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United States District Court

for the Eastern District of California

JAMUL ACTION COMMITTEE and the JAMUL COMMUNITY CHURCH, DARLA KASMEDO, PAUL SCRIPPS, GLEN RESELL and WILLIAM HENDRIX

Plaintiffs,

vs.

JONODEV CHAUDHURI, Acting Chairman of the National Indian Gaming Commission, DAWN HOUSE, Chief of Staff for the National Indian Gaming Commission, S.M.R. JEWELL, Secretary of the United States Department of the Interior, KEVIN WASHBURN, Assistant Secretary - Indian Affairs, U.S. Department of the Interior, PAULA L. HART, Director of the Office of Indian Gaming, Bureau of Indian Affairs, AMY DUTSCHKE, Regional Director, Bureau of Indian Affairs, JOHN RYDZIK, Chief, Division of Environmental, Cultural Resources Management and Safety of the Bureau of Indian Affairs, and U.S. DEPARTMENT OF THE INTERIOR, NATIONAL INDIAN GAMING COMMISSION, and RAYMOND HUNTER, Chairman, Jamul Indian Village

Defendants.

Case No. 2:13-cv-01920-KJM-KJN

NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF THE JAMUL INDIAN VILLAGE IN SUPPORT OF DEFENDANTS' MOTIONS TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

Date: May 23, 2014
Time: 10:00 a.m.
Judge: Hon. Kimberly J. Mueller

TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 23, 2014, 10:00 a.m., or as soon thereafter as the matter may be heard, in Courtroom 3, 15th floor of the above-entitled Court, located at 501 I Street, Sacramento, California, 95814, the Jamul Indian Village, a federally recognized Indian tribal government, will, and hereby does, move this Court for leave to file the accompanying proposed brief of an amicus curiae in support of defendants' motions to dismiss.

This Motion is brought pursuant to Federal Rules of Civil Procedure 7(b) and the Court's inherent authority to grant leave to file a brief of an amicus curiae. This Motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities in support filed herewith, the proposed Amicus Curiae Brief of the Jamul Indian Village in Support of Defendants' Motions to Dismiss lodged herewith, the Request for Judicial Notice filed herewith and exhibits thereto, the pleadings and papers on file herein, and upon such other matters as may be presented to the Court at or before the time of hearing.

Dated: April 25, 2014

Law Office of Frank Lawrence

By /s/
Frank Lawrence
Attorney for (Proposed) *Amicus Curiae* Jamul Indian Community

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I. Introduction: The Tribe, its Indian Lands and Development Plans

The Jamul Indian Village ("Tribe") is a federally recognized Indian tribal government. *See* 79 Fed. Reg. 4748-02, 4750 (January 29, 2014) ((Department of the Interior's statutorily-mandated listing of "Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs"). The Tribe has long been recognized by the United States of America as a "community of Jamul Indians of one-half degree or more of California Indian blood under Section 19 of the Indian Reorganization Act of June 18, 1934 (34 Stat. 984) ...." Letter from U.S. Department of Interior, Bureau of Indian Affairs to Carlene Tesam, Chairperson, Jamul Indian Village (Aug. 22, 1985), Request for Judicial Notice ("RJN"), Exhibit ("Ex.") 1. *See also* 47 Fed. Reg. 53130, 53132 (Nov. 24, 1982) (federally recognized tribes list).

The Tribe's members are "descended from a group of Diegueno Indians who were living in the vicinity of Jamul [San Diego County] on or before the date of the enactment of the Mission Indian Relief Act of January 12, 1891 (26 Stat. 712). They were among the California Indians for whom the Congress intended to make provisions in that Act." U.S. Department of Interior, Commissioner of Indian Affairs Memorandum to BIA Area Director, Sacramento Area at ¶ 1 (Dec. 19, 1974), RJN Ex. 2. The Tribe is "one of the Indian communities for which Congress expressed the intention that a reservation should be established." *Id.* at ¶ 2. "Reservation land was, in fact, set aside for several communities, including Jamul ... and those communities thereby received full Federal recognition ...." *Id.* at ¶ 3.

In 1978, the U.S. accepted into trust status a 4.66 acre parcel of land (known as "Parcel 04") on which the Jamul Indians resided. *See* First Amended Complaint ("FAC") ¶ 46, Ex. D; *Rosales v. U.S.*, 89 Fed Cl. 565, 574 (Fed. Cl. 2009) ("*Rosales X*). The Deed conveyed the land "to [t]he United States of America in trust for such Jamul Indians of one-half degree or more

Indian blood as the [Secretary] may designate." *Id.* In 1980, the Jamul Indians petitioned the U.S. to organize as a community of half-blood Indians, under the Indian Reorganization Act, 25 U.S.C. § 476. *See* FAC Exs. G, I; *see also id.* p. 2 fn 1(exhibits to FAC are incorporated by reference to, and are the same as, the exhibits to the original complaint); *Rosales v. Sacramento Area Dir.*, 32 IBIA 158, 159-60 (1998) ("*Rosales I*"). In response, the BIA identified a list of Jamul Indians eligible to vote on the proposed tribal Constitution, and held an election under section 16 of the IRA. *See Rosales v. U.S.*, 477 F. Supp. 2d 119, 122 (D. D.C. 2007) ("*Rosales VII*"). On May 9, 1981, the eligible voters unanimously adopted the Constitution. *Id.*; *Rosales I* at 159-60. Interior approved the Constitution on July 7, 1981. FAC Ex. G; *Rosales I*, 32 IBIA at 160. The secretarial election and Interior's approval of the adopted Constitution established the Tribe as a legal entity. *Rosales VII* at 122; *Rosales I* at 159-60. On May 25, 1982, the U.S. took "Parcel 05" into trust, consisting of 1.372 acres, for the Tribe's benefit. Thus today, the Tribe is the beneficial owner of 6.03 acres of contiguous land held by the U.S. in trust for the Tribe, consisting of Parcels 04 and 05. *See Rosales X*, 89 Fed. Cl. at 574.

Congress passed the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-21 ("IGRA"), in 1987, to "provide a statutory basis for the operation of gaming by Indian tribes as means of promoting tribal economic development, self-sufficiency, and strong tribal gaming." *Id.* § 2702(1). In 1993, the Tribe enacted a tribal gaming ordinance, and submitted it to the National Indian Gaming Commission ("NIGC"), as IGRA requires. *Id.* § 2710. In January 1994, the NIGC Chair approved the Tribe's ordinance. *See* http://www.nigc.gov/Portals/0/NIGC%20Uploads/readingroom/gamingordinances/jamulindianvillage/jamul010494.pdf. In addition to publication on the NIGC's website, notice of federal approval was also published in the Federal Register. *See* 64 Fed. Reg. 4722, 4723 (1999). In 2000, Interior published notice of its approval of the Tribe's gaming compact with the State of California. 65 Fed. Reg. 31189.

II. Interests of the Proposed Amicus Curiae

For nearly twenty years, plaintiffs have been a key part of a coordinated war against the Tribe. These modern-day Indian fighters have one goal: stop the Tribe at all costs from exercising its right under federal law to develop a governmentally owned gaming enterprise on its federal Indian lands. Jamulians opposed to the Tribe's development plans have brought at least 20 frivolous and unsuccessful lawsuits in numerous jurisdictions and venues alleging the same basic claims. Each and every case has been dismissed and, when appealed, all of those dismissals have been either affirmed or abandoned. They have serially filed new legal actions, sometimes under different names, often in different forums. Over and over again, these obstreperous efforts have targeted the Tribe's beneficial ownership of its federal trust lands, for without its "Indian lands" the Tribe cannot develop a government gaming project under IGRA. *See* 25 U.S.C. §§ 2703(4), 2710.

For example, five years ago, the U.S. Federal Court of Claims decided "two cases before this court" that "represent but the most [recent] iterations of plaintiffs' persistent attempts – in the face of repeated dismissals and unfavorable judgments over the course of 15 years – to invalidate a series of tribal elections and to wrest from the Village the beneficial ownership of two parcels of tribal land." *Rosales v. U.S.*, 89 Fed. Cl. 565, 571 (2009) ("*Rosales X*"). The court noted that these plaintiffs "have litigated or sought to litigate these same and related issues in now fewer than fourteen [now at least 20] legal actions brought before tribal tribunals, administrative boards, and federal courts in California and the District of Columbia, all without success." *Id.* The court noted that: "Despite vainly prosecuting myriad legal claims in every conceivable forum and fruitlessly propounding inventive and novel legal theories, plaintiffs have continually stared down the face of defeat, personifying Mason Cooley's aphorism, 'if at first you don't succeed, try again, and then try something else.'" *Id*. (*quoting Franklin Sav. Corp. v. U.S.,* 56 Fed. Cl. 720, 721 (2003)). The court warned plaintiffs that their "current attempt to defy their fate – an attempt this court strongly admonishes plaintiffs to make their last – miscarries again." *Id.*

Ignoring the Federal Court of Claims' advice, plaintiffs have now filed at least five new actions since Rosales X's admonition,[1] including this action in the Eastern District of California in yet another meritless attempt to kill the Tribe's hopes for self-sufficiency.

This case directly attacks the Tribe's core sovereign interest in its Indian lands. Specifically, the First Amended Complaint asks this Court to declare that the U.S. is "without authority to take or hold the Parcel in trust for the" Tribe. FAC, Prayer for Relief ¶ A. It asks for a judicial declaration that the U.S. "approval and implementation" of the Tribe's lands as being held "in trust for the JIV as a federally recognized tribe violated the IRA ...." *Id*. ¶ B. It asks the Court to declare that the U.S. has "no authority to take the Parcel, which is held in fee and is not public domain land, in trust for the JIV ...." *Id*. ¶ E. Thus the First Amended Complaint poses a clear and direct assault on the Tribe's interest in its lands.

As the leading treatise on federal Indian law explains, "[real property holdings are the single most important economic resources of most Indian tribes." F. Cohen, *Handbook of Federal Indian Law*, § 15.01 (Lexis/Nexis 2005 ed.) ("*Cohen*").[2] "Land forms the basis for

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[1] *See, e.g., Jamulians Against the Case v. Iwasaki/Caltrans*, Case No. 34-2010-8000428 (Sacramento Superior Court) (filed August 13, 2009) (dismissed December 14, 2012); *Rosales v. Off Duty Officers*, Case No. D064058 (4th Dist. Ct. App.) (filed June 12, 2013) (dismissed July 30, 2013); *Jamulians Against the Casino v. Chaudhuri*, Case No. 2:13-cv-01920-KJM (E.D. CA) (filed September 15, 2013) (this case); *Jamulians Against the Casino v. Caltrans*, Case No. 34-2014-8001752 (Sacramento Superior Court) (filed February 3, 2014) (motion to dismiss filed April 10, 2014; hearing re same calendared for August 22, 2014) *Rosales v. Caltrans*, Case No. 2014-00010222 (San Diego Superior Court) (filed April 7, 2014) (plaintiffs' motion for a temporary restraining order denied April 23, 2014).

[2] *Cohen* is routinely cited by the United States Supreme Court and the Ninth Circuit Court of Appeal. *See, e.g., United States v. Jicarilla Apache Nation,* __ U.S. __, 131 S. Ct. 2313, 2334 (2011); *United States v. Lara,* 541 U.S. 193, 200 (2004); *Oklahoma Tax Com'n v. Sac and Fox Nation*, 508 U.S. 114, 123 (1993); *Duro v. Reina*, 495 U.S. 676, 689 (1990); *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering*, 476 U.S. 877, 885 (1986); *Rice v. Rehner*, 463 U.S. 713, 718 (1983); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 139 (1982); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978); *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 159 (1973); *Sioux Tribe of Indians v. United States*, 316 U.S. 317, 325 n. 5 (1942). *See also U.S. v. Male Juvenile*, 280 F.3d 1008, 1013 (9th Cir. 2002); *Salt River Pima-Maricopa Indian Community v. State of Ariz.*, 50 F.3d 734, 736 (9th Cir. 1995); *Blackfeet Tribe of Indians v. State of Mont*., 729 F.2d 1192, 1206 n. 1 (9th Cir.1984). These are only a few of the Supreme Court and Ninth Circuit decisions that rely on *Cohen*.

social, cultural, religious, political, and economic life for American Indian nations." *Id*. (*citing* John P. LaVelle, *Rescuing Paha Sapa: Achieving Environmental Justice by Restoring the Great Grasslands and Returning the Sacred Black Hills to the Great Sioux Nation*, 5 Great Plains Nat. Resources J. 40 (2001); Frank Pommersheim, *The Reservation as Place: A South Dakota Essay*, 34 S.D. L. Rev. 246 (1989).

Plaintiffs also ask the Court to void the Tribe's contract with its business partner aimed at developing a governmental gaming enterprise on those Indian lands. Specifically, the Complaint asks the Court to enjoin the U.S. from "approving or implementing any aspect of the proposed Gaming Management Contract." FAC, Prayer for Relief ¶ G. IGRA requires federal review and approval of such agreements. *See* 25 U.S.C. § 2711.

Moreover, the legal effect of the relief requested would be to nullify the Tribe's gaming compact with California, for without "Indian lands" as IGRA defines that term, the compact cannot be effectuated. *See* 25 U.S.C. § 2710(d) ("Class III gaming activities shall be lawful on Indian lands ..."); *id*. § 2703(4) ("The term 'Indian lands' means ... any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual ...").

Thus the First Amended Complaint puts the Tribe's fundamental sovereign interests in and authority over its federal Indian lands, its federally-authorized and approved gaming compact with the State of California, and its development contract directly at issue. The Tribe's core governmental interests are clearly at stake in this case.

A. This Case Comes in the Wake of Many Years of Litigation Aimed at Taking Away the Tribe's Indian Lands to Stop the Tribe from Developing a Governmental Gaming Enterprise

Understanding an abbreviated history of some of the litigation brought by Jamulians against the Tribe's interests is essential to contextualize the significance of the Tribe's interests that are at stake in this current case. Thus what follows is a brief summary of some of these legal actions.

1. *Jamul Indian Village v. Hunter*, Case No. 95-131 (S.D. C.A. June 21, 1995).

Mr. Patrick Webb – a key protagonist in these cases who filed the original complaint in this case and who also personally resides in Jamul – sued the Tribe's current Chairman, Raymond Hunter, in the Southern District of California. Purportedly brought in the Tribe's name, the suit actually was brought on behalf of *non-Tribal member* casino opponents and Jamulians Mr. Rosales and Ms. Toggery who had attempted an illegal recall of the duly elected tribal government. The complaint named Chairman Hunter and numerous federal defendant agencies and officials. The court noted that "[t]o say that this action has been brought on behalf of the Tribe assumes a result very much in dispute; namely, whether the appropriate Executive Committee or the appropriate General Council of the Tribe has authorized suit on behalf of the Tribe." *Jamul Indian Village v. Hunter*, Case No. 95-131, Order Granting in Part and Denying in Part Defendants' Motion to Dismiss, at 2:2-5 (S.D. C.A. April 23, 1997), RJN Ex. 3. The suit alleged violations of the Indian Reorganization Act of 1934, 25 U.S.C. § § 461-79, among other federal statutes. The court found that the asserted claims involved questions about "who is an Indian as defined by the Tribe's constitution and who is a member of the Tribe," both of which are questions within the Tribe's sovereign powers: "One of a tribe's most fundamental powers is the power to determine its own membership and is 'central to its existence as an independent political community.'" *Id*. at 15:16-19 (*quoting Santa Clara Pueblo*, 436 U.S. at 72 n. 32. "This Court will not usurp the Tribe's authority to determine who is an Indian and who is a member of the Tribe." *Id*. at 14-16. The Court concluded that it lacked jurisdiction over "the internal affairs of a sovereign nation." *Id*. at 16:18-19*; see also id.* at 16 n.8. Ultimately, Mr. Webb opted to voluntarily dismiss the lawsuit, only to later re-file a virtually identical action in the U.S. District Court for the Central District of California, discussed *infra* at ¶ 9. *See Rosales v. Townsend*, Case No. 3:97-cv-769, Docket Doc. 65, Order Declining to Impose Sanctions, at p. 3:15-23) (S.D. C.A. Jan. 28, 1999) (originally filed in the Central District and later transferred to the Southern District).

2. *Jamul Indian Village v. Hunter*, Case No. 699070, San Diego Superior Court (April 10, 1996)

Having lost *Jamul Indian Village v. Hunter*, Mr. Webb filed a new lawsuit in San Diego Superior Court, again misleadingly in the Tribe's name, again against Chairman Hunter and other tribal officials, seeking entry of a "sister-state judgement" based on a fabricated "tribal court judgment." The purported tribal "court" was never duly authorized under tribal law and was, in fact, a sham, apparently created by Mr. Webb and his clients. *See Rosales v. Sacramento Area Director, BIA*, 32 IBIA 158, 167 n. 8 (April 22, 1998) (Interior Board of Indian Appeals concluded that it "cannot defer to a decision issued by the [sham "tribal court"] because there is no evidence that that court was established by tribal members in accordance with Art. VIII, § 1(e), of the Village's constitution.") The Superior Court denied Mr. Webb's application on April 10, 1996.

3. *Rosales v. Sacramento Area Director, BIA* ("*Rosales 1*"), 32 IBIA 158 (April 22, 1998)

Mr. Webb appealed the BIA's Area Director for allegedly recognizing the "wrong" tribal officials. The appeal was based on Mr. Webb's clients' – *both non-Tribal members* – illegal attempt to recall tribal leaders, including then- and current Tribal Chairman Raymond Hunter, who were duly elected in 1992. The BIA held that the plaintiff's so-called "recall" election was illegal, and on that basis, declined to certify its so-called "results." *Rosales I* also confirmed that the Jamul Indian "Village is a Federally recognized Indian tribe which ... has all of the same rights and authorities as every other recognized Indian tribe ...." 32 IBIA at 166.

4. *Rosales v. Sacramento Area Director, BIA* ("*Rosales II*"), 34 IBIA 50 (July 29, 1999)

In an election conducted by the U.S. Secretary of the Interior and held August 31, 1996, the Tribe's duly enrolled members voted unanimously to amend the Tribe's Constitution to lower the blood quantum requirement to 25 percent. Mr. Webb challenged these election results, but

failed to identify on whose behalf he was acting. *See* 34 IBIA at 53. Once again, the BIA affirmed the Tribe's decision by certifying the election. It held that "[n]one of the four individual still recognized as Appellants in this appeal [including Walter Rosales and Karen Toggery] are original members of the Village. Therefore, none of the present Appellants would be 'qualified voters'" in the contested Secretarial election. *Id*. at 53-54. *See also Rosales v. United States*, 477 F. Supp.2d 119, 128 (D.D.C. 2007), *aff'd* 278 Fed. Appx. 1 (D.C. Cir. March 27, 2008) (discussed below) ("[I]t is undisputed that Plaintiffs [Walter Rosales and Karen Toggery] are not original Village members and did not register to vote in the August 1996 election").

5. *Rosales v. Sacramento Area Director, BIA* ("*Rosales III*"), 34 IBIA 125 (September 29, 1999), *aff'd* 477 F. Supp. 2d 119 (D.D.C. 2007), *aff'd* 278 Fed. Appx. 1 (D.C. Cir. March 27, 2008)

In June, 1997, while *Rosales I* was pending before the IBIA, the federally recognized tribal government headed by Chairman Hunter held elections. At the same time, Mr. Webb's clients, Mr. Rosales and Ms. Toggery, purported to hold a competing "election" even though they were not – and are not – duly enrolled members of the Tribe, as already determined in *Rosales I* and *II*. On October 6, 1997, the BIA Superintendent of the Southern California Agency recognized the tribal government's election, and did not recognize the results of Mr. Webb's clients' fraudulent "election." *See* 34 IBIA 125. On August 21, 1998, the BIA Area Director upheld the Superintendent's recognition of that election's results. *See id.*

Two years later, in June, 1999, the duly recognized tribal government again conducted regularly scheduled biennial elections. This 1999 election was certified by the Superintendent on June 25, 1999. Because the IBIA has "consistently held that a valid tribal election held during the pendency of an appeal from an earlier trial election renders the earlier appeal moot," the IBIA dismissed *Rosales III* as moot. 34 IBIA at 126-27. Moreover, the IBIA noted that Mr. Webb and his clients "were on notice of this holding as it was raised during briefing in *Rosales I* and was discussed in that decision." 34 IBIA at 127.

6. *Rosales v. Pacific Regional Director, BIA* ("*Rosales IV*"), 39 IBIA 12 (March 4, 2003)

Undeterred by all of the above, Mr. Webb sought IBIA review of decisions by the BIA Pacific Regional Director in regard to three of the Tribe's elections: (1) reconsideration of *Rosales III*; (2) review of the BIA's recognition of the results of the Tribe's 1999 election; and (3) review of the BIA's recognition of the results of the Tribe's next regularly scheduled, biennial election in 2001. The IBIA denied reconsideration of *Rosales III* and review of the 1999 elections as mooted by the 2001 election. The IBIA affirmed the BIA's decision recognizing the results of the 2001 election. The IBIA also noted that the BIA had by then adopted a BIA-funded genealogical study by Dr. Michael G. Baksh, Ph.D., that confirmed the identity of the original Tribal members and confirmed their eligibility to vote in Tribal elections. *See* 39 IBIA at 14; *see also Rosales v. United States,* 477 F. Supp. 2d 119, 122 n. 2 (D.D.C. 2007).

7. *Rosales v. United States,* 477 F. Supp. 2d 119 (D.D.C. 2007)

This was an appeal from the IBIA's decisions in *Rosales III* & *IV*. It challenged four BIA actions: (1) the August 31, 1996 Secretarial election in which voters amended the Tribe's Constitution; (2) the Deputy Commissioner of Indian Affairs' October 15, 1996 decision approving the amendment; (3) the IBIA's July 29, 1999 decision affirming the Secretarial election; and (4) the IBIA's March 4, 2003 decision affirming the Deputy Commissioner's approval of the amendment. *See* 477 F. Supp. 2d at 130. "Plaintiffs seek to overturn tribal leadership elections held in 1997, 1999, and 2001 ...." *Id*. at 129. The District Court affirmed all of the tribal elections, BIA actions and IBIA decisions.

8. *Rosales v. United States*, 275 Fed. Appx. 1 (D.C. Cir. March 27, 2008)

This was an appeal from *Rosales v. United States,* 477 F. Supp. 2d 119 (D.D.C. 2007), discussed in the preceding paragraph, and *Rosales III* & *IV*, discussed above. The D.C. Circuit Court of Appeals affirmed, holding that "because the plaintiffs were not registered to vote in the

1996 election, under 25 C.F.R. § 81.22 they were in eligible to challenge it before the Interior Board of Indian Appeals. This forecloses their arguments here." *Id*. at *1.

9. *Rosales v. Hunter* ("*Rosales V*"), Case No. 97-cv-769 (S.D. C.A. Nov. 20, 1998)

Mr. Webb once again misleadingly purported to sue in the Tribe's name, having no authority to do so, as well as on behalf of Mr. Rosales and Ms. Toggery and other individuals. The allegations and named plaintiffs were "nearly identical" to those from *Jamul Indian Village v. Hunter*, discussed *supra* at ¶ 1. *Rosales V*, Order Declining to Impose Sanctions Pursuant to Rule 11, Docket Doc. 65 (S.D. C.A. Jan. 28, 1999), RJN Ex. 4. The federal defendants moved to transfer venue to the Southern District, which Judge Ideman granted on April 17, 1997, and the case was assigned to Judge Rhoades. After a year-and-a-half of procedural maneuvering, on November 12, 1998 – the Friday before the scheduled hearing on defendants motion to dismiss, and after the motion was fully briefed – plaintiffs moved to voluntarily dismiss the case. *See id*., 3:97-cv-00769, Docket Doc. 59, RJN Ex. 5.

The district court granted the motion for voluntary dismissal. The court then issued an order to show cause why Mr. Webb should not be sanctioned for his actions in litigating the matter. Although the court found Mr. Webb to have engaged in "forum shopping," it concluded that it was unable to impose sanctions under Rule 11 because its Order to Show Cause was issued after plaintiff's moved to voluntarily dismiss the case. *Id*. at Docket Doc. 65. District Judge Rhoades warned, however, that "should this case come again before this Court due to Mr. Webb's procedural tactics and maneuvering that this Court will not be reluctant to impose appropriate sanctions at that time, including monetary fines and possible dismissal of the action." *Id*. at p. 7:11-15.

10. *Rosales v. United States* ("*Rosales VI*"), Case No. 1:98-cv-860, 89 Fed. Cl. 565 (Fed. Cl. 2009), *aff'd per curium*, No. 2010-5028 (Fed. Cir. Sept. 17, 2010)

Mr. Webb filed this collateral attack on *Rosales I*, discussed above at paragraph 1, on

November 12, 1998. The suit was once again misleadingly brought in the Tribe's name, along with Mr. Rosales, Ms. Toggery. The case alleged that the federal government breached its duties to the Tribe by acting with and on behalf of non-members as if they were tribal members. The case was decided together with *Rosales X*, discussed *infra* at ¶ 15. The Federal Court of Claims dismissed the consolidated cases on October 7, 2009. The appeal was denied on September 17, 2010, Case no. 2010-5028, and the Supreme Court denied *certiorari*. *See* 131 S.Ct. 2882 (May 2, 2011).

11. *Rosales v. Kean Argovitz Resorts*, Case No. 00-cv-1910 (S.D. CA 2000)

Mr. Webb filed this suit on behalf of Mr. Rosales and Ms. Toggery against the Tribe's former business partner in an effort to stop the Tribe from developing a casino. The complaint charged that defendants misrepresented that "all of the land under the control of JAMUL meets the definition of Indian lands under the Indian Gaming Regulatory Act," and took other actions to help the Tribe develop a casino on its tribal lands. *Id*., Docket No. 1 (Complaint), at ¶ 10, RJN Ex. 6. The complaint sought a judgment declaring that "the land under the control of JAMUL" did not meet "the definition of Indian lands" under IGRA. *Id.*, prayer for relief, ¶ 3. It expressly sought to disrupt the Tribe's relationship with its business partners, seeking a declaration "that the Defendants' agreements with JAMUL have not been timely approved by the Secretary of the Interior and Chairman of the National Indian Gaming Commission, as required by Title 25 of the United States Code." *Id*. at ¶ 5. It sought -- in a lawsuit that did not name the Tribe as a defendant -- to invalidate the Tribe's Gaming Ordinance, a tribal law mandated by IGRA, asking the court to "declare that a Class III gaming ordinance cannot be approved ...." *Id*. at ¶ 6. It sought to kill the Tribe's development plans and scare away its business partners by asking the court to "declare that the Defendants cannot be approved as management contractors under the Indian Gaming Regulatory Act." *Id*. at ¶ 7. Once again, after dispositive motions had been filed, Mr. Webb voluntarily dismissed the complaint, and then filed an amended complaint. *Id*., docket no. 24-25.

The court granted defendants' motion to dismiss the first amended complaint. *See id.* docket no. 44 (Feb. 2, 2001), RJN Ex. 7. The court held that there is no private right of action under IGRA. *See id.* at p. 6:11-19. It also found that the plaintiffs lacked a private right of action under the Tribe's gaming Compact with the State of California. *See id*., at p. 6:21-7:19. The court found that "all of Plaintiffs' state law claims are preempted by IGRA." *Id*. at p. 9:8. The court "DISMISSES Plaintiff's state law claims with prejudice and without leave to amend." *Id*. at p. 11:10.

Despite the federal court's dismissal with prejudice, Mr. Webb nevertheless filed a second amended complaint. *See id.*, docket no. 45 (Feb. 28, 2001). The court granted defendants' motion to dismiss the second amended complaint. *See id*., docket no. 54 (April 18, 2001), RJN Ex. 8. The court's order noted that "Plaintiffs' failure to comply with this Court's order dated February 1, 2001 further warrants dismissal." The Ninth Circuit affirmed in an unpublished decision. *See Rosales v. Kean Argovitz Resorts, Inc.,* 35 Fed. Appx 562, 2002 WL 1033662 (9th Cir. May 21, 2002).

12. *Rosales v. United States* ("*Rosales VII*"), Case No. 01-951 (S.D. CA 2001)

Mr. Webb once again sued the BIA and NIGC seeking declaratory and injunctive relief pursuant to the Indian Reorganization Act ("IRA"). The complaint sought a declaration that Mr. Rosales and Ms. Toggery, and not the Tribe, owned the land that "was conveyed to the United States in trust in 1978 'in trust for such Jamul Indians of one-half degree or more Indian blood as the Secretary of the Interior may designate.'" *Id.*, docket no. 35, at p. 3:13-16 (Order Granting Defendants' Motion for Summary Judgment), RJN Ex. 9. Mr. Webb sought an injunction compelling the federal defendants to issue plaintiffs a trust patent for the Tribe's lands, and an order enjoining the federal defendants from denying plaintiffs' entitlement to the land.

The court granted the federal defendants' motion for summary judgment. *See id.* The court found that "plaintiffs cannot claim rights" to the land "separately from those of the Jamul Tribe. First, considering the language of the 1978 deed, it is clear that parcel number 597-080-01

was not conveyed in trust to the United States solely for the benefit of the individual plaintiffs but rather for the Jamul Tribe as a whole." *Id.* at p. 13:15-19. The court explained that:

> "the language in the 1978 trust conveyance deed clearly refers to the Jamul Tribe, especially in light of the fact that the 1978 deed also references 25 U.S.C. § 479, which defines 'Indian[s]' as 'all persons of Indian descent who are members of any recognized Indian tribe.' Section 479a further provides that the Secretary of the Interior is vested with the authority to recognize Indian tribes. Thus the 1978 deed's reference to 'such Jamul Indians of one-half degree or more Indian blood as the Secretary of the Interior may designate' is a reference to the *tribe*, rather than to individual half-blooded Jamul Indians ...."

Id. at 13:23-14:7 (emphasis in original) (internal citations omitted). The court further noted that, in addition to the deed, a "1978 letter from the United States Department of the Interior, attached to defendants' reply as Exhibit L, also shows that parcel number 597-080-01 ***was taken intro trust for the benefit of the Jamul Tribe***, rather than for the individual plaintiffs..." *Id*. at p. 148-10 (emphasis added). The court concluded therefore that "plaintiffs cannot claim an individual right, allotment or otherwise, to parcel 597-080-01. Rather***, the parcel is held by the United States in trust for the benefit of the Jamul Tribe***." *Id*. at p. 14:14-15 (emphasis added).

On appeal, the Ninth Circuit affirmed. *See* 73 Fed. Appx. 913 (9th Cir. Aug. 11, 2003. However, it did so on a ground not addressed by the district court, holding that the Tribe "is a necessary party pursuant to Rule 19(a)(2)(i) ...." The court found that the Tribe "has claimed jurisdiction over the parcel of land at issue in this action since at least 1981. This interest would be impaired if Appellants were declared to be the beneficial owners of the land." *Id*. The court noted that the Tribe "enjoys sovereign immunity from suit and cannot be forced to join this action without its consent." *Id.* The court held that the Tribe "is also an indispensable party pursuant to Rule 19(b) ...." *Id*. It found that the Tribe " would be prejudiced if Appellants were granted beneficial ownership of the parcel of land, and relief cannot be shaped to avoid this prejudice. While Appellants do not appear to have another adequate remedy, 'the tribe[']s interest in maintaining [its] sovereign immunity outweighs the plaintiffs' interest in litigating their claims.'" *Id.* (*quoting American Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1025 (9th

Cir.2002) (citations omitted)). For these reasons, the Ninth Circuit held that the Tribe "is a necessary and indispensable party, without whom this action cannot proceed." *Id.* The Supreme Court denied *certiorari*. *See* 541 U.S. 936 (March 22, 2004).

13. *Rosales v. United States* ("*Rosales VIII*"), Case No. 1:03-cv-1117 (D.C. DC 2003)

Mr. Webb, Mr. Rosales and Ms. Toggery once again misleadingly purported to sue in the Tribe's name, which now-worn gambit the D.C. District Court rejected: "The Complaint's caption lists the Jamul Indian Village ("Village") as a Plaintiff. Defendants object to the Jamul Indian Village being named as a Plaintiff because, they argue, Plaintiffs lack authority to represent the Village. Because the Court agrees and grants Defendants' Cross-motion for Summary Judgment, reference to Plaintiffs herein do not include the Village." *Id.*, docket no. 39, p. 1 n. 1 (Order March 8, 2007). The complaint once again sought to overturn the lawful amendment to the Tribe's Constitution in 1996, and to overturn lawful tribal elections in 1997, 1999, and 2001. The court granted the federal defendants' motion for summary judgment on March 8, 2007. *See id.*, docket nos. 39-40. The D.C. Circuit affirmed without oral argument in an unpublished *per curium* opinion. *See* Case No. 07-5140, document no. 1108026 (D.C. Cir. March 27, 2008). Rehearing was also denied in a *per curium* order. *See id.*, document no. 1117335 (D.C. Cir. May 20, 2008). Plaintiffs' motion for leave to petition for rehearing en banc was also denied in a *per curium* order. *See id.*, document no. 1135609 (D.C. Cir. Aug. 28, 2008).

14. *Rosales v. United States* ("*Rosales IX*"), Case No. 3:07-cv-624 (S.D. CA 2007)

Once again, Mr. Webb sued on behalf of Mr. Rosales, Ms. Toggery and the "Jamul Indian Village", under the Indian Reorganization Act. *See id.*, docket no. 2 (S.D. CA April 10, 2007) (First Amended Complaint ("FAC"). Mr. Webb alleged that "there has never been an Indian reservation for Jamul Indians," *id.* at p. 8, ¶ 12, and that the parcel is "not 'tribal land'" under

federal law. *Id*. at ¶ 13. Indeed, he alleged that "Parcel 597-080-01 ... was not acquired for a tribe, and has never been recognized by the federal government as being a parcel over which the subsequently federally recognized entity, known as the Jamul Indian Village, exercised governmental power." *Id*. p. 12, ¶ 25. Mr. Webb again alleged that "No Federally recognized Indian tribe ever exercised governmental power over parcel 597-080-04." *Id.* p. 14, ¶ 30. Mr. Webb also alleged that the "Jamul Indian Village therefore has never had jurisdiction over, nor exercised governmental power over" the subject land. *Id*. p. 16, ¶ 33.

On November 28, 2007, the court granted defendants' motion to dismiss with prejudice. *See* docket no. 47 , RJN Ex. 10. The court found that the Tribe was a necessary party under Rule 19(a): "Plaintiffs argue the faction which claims an interest in the land does not actually represent the Tribe .... This argument has been repeatedly rejected by the BIA and the District Court for the District of Columbia." *Id*. at 8:20-23 (*citing Rosales v. U.S.*, 477 F. Supp. 2d 119, 122 n. 1 (D.D.C. 2007)). The court found that Mr. Webb's attempt to "compel the federal government to stop the Tribe's construction" activities "necessarily implicates the Tribe's sovereign immunity." *Id*. at 9:1-3. The court thus also found the Tribe to be an indispensable party under Rule 19(b): "plaintiffs may not litigate the status of Parcel 04 in the absence of the Tribe." *Id*. at 10:6-7. In the alternative, the court also found it lacked jurisdiction under the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 *et seq.*, because the Tribe's lands fell outside of that statute's definition of "federal lands" to which it applies. *See id*. at 10:8-16. The court once "***again finds the land is held in trust for the Tribe, part of the reservation, and thus 'tribal land.***'" *Id*. at 12:12-13 (emphasis added).

Mr. Webb appealed to the Ninth Circuit, but the appeal was dismissed on August 12, 2008, for failure to prosecute because he never filed an opening brief. *See* docket no. 52.

15. *Rosales v. United States* ("*Rosales X*"), Case No. 1:08-cv-512, 89 Fed. Cl. 565 (Fed. Cl. 2009).

Mr. Webb filed yet another suit that arose "out of a common set of facts and implicate

similar principles of law" as *Rosales VI*. "For the purposes of judicial economy, the court addresses both cases in this single opinion." *Id.* at 571. "The two complaints before this court, in *Rosales VI* and *Rosales X*, represent but the most iterations of plaintiffs' persistent attempts -- in the face of repeated dismissals and unfavorable judgments over the course of fifteen years – to ... ***wrest from the Village the beneficial ownership of two parcels of tribal land***. Plaintiffs have litigated or sought to litigate these same and related issues in no fewer than fourteen legal actions brought before tribal tribunals, administrative boards, and federal courts in California and the District of Columbia, all without success." *Id.* The court granted defendants' motion to dismiss the complaint in *Rosales X*, and dismissed, on its own motion, the complaint in *Rosales VI*. *See id*. at 572.

B. The Court Should Exercise its Discretion and Grant the Tribe Leave to File the Proposed Amicus Brief Submitted Herewith

"Generally, courts have exercised great liberality in permitting an amicus curiae to file a brief in a pending case, and, with further permission of the court, to argue the case and introduce evidence .... There are no strict prerequisites that must be established prior to qualifying for amicus status; an individual seeking to appear as amicus must merely make a showing that his participation is useful to or otherwise desirable to the court." *In re Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991) (*quoting United States v. Louisiana*, 751 F.Supp. 608, 620 (E.D.La.1990)).

Federal courts retain broad discretion to permit the appearance of amicus curiae. *See Gerritsen v. de la Madrid Hurtado*, 819 F.2d 1511, 1514 (9th Cir.1987). "District courts frequently welcome amicus briefs from non-parties ... if the amicus has unique information or perspective that can help the court beyond the help that the lawyers from the parties are able to provide." *Sonoma Falls Developers, L.L.C. v. Nev. Gold & Casinos, Inc.*, 272 F.Supp.2d 919, 925 (N.D. Cal. 2003) (internal quotations omitted). In addition, participation of amicus curiae is

appropriate where legal issues in a case have potential ramifications beyond the parties directly involved. *Id.*

III. Conclusion

For all of these reasons, the Tribe respectfully requests that the Court grant it leave to file the amicus brief submitted herewith.

Dated: April 25, 2014

Law Office of Frank Lawrence
By /s/
Frank Lawrence
Attorney for (Proposed) Amicus Curiae
Jamul Indian Community

STANDING ORDER MEET AND CONFER CERTIFICATION

Per this Court's Standing Order, the undersigned made a good faith effort to meet and confer with plaintiffs' counsel prior to filing this motion. We were not able to obviate the need for this motion.

Dated: April 25, 2014

Law Office of Frank Lawrence
By /s/
Frank Lawrence
Attorney for (Proposed) Amicus Curiae
Jamul Indian Community

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF NEVADA)

I am employed in the County of Nevada, State of California. I am over the age of 18 and not a party to the within action. My business address is 578 Sutton Way, No. 246, Grass Valley, California 95945. On April 25, 2014 I caused the foregoing document described as **NOTICE OF MOTION AND MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF THE JAMUL INDIAN VILLAGE IN SUPPORT OF DEFENDANTS' MOTIONS TO DISMISS; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** to be served on the interested parties in this action, identified below, by electronic filing and service pursuant to Local Rule 135 (Fed. R. Civ. P. 5), Case Management / Electronic Case Files docketing and file system of the above referenced court:

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Executed on April 25, 2014, at Nevada City, California.

/s
Frank Lawrence