

Holland & Knight LLP  
400 South Hope Street, 8<sup>th</sup> Floor  
Los Angeles, CA 90071  
Tel: 213.896.2400 Fax: 213.896.2450

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

HOLLAND & KNIGHT LLP  
Jerome L. Levine (SBN 38613)  
Timothy Q. Evans (SBN 231453)  
Marissa E. Buck (SBN 293373)  
400 South Hope Street, 8th Floor  
Los Angeles, California 90071  
Telephone: 213.896.2400  
Facsimile: 213.896.2450  
E-mail: jerome.levine@hklaw.com  
tim.evans@hklaw.com  
marissa.buck@hklaw.com

Attorneys for Plaintiff  
Ione Band of Miwok Indians

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SACRAMENTO**

IONE BAND OF MIWOK INDIANS,

Plaintiff,

vs.

MATTHEW FRANKLIN and JOHNNY  
"GIL" JAMERSON,

Defendants.

) Case No: 34-2014-00164169

) **PLAINTIFF'S MEMORANDUM OF**  
) **POINTS AND AUTHORITIES IN**  
) **OPPOSITION TO SPECIALLY**  
) **APPEARING DEFENDANT MATTHEW**  
) **FRANKLIN'S MOTION TO QUASH**

) **[DECLARATION OF CHAIRWOMAN**  
) **YVONNE MILLER FILED**  
) **CONCURRENTLY HEREWITH]**

) Date: August 14, 2014  
) Time: 2:00 p.m.  
) Dept.: 53

Holland & Knight LLP  
400 South Hope Street, 8<sup>th</sup> Floor  
Los Angeles, CA 90071  
Tel: 213.896.2400 Fax: 213.896.2450

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Despite Defendant Matthew Franklin’s protestations that this case involves matters uniquely related to the internal governance of the Plaintiff Ione Band of Miwok Indians (“Tribe”), it is a simple civil dispute between a Tribe and its former official to recover Tribal money misspent by the Defendant outside the scope of his duties as Tribal Chairman for a variety of unauthorized personal uses, including visits to strip clubs, engaging escort services, purchases at jewelry stores, trips to amusement parks, movie rentals, clothing items, unexplained traveling, and the like, which Defendant would not and apparently cannot justify as having been related to his duties and responsibilities. Those duties included his sworn but obviously broken promise to protect the best interest of the Tribe and its members. *See* Oath of Office, *Constitution of the Ione Band of Miwok Indians of California* (the “Tribal Constitution”), Article 5, Section 4, attached as Exhibit 1 to Defendant Franklin’s Declaration in Support of Motion to Quash (“Franklin Decl.”). The complaint seeks a return from him of the unauthorized \$205,749.22 in Tribal monies that he caused to be delivered to his personal vendors. Complaint ¶¶ 5-9. Mr. Franklin was presented with an accounting in writing and requested to account for the expenditures, but did not do so. *Id.*

In response to the Complaint, Mr. Franklin has filed a Motion to Quash (“Motion”) the service of the summons and Complaint and a Memorandum of Points and Authorities in Support of Motion to Quash. The Motion is based on the purported grounds that, since the Complaint involves a Tribe, Defendant as a former Tribal Chairman, and the Tribe’s assets, this Court lacks jurisdiction over this dispute because it is an intra-tribal matter that must be resolved in a Tribal judicial forum, and over Mr. Franklin because of his sovereign immunity from suit as a former officer of the Tribe, and that as such the Tribe may not avail itself of its civil remedies in state court. No authority for such a rule is, or could be, provided. Sovereign immunity does not protect Tribal officials when not acting within the scope of their authority. The question of whether or not Mr. Franklin was acting within the scope of his authority when he spent Tribal assets on strip clubs is a straightforward question for a trier of fact. The extent to which those issues carry any implications regarding the



1 Tribe’s internal governance, as Mr. Franklin suggests, is for the sovereign Plaintiff Tribe to  
2 consider, and it has elected to submit those issues to this Court, notwithstanding that in doing so this  
3 Court may (but will not necessarily) be called upon to review and interpret Tribal law, custom and  
4 practice. It would be absurd to allow the exercise of the Tribe’s sovereign prerogatives to be used  
5 as a shield against its ability to enforce its rights or to allow the doctrine of sovereign immunity,  
6 which was designed in large part to protect the treasury of the sovereign (*see, e.g., Del Campo v.*  
7 *Kennedy*, (9th Cir. 2008) 517 F.3d 1070, 1075), to instead protect one who has allegedly withheld  
8 funds from that same treasury without authorization. No court has held that tribes are under any  
9 such handicap.

10 Mr. Franklin also asserts that he is entitled to immunity as a former Tribal official under a  
11 provision of the Tribal Constitution which immunizes such officials, but (as he concedes) only  
12 “when acting within the scope of their authority” and in an “official capacity.” Tribal Constitution,  
13 Article IV, Section 1. The Complaint is not about any *authorized* acts or expenditures by Mr.  
14 Franklin. It is explicitly to the contrary. The Complaint is solely for recovery of “unauthorized  
15 personal expenses” which were incurred improperly and with knowledge by Mr. Franklin that the  
16 credit cards were not for his personal use. Complaint ¶¶ 5-7. His only attempt to factually  
17 immunize his conduct is the minimal conclusory statement in his declaration that they were  
18 “business expenses” incurred during his tenure as Chairman, related to his responsibilities of office,  
19 and while he was “working on the Tribe’s Class III gaming project.” Franklin Decl. ¶ 6. No  
20 foundation or specifics are provided, and thus the statements should be disregarded.

21 Defendant Franklin also asserts that he has not waived his immunity from suit, but no  
22 waivers are asserted by Plaintiff. None are necessary. Defendant Franklin is not being sued in  
23 connection with any authorized acts that might be immune from judicial attack, but just the  
24 opposite. He has no immunity from being sued to return Tribal assets that he used for his own  
25 personal and unauthorized purposes.

26 In sum, this Court has jurisdiction over Defendant and this matter. Mr. Franklin has been  
27 personally served within the state and County where this Court sits. The declaration of the Tribe’s  
28

1 Chairwoman, Yvonne Miller, submitted in support of this Opposition, establishes that the  
2 expenditures were unauthorized and unexplained by Defendant Franklin and that he has refused to  
3 repay the money he diverted from his tribal government credit cards. It is a proper and classic  
4 common law claim by Plaintiff in all respects. Plaintiff has met its burden to establish jurisdiction.  
5 Defendant's motion to quash should be denied.

6 **II. ARGUMENT**

7 **A. The Tribe Does Not Have to Waive its Sovereign Immunity in Order to Bring**  
8 **This or Any Other Suit**

9 A tribe can bring a civil suit under state or federal laws without the need to waive its  
10 immunity, either impliedly or explicitly. *See, e.g., Red Jacket Tribe, No. 28 v. Gibson* (1886) 70  
11 Cal. 128 (suit by Tribe against tribal members); *Robinson Rancheria of Pomo Indians v. Anderson*,  
12 2008 WL 4383228 (Tribe as plaintiff); *California Valley Miwok Tribe v. California Gambling*  
13 *Control Commission*, 2010 WL 1511744 (Tribe as plaintiff); *Chemehuevi Indian Tribe v. California*  
14 *State Bd. of Equalization* (9th Cir. 1986) 800 F.2d 1446; *Quechan Indian Tribe v. McMullen* (9th  
15 Cir. 1993) 984 F.2d 304; *Karuk Tribe of California v. Ammon* (Fed. Cir. 2000) 209 F.3d 1366.<sup>1</sup>  
16 Sovereign immunity is intended as a shield to protect the sovereign from civil suits by others (116  
17 Am. Jur. Trials 395 (2014) §76 *Scope of Immunity*), but that does not mean it prevents tribes from  
18 availing itself to the courts for relief. Without the ability to bring suits in state and federal court,  
19 Tribes would have no redress or remedy for these harms.

20 While it is true that tribes can resolve tribal issues in a tribal court or council, certain issues  
21 of basic civil law may also be redressed by a state or federal court. Here, the Tribe is seeking relief  
22 through common counts in state court. Defendant Franklin owes the Tribe money for unauthorized  
23 charges which were presented to him and he was unable to justify. The Tribe decided to seek the  
24 assistance of the state court in order to enforce its rights against Mr. Franklin for payment of the  
25  
26

27 <sup>1</sup> *See also, United States v. Oregon* (9th Cir. 1981) 657 F.2d 1009, 1014; *McClendon v. United States* (9th Cir. 1989)  
28 885 F.2d 627, 630; *Rosebud Sioux Tribe v. A&P Steel, Inc.* (8th Cir. 1989) 874 F.2d 550, 552; *Oklahoma Tax Comm'n*  
*v. Potawatomi Indian Tribe* (1991) 498 U.S. 505, 506-508.



1 amount owed, and neither its own sovereign immunity nor any other legal principle can deprive it  
2 of that right.

3 **B. Sovereign Immunity Does Not Apply to Defendant Matthew Franklin Because**  
4 **He Was Not Acting Within the Scope of His Authority as Chair of the Tribal**  
5 **Council When He Made Improper, Personal Charges**

6 Although tribal officials have sovereign immunity when acting in their official capacity,  
7 tribal officials are not necessarily immune from suit. *Santa Clara Pueblo v. Martinez* (1978) 436  
8 U.S. 49, 59. When tribal officials act beyond their authority they lose their right to the sovereign's  
9 immunity, even if they are tribal members. *Id.*; *see also Imperial Granite Co. v. Pala Band of*  
10 *Mission Indians* (9th Cir. 1991) 940 F.2d 1269, 1271; *United States v. Oregon, supra*, 657 F.2d at  
11 1012 n. 8 (tribal immunity extends to individual tribal officials acting in their representative  
12 capacity and within the scope of their authority, but not to individual tribal members).

13 Here, Defendant Franklin acted outside the scope of his authority as Chairman of the Tribal  
14 Council by making unauthorized charges, including charges at strip clubs and other personal  
15 charges. *See* Declaration of Chairwoman Yvonne Miller ("Miller Decl.") ¶ 2. Despite Defendant's  
16 contention to the contrary, the Complaint alleges acts by Defendant which were outside the scope of  
17 his authority because they were not and would not have been authorized by the General Council  
18 (which consists of the entire Tribal body and is the ultimate source of all Tribal authority, rights,  
19 and powers, *see* Tribal Constitution, Article VII, Sections 2-4) or its Tribal Council (the Tribe's  
20 governing body which is authorized to exercise the powers of the Tribe, *see* Tribal Constitution,  
21 Articles V, VI, and VII), which allegations are reinforced by Ms. Miller. Miller Decl. ¶¶ 2-3, 5, 8.  
22 Defendant has provided no credible evidence to the contrary. Thus, Defendant has neither  
23 established sovereign immunity for the purpose of his Motion nor overcome Plaintiff's showing that  
24 there is no basis for claiming immunity.

1           **C.     This Court Has Jurisdiction Over This Basic Civil Case**

2           The cause of action here is a simple claim based on common counts to recover money owed  
3 to the Tribe. Defendant claims that this litigation will necessitate this Court's review of the Tribal  
4 Constitution and interpretation of Tribal law, custom, and practice. While we may disagree, as a  
5 sovereign entity it is the Tribe's choice, not Franklin's, as to where its matters should be  
6 determined.

7           Defendant's Motion focuses solely on cases in which internal tribal matters were at issue,  
8 such as membership, property rights on reservations, and the like, and mostly where tribal members  
9 were seeking redress against a tribe (unlike this case where the Tribe seeks redress against a former  
10 official), and in those other cases courts and even the Bureau of Indian Affairs have largely left  
11 such internal matters up to the tribes to resolve. Furthermore, those cases were decided in part  
12 based upon the limited subject matter jurisdiction of federal courts that does not necessarily  
13 encompass the interpretation and application of tribal law to internal tribal disputes.

14           Those cases do not apply here. For instance, in *Healy Lake Village v. Mt. McKinley Bank*,  
15 cited in Defendant's Memorandum of Points and Authorities to support his contention that this an  
16 internal tribal matter, the issues were based on a tribal election and membership dispute. The  
17 Supreme Court of Alaska upheld the lower state court's determination that it did not have  
18 jurisdiction over those internal political issues, observing, "the fundamental issue in the case was  
19 *the determination of the legitimate governing body of the Tribe, which was an internal self-*  
20 *governance matter* within the Tribe's retained inherent sovereignty" and therefore the state court  
21 lacked subject matter jurisdiction. (2014) 332 P.3d 866, 867 (emphasis added).

22           Unlike in *Healy Lake Village*, this dispute is not an internal political matter. This action was  
23 brought by the Tribe itself as a party and claimant seeking to recover its property from a tribal  
24 member and former officer who has allegedly acted without authority in misusing Tribal property.  
25 While Defendant Franklin would like to turn this into an internal political battle ("A member of the  
26 Current Tribal Council made various allegations against me during my tenure as Ione Tribal  
27 Chairman. [¶] The allegations leveled against me were political in nature, a result of differences of  
28



1 opinion concerning my leadership of the Tribe as its Chairman.” Franklin Decl. ¶¶ 8-9), the  
2 statements in his declaration, which again are mere conclusions and without foundation, do not  
3 demonstrate that the allegations in the Complaint frame anything other than a direct and apolitical  
4 claim for the recovery of unauthorized and misspent moneys. And unlike in *Healy Lake Village*,  
5 the state does indeed have a cognizable interest in providing a judicial forum for the adjudication of  
6 claims arising under and enforcement of its civil laws. The determination in this case will be  
7 resolved as any other common counts would be and will be fact specific regarding what Mr.  
8 Franklin did with respect to the Tribe’s moneys and under what circumstances. While anyone’s vote  
9 to pursue a claim could be politically motivated, that does not make the claim itself “political,” no  
10 matter how hard Mr. Franklin tries to characterize it as such.

11 Further, the complete mischaracterization in Mr. Franklin’s Memorandum of Points and  
12 Authorities of the Tribal Constitution in saying “[h]ere, the Tribe, and not the Court, retains the  
13 exclusive right to punish council members by enacting and enforcing Tribal regulations”  
14 (Memorandum of Points and Authorities in Support of Motion to Quash 2:16-18) does not help his  
15 cause, because the cited provision of the Tribal Constitution (Article VIII) does not in any way  
16 provide that the Tribe has the *exclusive* right to punish council members or that a Tribal forum is  
17 the *exclusive* means to do so, to the exclusion of state or federal actors or forums. Finally, the Tribe  
18 could not and cannot retain, on the bases alleged in Mr. Franklin’s Memorandum of Points and  
19 Authorities alleges, “exclusive jurisdiction over this matter given the alleged acts and omissions of  
20 Mr. Franklin occurred within sovereign tribal federal trust lands and were related to tribal  
21 governmental affairs.” Memorandum of Points and Authorities in Support of Motion to Quash  
22 3:19-21. As alleged in the Complaint and shown in this Opposition, including the declaration by  
23 Chairwoman Miller, the alleged acts and omissions were not related to tribal governmental affairs,  
24 but rather personal matters, and further, they are not alleged to have occurred (nor could they)  
25 within sovereign tribal federal trust lands because at all relevant times to the allegations contained  
26 in the Complaint, the Tribe had no, and still to this day does not have, federal lands held in trust for  
27  
28

Holland & Knight LLP  
400 South Hope Street, 8<sup>th</sup> Floor  
Los Angeles, CA 90071  
Tel: 213.896.2400 Fax: 213.896.2450

1 its benefit. Miller Decl. ¶ 7. This Court is not in any way precluded from adjudicating this case,  
2 based on a lack of jurisdiction or otherwise.

3 **III. CONCLUSION**

4 This Court has jurisdiction over Defendant Franklin and this case because it involves a  
5 straightforward common law claim asserted by the Tribe to recover funds owed by the Defendant,  
6 and raises no credible sovereign immunity issues that Defendant Franklin can assert. Because he is  
7 alleged to have been acting outside the scope of his authority when he made the unauthorized  
8 personal charges in question, and all other jurisdictional requirements have been met, Defendant's  
9 Motion to Quash should be denied

10  
11  
12 Dated: August 1, 2014

Respectfully submitted,

HOLLAND & KNIGHT LLP



By: \_\_\_\_\_

Jerome L. Levine

Attorneys for Plaintiff Ione Band of  
Miwok Indians

13  
14  
15  
16  
17  
18  
19  
20 #31816755\_v6



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*IONE Band of Miwok Indians v Matthew Franklin, et al.*  
Sacramento Superior Court Case No. 34-2014-00164169

PROOF OF SERVICE

State of California                    )  
  )       ss.  
County of Los Angeles                )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 400 South Hope Street, 8<sup>th</sup> Floor, Los Angeles, California 90071.

On **August 1, 2014**, I served the document described as **PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO SPECIALLY APPEARING DEFENDANT MATTHEW FRANKLIN'S MOTION TO QUASH** on the interested parties in this action, enclosed in a sealed envelope, addressed as follows:

Jack Duran, Jr.  
DURAN LAW OFFICE  
4010 Foothills Blvd., S-103, N.98  
Roseville, CA 95747  
(916) 779-3316  
(916) 520-3526 – Fax  
[duranlaw@yahoo.com](mailto:duranlaw@yahoo.com)

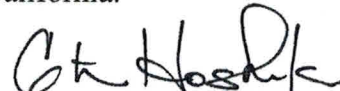
Attorneys for Specially Appearing  
Defendant MATTHEW FRANKLIN

**By Mail**

Following ordinary business practices, I placed the document for collection and mailing at the offices of Holland & Knight LLP, 400 South Hope Street, 8<sup>th</sup> Floor, Los Angeles, CA 90071, in a sealed envelope. I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service, and, in the ordinary course of business, such correspondence would be deposited with the United States Postal Service on the day on which it is collected at the business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **August 1, 2014**, at Los Angeles, California.



\_\_\_\_\_  
Gloria Hoshiko







1           4. I am informed and believe and thereon allege that as a person who sought and held a  
2 governmental leadership position for many years and was entrusted with the responsibility to  
3 protect the Tribe and its assets, Mr. Franklin knew or should have known when he used the Tribal  
4 Government Credit Cards at the strip clubs and in connection with the other personal charges that  
5 doing so would be a misuse of and an unauthorized diversion of Tribal assets, and that to use the  
6 credit cards for such purposes would be well beyond the scope of his authority as a Tribal officer.

7           5. I am familiar with the laws, rules and actions of the Tribe and know of no provisions  
8 in the Tribe's laws or records that authorize such expenditures or that would permit either Mr.  
9 Franklin as Chairman or any other officer, agent or employee of the Tribe to authorize such  
10 expenditures or conduct as part of their official duties.

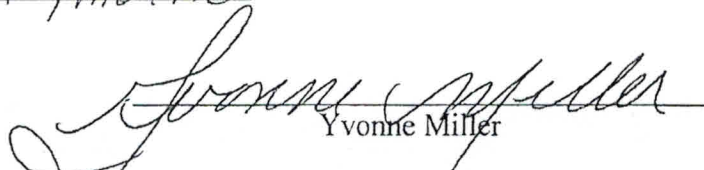
11           6. Following the audit, the Tribe sought to give Mr. Franklin a fair opportunity to  
12 explain the Personal Charges. When confronted with the audit report, Mr. Franklin admitted that  
13 the Personal Charges were his but was unable to provide any Tribal governmental justification for  
14 the Personal Charges or any explanation that they were incurred within the course and scope of his  
15 authority as a Tribal officer. He has failed to repay any of the Tribe's money that he accessed  
16 through the credit cards and that he caused to be received by others.

17           7. At all relevant times to the allegations contained in the Complaint, the Tribe had no,  
18 and still to this day does not have, federal lands held in trust for its benefit.

19           8. The Complaint accurately alleges the existence of the claim, including Mr.  
20 Franklin's access to but misuse of the Tribe's money through the Tribal Government Credit Cards to  
21 pay for his personal expenses, that such uses and diversions were unauthorized, and that they have  
22 not been repaid.

23           I declare under penalty of perjury under the laws of the State of California that the foregoing  
24 is true and correct.

25 Executed on August 1 2014 at Plymouth, California

26  
27   
28 Yvonne Miller



PROOF OF SERVICE

State of California                    )  
  )     ss.  
County of Los Angeles            )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 400 South Hope Street, 8<sup>th</sup> Floor, Los Angeles, California 90071.

On **August 1, 2014**, I served the document described as **DECLARATION OF CHAIRWOMAN YVONNE MILLER IN SUPPORT OF PLAINTIFF'S OPPOSITION TO SPECIALLY APPEARING DEFENDANT MATTHEW FRANKLIN'S MOTION TO QUASH** on the interested parties in this action, enclosed in a sealed envelope, addressed as follows:

Jack Duran, Jr.  
DURAN LAW OFFICE  
4010 Foothills Blvd., S-103, N.98  
Roseville, CA 95747  
(916) 779-3316  
(916) 520-3526 – Fax  
[duranlaw@yahoo.com](mailto:duranlaw@yahoo.com)

Attorneys for Specially Appearing  
Defendant MATTHEW FRANKLIN

**By Mail**

Following ordinary business practices, I placed the document for collection and mailing at the offices of Holland & Knight LLP, 400 South Hope Street, 8<sup>th</sup> Floor, Los Angeles, CA 90071, in a sealed envelope. I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service, and, in the ordinary course of business, such correspondence would be deposited with the United States Postal Service on the day on which it is collected at the business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **August 1, 2014**, at Los Angeles, California.



\_\_\_\_\_  
Gloria Hoshiko