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SHINGLE SPRINGS BAND OF MIWOK INDIANS

9 UNITED STATES DISTRICT COURT  
10 EASTERN DISTRICT OF CALIFORNIA

11  
12 SHINGLE SPRINGS BAND OF MIWOK  
INDIANS,

13 Plaintiff,

14 v.

15 CESAR CABALLERO,  
16 Defendant.

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

19 Counter-Plaintiff,

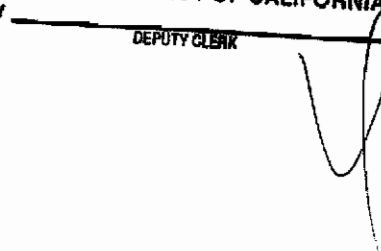
20 v.

21 SHINGLE SPRINGS BAND OF MIWOK  
22 INDIANS,

23 Counter-Defendant.  
24  
25  
26  
27  
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**FILED**

MAY 20 2009

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
BY  DEPUTY CLERK

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

~~PROPOSED~~ ORDER GRANTING  
SHINGLE SPRINGS BAND OF  
MIWOK INDIANS' MOTION TO  
DISMISS OR, ALTERNATIVELY, TO  
STRIKE CESAR CABALLERO'S  
COUNTERCLAIMS

Date: May 20, 2009

Time: 9:00 a.m.

Courtroom: 6

Judge: Hon. John A. Mendez

1 After full consideration of Shingle Springs Band of Miwok Indians' (the "Tribe") Motion  
2 To Dismiss or, Alternatively, To Strike Cesar Caballero's Counterclaims, the Supporting  
3 Memorandum of Points and Authorities, the Declaration of Nicholas Fonseca, the Tribe's  
4 Request for Judicial Notice, the Tribe's Compendium of Unpublished Cases, all additional  
5 pleadings and papers filed in this matter, including the papers submitted by Counter-Plaintiff, and  
6 the arguments of counsel, the Court finds there is good cause to GRANT the motion on the  
7 ground that the Court lacks subject matter jurisdiction.

8 First, this Court lacks subject matter jurisdiction over the action because the Tribe  
9 possesses sovereign immunity to suit, and that immunity has not been waived. Fed. R. Civ. Pro.  
10 12(b)(1). Second, this Court lacks subject matter jurisdiction to adjudicate a challenge to the  
11 status of a tribe that appears on the United States' list of federally-recognized tribes, and Mr.  
12 Caballero, and the "Indigenous Miwoks" he purports to represent, cannot state a claim for relief  
13 as a matter of law. Fed. R. Civ. Pro. 12(b)(1), (6). Third, Mr. Caballero's challenge to the  
14 Tribe's federal recognition is simply <sup>not</sup> justiciable, as the Tribe's status in relation to the United  
15 States is a political question beyond the province of any court. Fed. R. Civ. Pro. 12(b)(1), (6).  
16 Fourth, to the extent Counter-Plaintiff claims he and the persons he purports to represent were  
17 wrongfully denied membership in the Shingle Springs Band, this Court's also lacks subject  
18 matter jurisdiction to adjudicate it, because only the Tribe itself is empowered to grant  
19 membership, and no claim for federal relief can be stated. Fed. R. Civ. Pro. 12(b)(1), (6). Fifth,  
20 Mr. Caballero's challenge is time-barred, since, as a matter of law, he and other members of the  
21 Tribe have been aware of the Tribe's federal recognition for 30 years. Fed. R. Civ. Pro. 12(b)(6).  
22 Seventh, Mr. Caballero's countersuit cannot state a claim upon which relief can be granted  
23 because, as a matter of law, a federally-recognized Indian tribe cannot be enjoined from using its  
24 own federally-recognized name, under the guise of trademark law or otherwise. *Id.* Finally, the  
25 United States is a necessary and indispensable party to Mr. Caballero's challenge of the United  
26 States' recognition of the Shingle Springs Band and his claim to their lands, but cannot be joined  
27 because of its immunity, requiring dismissal. Fed. R. Civ. Pro. 12(b)(7).  
28

1 Accordingly, pursuant to Federal Rules of Civil Procedure 12(b)(1), the Court hereby  
2 orders that Counter-Plaintiff's complaint is, in its entirety, DISMISSED WITH PREJUDICE for  
3 lack of subject matter jurisdiction. In addition, the Court finds that dismissal also would be  
4 warranted if it had subject matter jurisdiction, because Counter-Plaintiff has failed to state a  
5 claim upon which relief can be granted pursuant to Federal Rules of Civil Procedure 12(b)(6) and  
6 because the United States is an indispensable party that cannot be joined, requiring dismissal  
7 under Rule 12(b)(7).

8 IT IS SO ORDERED.

9  
10  
11 DATED: 5-20-09

  
The Honorable John A. Mendez  
United States District Judge

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