification of this suit as a class action include:

26 (a) Requiring individuals to prosecute separate actions would substantially impair
27 or impede the individual member’s ability to protect his/her interests;

28 (b) On information and belief, there is no litigation already commenced by Class
Members concerning the causes of action raised in this Complaint;

1 (c) It is desirable to concentrate the individual member's claims in one forum
2 because, given, the amount in controversy, to require these claims to be brought in separate
3 forums would effectively prevent individuals from bringing to recover their funds; and

4 (d) No substantial difficulties are likely to be encountered in managing this class
5 action.

6 VI.

7 **NATURE OF ACTION**

8 16. Cross-Complainant Cesar Caballero, Chief of the indigenous Shingle Springs Band
9 of Miwoks, on behalf of all those similarly situated hereinafter referred to as the "Indigenous
10 Shingle Springs Miwoks" brings this action as a class action pursuant to Rule 23 of the
11 Federal Rules of Civil on Procedure on behalf of all of the members of his tribe who share
12 common ancestry with the Miwok Indians indigenous to the Shingle Springs area. The
13 Indigenous Shingle Springs Miwoks take action to recover damages caused by the Cross-
14 Defendant's, hereinafter called the "Casino Indians," performed actions wherein they have
15 purposely and deceptively assumed and/or usurped the name "Shingle Springs Band of
16 Miwoks" despite the fact that they are neither Miwok or indigenous to the Shingle Springs
17 area.

18 17. The Casino Indians have over a period of many decades systematically,
19 maliciously and intentionally presented themselves in such a manner towards the Bureau of
20 Indians Affairs, The County of El Dorado, The State of California, Local Agency Formation
21 Commission, El Dorado Irrigation, investors or bond holders and the public as to make them
22 believe that they were Miwok Indians indigenous to the Shingle Springs area whenever it
23 suited the Casino Indians' purpose to do so despite the fact that they are neither Miwok nor
24 indigenous to the Shingle Springs area.

25 18. Their purpose in doing so was to leverage a statement on a 1920 deed, wherein
26 the United States Government purchased a 160 acre parcel of land in fee, hereinafter referred
27 to as the "Verona Tract," which now makes up a large portion of the land where a Casino has
28 been built. The deed cited in the non-granting portion of the document that the land was
intended for the use and occupancy of the Sacramento Band of homeless Indians. (Attached

1 as Exhibit A, and incorporated herein by reference.) The United States of America had just
2 previously purchased an adjacent 80 acre parcel of land hereinafter referred to as the “Dorado
3 Tract.” The two parcels combined make up what is very nearly now the land where the Red
4 Hawk Casino was built, hereinafter referred to as the”Casino Land.”

5 19. The Indigenous Shingle Springs Miwoks are informed and believe that the Casino
6 Indians purport to be the successor in interest to the Sacramento-Verona Band of Homeless
7 Indians a group made up of Maidu Indian ancestry combined with many individuals of
8 Hawaiian ancestry.

9 20. The Indigenous Shingle Springs Miwoks are informed and believe and thereon
10 allege that the Casino Indians have successfully, albeit deceptively, managed to use the citing
11 on the deed for the “Verona Tract,” “for use and occupancy of the Sacramento-Verona Band
12 of Indians” in such a manner throughout the years to assume, usurp, or lead others to believe
13 that they are the “Shingle Springs Band of Miwoks.” They have done so by suggesting that
14 the many historical references to a “Shingle Springs Band of Miwoks” or similar name refer
15 to them. The Casino Indians have thoughtfully and deceptively managed to induced the
16 Bureau of Indian Affairs (“BIA”) to take them to be the historically referenced Shingle
17 Springs Band of Miwoks or similar names because they were purportedly the only group
18 having some land interest in the Shingle Springs area.

19 21. The Indigenous Shingle Springs Miwoks are informed and believe and based
20 thereon allege the Casino Indians took advantage of the bureaucratic nature of the BIA and
21 began to take on a role that was convenient to the BIA and supported the Casino Indians aims
22 at building a gaming empire on the Shingle Springs land owned by the United States in fee.

23 22. The Indigenous Shingle Springs Miwoks are informed and believe that the BIA
24 assumed falsely without investigation that the Casino Indians tribal government was the tribal
25 government of Shingle Springs Band of Miwok who had been previously referenced or eluded
26 to in federal documents. As a result of the Casino Tribe’s systematic and deceptive actions,
27 the State of California, El Dorado County, Local Agency Formation Commission, investors,
28 bond holders, and the public blindly followed suit with the BIA in assuming that the Casino
Indians were the Shingle Springs Band of Miwoks. The Casino Indians carried on this charade

1 until ultimately being allowed to build what is now referred to as the “Red Hawk Casino” and
2 are receiving significant financial gain and anticipate receiving significantly more financial
3 gain from the gaming proceeds.

4 23. The Indigenous Shingle Springs Miwoks are informed and believe and based
5 thereon allege that the Casino Indians will carry on this charade.

6 VII.

7 **ESTOPPEL OF PLEADING AND TOLLING OF**
8 **APPLICABLE STATUTES OF LIMITATIONS**

9 24. The Casino Indians are estopped from relying on any statutes of limitation by virtue
10 of their acts of systematic concealment towards the Indigenous Shingle Springs Miwoks
11 through their intended and unjust purpose of limiting the size and scope of the intended
12 beneficiaries of the land in Shingle Springs owned in fee by the United States. Given the nature
13 of Casino Indians systematic exclusion and the non-public actions and deceptions taken against
14 the interests of the Indigenous Shingle Springs Miwoks; the Indigenous Shingle Springs
15 Miwoks alleged herein that the Indigenous Shingle Springs Miwoks could not have reasonably
16 discovered the wrongdoing alleged herein. The Casino Indians are estopped from relying on any
17 statutes of limitations that might otherwise be applicable to the claims asserted herein. Further,
18 any such statutes of limitations have been tolled by the Casino Indians’ acts of concealment and
19 misrepresentation.

20 VIII.

21 **GENERAL ALLEGATIONS**

22 25. The Indigenous Shingle Springs Miwoks are informed and believe and based
23 thereon allege that if the Casino Indians are a tribe at all, they are a created tribe as opposed to
24 an historic tribe and thus are not eligible for the benefits of tribal sovereign immunity because a
25 created tribe has delegated sovereignty rather than the inherent sovereignty of an historic tribe.

26 26. The Indigenous Shingle Springs Miwoks are informed and believe and thereon
27 allege that the Casino Indians are a band of Indians of Maidu ancestry who combined with a
28 group of individuals with Hawaiian ancestry.

1 27. The Indigenous Shingle Springs Miwoks are informed and believe and thereon
2 allege that the Casino Indians are not indigenous to the region commonly referred to as the
3 Western Slope of El Dorado County, an area that encompasses the "Casino Land."

4 28. The Indigenous Shingle Springs Miwoks are informed and believe and based
5 thereon allege that they have been identified historically as descending from the Wopumnes of
6 the Shingle Springs area. Their 1846 village was situated close to what is now Highway 50.
7 Their territory extended East and West of Placerville to just east of Sacramento, which is very
8 nearly the area now commonly identified as the Western Slope of El Dorado County.

9 29. The Indigenous Shingle Springs Miwoks are informed and believe and based
10 thereon allege the members of the Indigenous Shingle Springs Miwoks are identified as early as
11 1880 in a census carried out by the federal government indicating 172 Indians living in El
12 Dorado County, while no members of the Casino Indians were identified in the 1880 Census.
13 (Attached as Exhibit B and incorporated herein by reference.)

14 30. The Indigenous Shingle Springs Miwoks are informed and believe and based
15 thereon allege that members of the Indigenous Shingle Springs Miwoks were identified on a
16 1910 Census (attached as Exhibit C and incorporated herein by reference) by the federal
17 government that identified 175 Indians living in El Dorado County, while no members of the
18 Casino Indians were so identified.

19 31. The Indigenous Shingle Springs Miwoks are informed and believe and based
20 thereon allege that although the name "Shingle Springs Band of Miwoks" falsely assumed or
21 usurped by the Casino Indians appears on certain lists periodically published in the Federal
22 Register pursuant to Section 104 of the Federally Recognized Indian Tribes List Act of 1994
23 under 25 U.S.C. §§479a and 479a-1, the Casino Indians are not actually a tribe at all and have
24 never actually been recognized as such by the United States of America.

25 32. The Indigenous Shingle Springs Miwoks are informed and believe and based
26 thereon allege that the Casino Indians are not eligible for a Gaming Compact with the State of
27 California as mere occupants of the "Casino Land" which the United States of America owns in
28 fee, and which it initially allotted to groups of homeless Indians for use and/or occupancy, but

1 which it does not hold in trust for the Casino Indians and therefore is not "Indian Land" of a
2 type which would render its occupant eligible for said gambling compact.

3 33. The Indigenous Shingle Springs Miwoks are informed and believe and based
4 thereon allege that in or about 1915 the United States Government purchased the 80 acre
5 "Dorado Tract," from a private individual for the use and occupancy of El Dorado County
6 Indians, which later through a series of transactions now forms part of "Casino Land."

7 34. The Indigenous Shingle Springs Miwoks are informed and believe and based
8 thereon allege that in or about 1920, the United States of America purchased the 160 acre
9 "Verona Tract" adjacent to the 80 acre "Dorado Tract" from the private estate of a Mr.
10 Meldrum. In a separate paragraph of the deed from the conveying paragraph, the United States
11 was to have and to hold..... for the use and occupancy of the Sacramento-Verona Band of
12 Homeless Indians.

13 35. The Indigenous Shingle Springs Miwoks are informed and believe and based
14 thereon allege that the two adjacent parcels identified herein as the "Dorado Tract" and the
15 "Verona Tract" were purchased with the intention of forming one entity of land to be occupied
16 by the Sacramento-Verona Band of Homeless Indians and the El Dorado County Homeless
17 Indians. No barriers or lines of separation were developed to differentiate from what area of the
18 land was to be used and occupied by the El Dorado Indians and that land to be used and
19 occupied by the Sacramento-Verona Band of Homeless Indians because it was anticipated that
20 either group may use portions of the entire 240 acres owned in fee by the United States.

21 36. The Indigenous Shingle Springs Miwoks are informed and believe and based
22 thereon allege that the Hawaiians, who make up a large segment of the Casino Indians were not
23 intended to benefit from the use and occupancy of the Casino Land because they were not
24 members of the Sacramento-Verona band of Homeless Indians and they were not homeless
25 Indians in local proximity to Shingle Springs.

26 37. The Indigenous Shingle Springs Miwoks are informed and believe and based
27 thereon allege that no member or individual from the Sacramento-Verona Band of Homeless
28 Indians occupied either the "Verona Tract" or the "Dorado Tract" or any portion of the Casino

1 Land or any other area near or about the "Casino Land" for over 60 years.

2 38. The Indigenous Shingle Springs Miwoks are informed and believe and thereon
3 allege that in or about 1955 the California Senate adopted its resolution #115 recognizing that
4 the Shingle Springs reservation was owned by El Dorado Indians. Up to this time and the
5 Casino Indians had never occupied "Casino Land" or occupied any other land in El Dorado
6 County nor had they any affiliation with El Dorado County.

7 39. The Indigenous Shingle Springs Miwoks are informed and believe and based
8 thereon allege that in the mid 1960's, The California Department of Transportation began
9 negotiations with members of the Indigenous Shingle Springs Miwoks to build an overpass to
10 the then land-locked Casino Land prior to the Casino Indians having any influence or even
11 giving any attention to the Casino Land. Ultimately those negotiations failed.

12 40. The Indigenous Shingle Springs Miwoks are informed and believe and based
13 thereon allege that in or about the mid 1960's, under the authority of the California Rancheria
14 Act, P.L. 85-671 72 Stat. 619 amended in 1964 P. L. 88-419 78 Stat. 390. The Bureau of Indian
15 affairs attempted to sell both parcels of the "Casino Land".

16 41. The Indigenous Shingle Springs Miwoks are informed and believe that the "Dorado
17 Tract" was sold to the Padilla Family for consideration; the disbursement of any benefits is
18 unknown to the Indigenous Shingle Springs Miwoks. Portions of the Dorado Tract were later
19 repurchased after a series of transaction by the United States.

20 42. The Indigenous Shingle Springs Miwoks are informed and believe and based
21 thereon allege that the Bureau of Indians Affairs developed A PLAN FOR THE
22 DISTRIBUTION OF THE ASSETS OF THE SHINGLE SPRINGS RANCHERIA
23 ACCORDING TO THE PROVISIONS OF P.L. 85-671, AS AMENDED BY P.L. 88-419
24 (attached as Exhibit D and incorporated herein by reference) in anticipation of the sale of the
25 "Verona Tract" and presumed that the proceeds of the proposed sale would be distributed to the
26 list of distributes therein.

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1 43. This list of proposed distributes included many with members of the Indigenous
2 Shingle Springs Miwoks as well as members or individuals now referred to as the Casino
3 Indians.

4 44. The Indigenous Shingle Springs Miwoks are informed and believe and based
5 thereon allege that the attempt by the United States of America to sell the "Casino Land" failed.

6 45. The Indigenous Shingle Springs Miwoks are informed and believe and based
7 thereon allege that as late as 1974 nine members of the Sacramento-Verona Band of Indians as
8 the Casino Indians called themselves at the time because it served their purpose at the time
9 signed a letter stating that they wanted the Shingle Springs Rancheria sold. (a copy of the letter
10 is attached as Exhibit E and incorporated herein by reference.)

11 46. The Indigenous Shingle Springs Miwoks are informed and believe and based
12 thereon allege that the Casino Indians only began organizing and attempting to gain influence
13 on the Casino Lands after the possibility of gaming began to be considered as possible for
14 Indians on Indian Land.

15 47. The Indigenous Shingle Springs Miwoks are informed and believe and based
16 thereon allege that a meeting was set up between the Bureau of Indian Affairs and the
17 descendants of a 1916 census list developed by Indian agent Terrell to the Commissioner of
18 Indian Affairs, enclosing a "Census of (34) names individuals, living in Sutter and Sacramento
19 Counties", which Indigenous Miwoks are informed and believe and based thereon allege
20 included persons who were actually of Hawaiian decent. Notice was only given to those
21 individuals who descended from the 1916 census. No notice was given to any Indigenous
22 Shingle Springs Miwoks.

23 48. The Indigenous Shingle Springs Miwoks are informed and believe and thereon
24 alleged that the meeting between the Bureau of Indian Affairs and the descendants of the 1916
25 Census described in paragraph 47 above was held on in or about 1970.

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1 49. The Indigenous Shingle Springs Miwoks are informed and believe and thereon
2 allege that at the meeting described in paragraphs 47 and 48 above, the group of persons present
3 decided that the determination of the membership of the "Sacramento-Verona Band" a new
4 name should be given the highest priority.

5 50. The Indigenous Shingle Springs Miwoks are informed and believe and based
6 thereon allege that some time before 1976 the Casino Indians unilaterally, intentionally, and
7 maliciously removed the names of those individuals with indigenous Miwok Ancestry from the
8 original PLAN FOR THE DISTRIBUTION OF THE ASSETS OF THE SHINGLE SPRINGS
9 RANCHERIA ACCORDING TO THE PROVISIONS OF P.L. 85-671, AS AMENDED BY
10 P.L. 88-419, without authority, permission or notice to or by the Indigenous Shingle Springs
11 Miwoks.

12 51. The Indigenous Shingle Springs Miwoks are informed and believe and based
13 thereon allege that the intention acts of the Casino Indians and the predecessors in interest
14 intentional delineated the Indigenous Shingle Springs Miwoks from the PLAN FOR THE
15 DISTRIBUTION OF THE ASSETS OF THE SHINGLE SPRINGS RANCHERIA to deny the
16 Indigenous Shingle Springs Miwoks any beneficial interests that may be afforded them from
17 inclusion.

18 52. The Indigenous Shingle Springs Miwoks are informed and believe and based
19 thereon allege that Casino Indians were not identified as the federally recognized tribe the
20 Shingle Springs Band of Miwoks, at the time of their malicious act identified above in
21 paragraph 50 and even if they had been recognized they had no right or authority to, delineate or
22 remove the Indigenous Shingle Springs Miwoks from the plan for distribution thus denying
23 them any beneficial interest in the "Casino Land".

24 53. The Indigenous Shingle Springs Miwoks are informed and believe and thereon
25 allege that after attempts to sell the "Casino Land" failed the Casino Indians began a systematic
26 process wherein they took advantage of the bureaucratic nature of the Bureau of Indian Affairs
27 by acting in a manner where the Bureau of Indian Affairs would assume they were the
28 historically referenced "Shingle Springs Band of Miwoks" when it suited the purpose of the

1 Casino Indians to do so in an attempt to deprive the Indigenous Shingle Springs Miwoks from
2 any benefit of the "Casino Land" or federal recognition as the "Shingle Springs Band of Miwok
3 Indians."

4 54. The Indigenous Shingle Springs Miwoks are informed and believe and thereon
5 allege that the Casino Indians chose to call themselves the Sacramento –Verona Band when that
6 name suited their purpose, and later the "Shingle Springs Band of Miwok Indians" when that
7 name suited their purpose or the Shingle Springs Rancheria when that name suited their purpose

8 55. The Indigenous Shingle Springs Miwoks are informed and believe and thereon
9 allege that in or about 1976 the Casino Indians voted to establish Articles of Association and By
10 Laws for the "Shingle Springs Band". That band was to consist of those names that appeared
11 on the 1916 census taken by Terrell and their lineal descendants providing that such
12 descendents possess at least 1/16th Indian blood. No mention at the time was made to any
13 purported connection or association with the Miwok tribe of Indians.

14 56. The Indigenous Shingle Springs Miwoks are informed and believe and based
15 thereon allege that the articles and bylaws described above were submitted by the Casino
16 Indians to the Commissioner of the Bureau of Indian Affairs and approved in December of
17 1976. These articles appear to constitute the only action on the part of the Government for
18 which the Casino Indians could base a claim by the "Shingle Springs Band" to federal
19 recognition.

20 57. The Indigenous Shingle Springs Miwoks are informed and believe and based
21 thereon allege that the Governments mere approval of the Articles of Association and By Laws
22 for the "Shingle Springs Band" does not constitute "recognition" of that tribe by the federal
23 government.

24 58. The Indigenous Shingle Springs Miwoks are informed and believe and based
25 thereon allege that On January 31, 1979 the Shingle Springs Rancheria, but not the Band, was
26 identified in the Federal Register as the "Shingle Springs Rancheria (Verona Tract) of Miwok
27 Indians, California." 44 Fed. Reg. 7235, 7236.

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1 59. The Indigenous Shingle Springs Miwoks are informed and believe and based
2 thereon allege that the BIA was not listing a group of persons but rather the Rancheria property
3 itself. This fact is supported by a document by BIA entitled "American Indians and Their
4 Federal Relationship," published in March 1972, which identifies "Shingle Springs Rancheria
5 (Verona Tract) (3) (unoccupied)."

6 60. The Indigenous Shingle Springs Miwoks are informed and believe and based
7 thereon allege that from 1916 until 1979 the Casino Indians did not have any sociological,
8 political, economic existence on the Rancheria (Casino Land) or anywhere else that could have
9 been recognized by the federal government as an Indian tribe.

10 61. The Indigenous Shingle Springs Miwoks are informed and believe and based
11 thereon allege that the provisions of 25 C.F.R. Part 83 as they pertain to acknowledgment of
12 recognition of the Casino Indians have, would have, do, did, and will preclude the Casino
13 Indians from Federal recognition. Moreover, the Indigenous Shingle Springs Miwoks are
14 informed and believe and based thereon allege that the provisions of 25 C.F. R. part 83 are the
15 only way the Casino Indians could have gained recognition as a federally recognized tribe
16 because no "course of dealings" or "pattern and practice" or other creative process could be
17 used by the BIA to recognize a federal tribe.

18 62. The Indigenous Shingle Springs Miwoks are informed and believe and based
19 thereon allege that Casino Indians as a group are not indigenous to **continental** United States of
20 America because as indicated in the 1916 census a significant number of the Casino Indians are
21 of Hawaiian decent which is not part of the continental United States.

22 63. The Indigenous Shingle Springs Miwoks are informed and believe and based
23 thereon allege that Casino Indians have not existed as a community from historical times, until
24 present because the 1916 census refers to homeless Indians scattered throughout Sacramento
25 and in Sutter County separately.

26 64. The Indigenous Shingle Springs Miwoks are informed and believe and based
27 thereon allege that the Casino Indians have not had or been in a substantially continuous tribal
28 existence and/or functioned as an autonomous entity since 1900. The casino lands were not

1 occupied by the Casino Indians until 1980 at the earliest.

2 65. The Indigenous Shingle Springs Miwoks are informed and believe and based
3 thereon allege that the Indigenous Shingle Springs Miwoks have been in a substantially
4 continuous tribal existence and/or functions as an autonomous entity since before 1900.

5 66. The Indigenous Shingle Springs Miwoks are informed and believe and based
6 thereon allege that the Indigenous Shingle Springs Miwoks have existed as a community from
7 historical times until present.

8 67. The Indigenous Shingle Springs Miwoks are informed and believe and based
9 thereon allege that the Indigenous Shingle Springs Miwoks are indigenous to the continental
10 United States of America.

11 68. The Indigenous Shingle Springs Miwoks are informed and believe and based
12 thereon allege that the provisions of 25 C.F.R. Part 83 as they pertain to acknowledgment of
13 recognition of the Indigenous Shingle Springs Miwoks can, have, and will provide the
14 Indigenous Shingle Springs Miwoks with sufficient basis for acknowledgement as a Federally
15 recognized Indian Tribe.

16 69. The Indigenous Shingle Springs Miwoks are informed and believe that the Casino
17 Indians will continue to use the name "Shingle Springs Band of Miwoks" in a commercial
18 venture, trade, business and/or for solicitation.

19 **FIRST CAUSE OF ACTION**

20 **(Declaratory Judgment)**

21 70. The Indigenous Shingle Springs Miwoks hereby repeat, replead, and incorporate
22 herein by reference as though fully set forth herein each and every allegation contained in
23 paragraphs 1 through 69 inclusive of the Cross-Complaint.

24 71. An actual and present controversy exists because the Indigenous Shingle Springs
25 Miwoks contend that The Casino Indians are not a federally recognized tribe and thus are not
26 benefitted by sovereign immunity, federal benefits, sole occupancy of the Casino Land, and/or
27 the right to pursue gaming through compact or otherwise. All the historic references to the
28 "Shingle Springs Band of Miwok Indians" were intended to and did represent the Indigenous

1 Shingle Springs Miwoks and that the Casino Indians have no rights, and have never had any
2 such rights to use those historic references to refer to Casino Indians and thus gain the
3 advantages alleged herein in this complaint or in a way. On information and belief, Casino
4 Indians disagree with this contention.

5 72. Pursuant to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201 et
6 seq., the Indigenous Shingle Springs Miwoks therefore seeks a judicial declaration that,
7 notwithstanding Casino Indians alleged Federal Recognition pursuant to Fed. Reg. 18553,
8 18556 (2008) that Casino Indians have no rights, and has never had any such rights, to use the
9 mark “Shingle Springs Band of Miwok Indians” in any way.

10 **SECOND CAUSE OF ACTION**

11 **(Infringement of Unregistered Trademark and Trade name and Unfair competition In** 12 **violation of the Latham Act, 15 U.S.C. Section 1125(a))**

13 73. The Indigenous Shingle Springs Miwoks hereby repeat, replead, and incorporate
14 herein by reference as though fully set forth herein each and every allegation contain in
15 paragraphs 1 through 73 inclusive of the Cross-Complaint.

16 74. Cross-Defendant’s use, advertising and promotion of the mark “Shingle Springs
17 Band of Miwoks” has created and continues to create a likelihood of confusion, mistake, or
18 deception as to affiliation, connection, association, origin, sponsorship, approval, commercial
19 activities, nature, characteristics, or qualities of Casino Indians’ business including operation of
20 a casino designed to promote and profit from gambling operations in connection with Cross-
21 Defendants.

22 75. Casino Indians use of the mark “Shingle Springs Band of Miwok Indians” has
23 caused irreparable harm to the tribe, including but not limited to detriment to and diminution in
24 value of the Casino Indians’ trademark and trade name.

25 76. As a result of the aforesaid acts, the Cross-Complainants are entitled to preliminary
26 and permanent injunctive relief to enjoin Cross-Defendant’s acts of infringing on The
27 Indigenous Miwoks’ Trademark and to recover its damages and Cross-Defendants’ gains,
28 profits, and advantages gained as a result of the acts alleged above, and treble damages and

1 enhanced profits in an amount to be determined.

2 77. Cross-Defendant knew or had reason to know of the Cross-Complainants' widely
3 recognized use of its trademark and trade name and deliberately copied its mark. Given that
4 Cross-Defendants' actions were willful, deliberate and fraudulent, this is an exceptional case,
5 and the tribe is entitled to damages and an award of reasonable attorneys' fee against Cross-
6 Defendants.

7 **THIRD CAUSE OF ACTION**

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

9 78. The Indigenous Shingle Springs Miwoks hereby repeat, replead, and incorporate
10 herein by reference as though fully set forth herein each and every allegation contain in
11 paragraphs 1 through 77 inclusive of the Cross-Complaint.

12 79. Casino Indians misappropriation, use, and infringement on the Indigenous Indians
13 trademark and trade name violates California Business and Professions Code, Section 14401, et
14 seq., Section 21300, et seq., and common law protection of trademarks and trade names.

15 80. As a result of Casino Indians unauthorized and impermissible use of the Indigenous
16 Shingle Springs Miwoks trademark and tradename, the Indigenous Shingle Springs Miwoks
17 have been damaged in an amount to be shown at trial.

18 81. In accordance with California Business and Professions Code Sections 14402 and
19 14493, California Corporations Code Section 21308(2), and common law protection of the
20 Indigenous Indians trademark and trade name, the Indigenous Shingle Springs Miwoks are
21 entitled to injunctive relief to enjoin The Casino Indians, their agents, servants, employees,
22 successors, assigns, and all those controlled by them from using the mark "Shingle Springs
23 Band of Miwok Indians, "or any similar mark.

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1 **FOURTH CAUSE OF ACTION**

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

4 82. The Indigenous Shingle Springs Miwoks hereby repeat, replead, and incorporate
5 herein by reference as though fully set forth herein each and every allegation contain in
6 paragraphs 1 through 82 inclusive of the Cross-Complaint.

7 83. The Casino Indians have made and disseminated, and/or caused to be made and
8 disseminated, the words “Shingle Springs Band of Miwok Indians,” to mislead the bureau of
9 Indian Affairs, The State of California, The county of El Dorado, The El Dorado Irrigation
10 District, Local Agency Formation Commission, investors, bond holders, the customers of the
11 casino and the public in believing that they are Indigenous Indians of Miwok Ancestry in
12 connection with the opening and operation of the Casino.

13 84. The dissemination of such information is likely to and has deceived the Bureau of
14 Indian Affairs, The State of California, The county of El Dorado, The El Dorado Irrigation
15 District Local Agency Formation Commission, the customers of the casino and the public in
16 believing that they are Indigenous Indians of Miwok Ancestry has caused harm and will
17 continue to cause harm to the Indigenous Shingle Springs Miwoks as a result of The Casino
18 Indians ongoing deception.

19 85. The Casino Indians making and dissemination and/or causing the making and
20 disseminating, of false and misleading statements to the bureau of Indian Affairs, The State of
21 California, The county of El Dorado, The El Dorado Irrigation District, Local Agency
22 Formation Commission, the customers of the casino and the public violates the California
23 Business and Professions Code Sections 17200, et seq., and 17500, et seq.

24 86. The Indigenous Shingle Springs Miwoks have been injured by the unlawful, unfair,
25 and fraudulent business practices and false advertising of the Casino Indians as described herein
26 and such practices present a continuing threat to the Indigenous Miwoks. The Indigenous
27 Shingle Springs Miwoks are informed and believes that the Casino Indians will not discontinue
28 its fraudulent conduct and false advertising unless and injunction is issued by this Court.

87. In accordance with California Business and Professions Code Sections 17203 and 17535, The Indigenous Shingle Springs Miwoks are entitled to injunctive relief to enjoin the Casino Indians, their agents, servants, employees, successors, assigns, and all those controlled by them from using the name Shingle Springs Band of Miwoks or any similar name, and from falsely representing to the bureau of Indian Affairs, The State of California, The county of El Dorado, The El Dorado Irrigation District, Local Agency Formation Commission, investors, bond holders, the customers of the casino and the public that any business, product, or activity, of the Casino Indians is associated in any way with the Indigenous Miwoks.

FIFTH CAUSE OF ACTION

(Intentional Interference with Prospective Economic Advantage)

88. The Indigenous Shingle Springs Miwoks hereby repeat, replead, and incorporate herein by reference as though fully set forth herein each and every allegation contain in paragraphs 1 through 88 inclusive of the Cross-Complaint.

89. The Indigenous Shingle Springs Miwoks had and have a prospective economic relationship with the United States Federal Government in that through their beneficial interest in the 240 acres Shingle Springs Tract they likely would have control of the federal recognition of “the Shingle Springs Band of Miwok Indians and eventually confirmed as the true and natural benefactor of such recognition as a federally recognized tribe, and the resulting probability of economic benefit from Federal Programs and Benefits which are only available to members of federally recognized tribes in addition to the gaming rights coming as a direct result of that federal recognition.

90. In addition, Casino Indians intentionally disrupted the relationship between The Indigenous Shingle Springs Miwoks and the United States Government by eliminating the Indigenous Shingle Springs Miwoks from the PLAN FOR THE DISTRIBUTION OF THE ASSETS OF THE SHINGLE SPRINGS RANCHERIA ACCORDING TO THE PROVISIONS OF P.L. 85-671, AS AMENDED BY P.L. 88-419.

91. Casino Indians thereafter began and continued to fraudulently and intentionally assume historic references to Shingle Springs Band of Miwoks or similar name, despite having

1 no ancestral claim to the Miwok identity or aboriginal or indigenous claim to the Shingle
2 Springs area.

3 92. Casino Indians fraudulently assumed and took control of the federal recognition of
4 the “Shingle Springs Band of Miwok Indians.”

5 93. Casino Indians continued to assume their tribal identity and heritage through
6 intentional and unjustified acts.

7 94. The Casino Indians unjustified acts actually caused a disruption in The Indigenous
8 Shingle Springs Miwoks economic relationship with the United States of American resulting in
9 loss of Federal Benefits, a beneficial interest in the 240 acre Shingle Springs tract of land and
10 the resulting loses of profits and revenues derived from gaming rights associated with federal
11 recognition.

12 95. As a result of the intentional and unjustified acts The Indigenous Shingle Springs
13 Miwoks have been damages in amount to be shown at trial.

14 **SIXTH CAUSE OF ACTION**

15 **(Negligent Interference with Prospective Economic Advantage)**

16 96. The Indigenous Shingle Springs Miwoks hereby repeat, replead, and incorporate
17 herein by reference as though fully set forth herein each and every allegation contained in
18 paragraphs 1 through 95 inclusive of the Cross-Complaint.

19 97. The Indigenous Shingle Springs Miwoks had and have a prospective economic
20 relationship with the United States Federal Government in that through their beneficial interest
21 in the 240 acres Shingle Springs Tract they likely would have control of the federal recognition
22 of “the Shingle Springs Band of Miwok Indians and eventually confirmed as the true and
23 natural benefactor of such recognition as a federally recognized tribe, and the resulting
24 probability of economic benefit from Federal Programs and Benefits which are only available to
25 members of federally recognized tribes in addition to the gaming rights coming as a direct result
26 of that federal recognition.

27 98. In addition, Casino Indians negligently disrupted the relationship between The
28 Indigenous Shingle Springs Miwoks and the United States Government by eliminating the

1 Indigenous Shingle Springs Miwoks from the PLAN FOR THE DISTRIBUTION OF THE
2 ASSETS OF THE SHINGLE SPRINGS RANCHERIA ACCORDING TO THE PROVISIONS
3 OF P.L. 85-671, AS AMENDED BY P.L. 88-419.

4 99. Casino Indians thereafter began and continued to fraudulently assume historic
5 references to Shingle Springs Band of Miwoks or similar name, despite having no ancestral
6 claim to the Miwok identity or aboriginal or indigenous claim to the Shingle Springs area.

7 100. Casino Indians fraudulently assumed and took control of the federal recognition of
8 the “Shingle Springs Band of Miwok Indians.”

9 101. Casino Indians continued to assume their tribal identity and heritage through
10 intentional and unjustified acts.

11 102. The Casino Indians unjustified acts actually caused a disruption in The Indigenous
12 Shingle Springs Miwoks economic relationship with the United States of American resulting in
13 loss of Federal Benefits, a beneficial interest in the 240 acre Shingle Springs tract of land and
14 the resulting loses of profits and revenues derived from gaming rights associated with federal
15 recognition.

16 103. As a result of the intentional and unjustified acts The Indigenous Shingle Springs
17 Miwoks have been damages in amount to be shown at trial.

18 **PRAYER**

19 **WHEREFORE**, the Indigenous Shingle Springs Miwoks pray for judgment as
20 follows:

21 A. That the Casino Indians, be preliminarily and permanently enjoined:

22 1. From use, benefit or acknowledgement as to federal recognition as the “Shingle
23 Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract).” pursuant to 73
24 Fed. Reg. 18553, 18556 (2008); and

25 2. From operating a gaming casino of any class or type on the Casino Land;

26 B. That the Casino Indians , their agents, servants, employees, successors, assigns and
27 all those controlled by them, or in active concert or participation with them be preliminarily and
28 permanently enjoined:

1 1. From reproducing, copying, counterfeiting, colorably imitating, or otherwise
2 using in any way without the consent of the Indigenous Miwoks, the mark “Shingle Springs
3 band of Miwoks.”

4 2. From using in any way any other mark, designation, or symbol so similar to the
5 mark Shingle Springs Band of Miwoks as to cause likely confusion, or cause mistake of
6 deceive.

7 3. From circulating advertising or promotional literature, or advertising any
8 product or service bearing the mark “Shingle Springs Band of Miwok Indians”.

9 4. From representing that the Casino Indians is in any way associated or affiliated
10 with, or authorized approved, or licensed by the Indigenous Miwok Indians.

11 C. That Casino Indians be ordered to deliver for destruction all articles of merchandise,
12 displays signs, plaques, advertisements, packaging, brochures, order forms, price lists, or any
13 other materials in Casino Indians possession or control or in the possession or control of Casino
14 Indians’ agents which bear the mark “Shingle Springs Band of Miwok Indians” or any other
15 confusingly similar marks.

16 D. That Casino Indians be ordered to withdraw any license, agreement, compact or
17 fictitious business statement that he may have filed in any jurisdiction, by which they purport to
18 do business as “Shingle Springs Band of Miwok Indians” or any other confusingly similar
19 name.

20 E. That Casino Indians be ordered to file with this Court and serve on the Indigenous
21 Shingle Springs Miwoks within 14 days after entry of such order, a report in writing, under
22 oath, setting forth in detail the manner of Casino Indians compliance with all of the foregoing
23 requirements.

24 F. That Casino Indians be required to account for and pay over to the Indigenous
25 Miwoks, all gains, profits, and advantages derived by Casino Indians from Casino Indians from
26 the intentional or negligent interference with the Indigenous Shingle Springs Miwoks
27 prospective economic relations with the United States of America.

1 G. That Casino Indians be required to account for and pay over to the Indigenous
2 Miwoks, all gains, profits, and advantages derived by Casino Indians from Casino Indians
3 infringement on the Indigenous Shingle Springs Miwoks mark.

4 H. That Casino Indians be ordered to pay to the Indigenous Shingle Springs Miwoks as
5 punitive damages a sum equal to three (3) times the amount of the Miwok Indians actual
6 damages, plus interests and costs of this action.

7 I. That Indigenous Shingle Springs Miwoks recover prejudgment interest on its
8 damages.

9 J. The Casino Indians be ordered to pay the Indigenous Shingle Springs Miwoks cost
10 of suit and, as an exceptional case under the Lanham Act, attorney's fees to the Indigenous
11 Miwoks.

12 K. That the Court issue a judicial declaration that notwithstanding Casino Tribes
13 assertion of Federal Recognition as an Indian Tribe, the Indigenous Shingle Springs Miwoks are
14 the owner of the Shingle Springs Band of Miwok Indians" mark, that the Indigenous Shingle
15 Springs Miwoks used the mark "Shingle Springs Band of Miwok Indians" prior to any use by
16 Casino Indians, that Casino Indians did not commence to transact business

17 L. That the Court grants the Indigenous Shingle Springs Miwoks such other relief as
18 the court deems just.

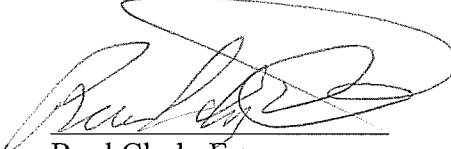
19 * * * * *

20 **DEMAND FOR JURY TRIAL**

21 Defendant and Cross-Complainants hereby demand a jury trial as provided by Rule 38
22 of the Federal Rules of Civil Procedure.

23
24 Dated: February 17, 2009

25 Respectfully Submitted,

26
27 
28 Brad Clark, Esq.

Attorney for Defendant Cesar Caballero