

1 Jack Duran, Jr. SBN 221704
2 DURAN LAW OFFICE
3 4010 Foothills Blvd, S-103, N.98
4 Roseville, CA 95747
5 Telephone: (916) 779-3316
6 Facsimile: (916) 520-3526
7 Email: duranlaw@yahoo.com

BY FAX

6 Attorney for Specially Appearing Defendant
7 MATTHEW FRANKLIN

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 SACRAMENTO COUNTY

11 IONE BAND OF MIWOK INDIANS,
12 Plaintiff,
13 v.
14 MATTHEW FRANKLIN AND JOHNNY "GIL"
15 JAMERSON,
16 Defendants.

Case No.: 34-2014-00164169

**SPECIALY APPEARING DEFENDANT
MATTHEW FRANKLIN'S MEMORADUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF MOTION TO QUASH
[Code Civ. Proc.. §418.10, subd. (a)(1)]**

Date: : August 14, 2014
Time: 2:00 pm
Department: 53

17
18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. INTRODUCTION**

20 This case concerns specially appearing Defendant Matthew Franklin's use of an
21 Indian Tribe's credit card while Mr. Franklin was the Tribe's Chair of its Tribal Council.
22 The dispute over the propriety of those credit card charges is an internal Tribal matter that
23 should be resolved in the appropriate Tribal forum pursuant to Indian law, tradition and
24 custom. The dispute is not for this Court to decide. As such, this Court has no jurisdiction
25 over this intra-tribal dispute and Mr. Franklin in particular. Mr. Franklin's motion to quash
26 for want of jurisdiction should be granted.

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2 **II. FACTUAL BACKGROUND**

3 On May 30, 2014, Plaintiff, IONE BAND OF MIWOK INDIANS, filed the instant
4 complaint. (Complaint, see Request for Judicial Notice (RJN), Exh. 1.) On or about June 18,
5 2014, Plaintiff purportedly served Mr. Franklin. Mr. Franklin contends that the alleged
6 service of the summons and complaint was improper as the Court does not have jurisdiction
7 over this matter given it is an intra-Tribal dispute. Mr. Franklin is a former Tribal Chairman
8 of Plaintiff, Ione Band of Miwok Indians (“Tribe”). As a result he is entitled to sovereign
9 immunity from suit as he is being sued for actions occurring while the duly elected Chair of
10 the Tribe. Plaintiff’s Constitution provides for this sovereign immunity. (Ex. 1, Ione Band
11 of Miwok Constitution, Article XIV, attached to Declaration of Matthew Franklin.)

12 Plaintiff’s allegations concern a non-justiciable, intra-tribal matter upon which the
13 Court has no jurisdiction and which should be resolved in the proper tribal forum, i.e. before
14 Plaintiff’s Tribal Council per its Constitution. The Court should not allow this matter to
15 move forward because it will require the Court to review and interpret Tribal law, custom
16 and practice. Here, the Tribe, and not the Court, retains the exclusive right to punish council
17 members by enacting and enforcing Tribal regulations. (Ex. 1, Const. Article VIII; attached
18 to Franklin Declaration.) Put simply: the Tribe may pursue its claims against Mr. Franklin in
19 its own tribal forum. Therein lies the Tribe’s remedy, if any.

20 Finally, service of the complaint should be quashed because Plaintiff has failed to
21 plead and demonstrate in the complaint that it has waived its own sovereign immunity from
22 civil suit (e.g., a cross-complaint) via a proper Tribal directive. Further, the complaint fails
23 to allege that Mr. Franklin as an agent of the Tribe waived his own sovereign immunity. He
24 has not. Mr. Franklin’s motion to quash should be granted.

25 **III. LEGAL ARGUMENT**

26 **A. THE PURPORTED SERVICE OF SUMMONS AND COMPLAINT IS**
27 **INVALID AND SUBJECT TO A QUASH ORDER FOR LACK OF**
28 **JURISDICTION**

1 Since this Court has no jurisdiction over Mr. Franklin due to his sovereign immunity,
2 his motion to quash should be granted.

3 Code of Civil Procedure Section 418.10 states in relevant part: “(a) A Defendant on
4 or before the last day of his or her time to plead or within any further time that the Court
5 may for good cause allow, may serve and file a notice motion: (1) To quash service of
6 process on the grounds of the lack of jurisdiction by the Court over him or her . . .” (Code
7 Civ. Proc., § 418.10, subd. (a)(1).) A motion to quash is a proper means of challenging the
8 court’s jurisdiction over a matter, whether based on personal or subject matter jurisdiction.
9 (*Great Western Casinos, Inc. v. Morongo Band of Mission Indians* (1999) 74 Cal.App.4th
10 1407, 1417, citations omitted, [demurrer not required to challenge jurisdiction].) A motion
11 to quash may rely on evidence outside the bare allegations of an unverified complaint, such
12 as affidavits (*Id.*, at pp. 1418-1420.)

13 Although Mr. Franklin is the moving Party, when contesting jurisdiction, the burden
14 of proof is on Plaintiff to establish jurisdiction. (*Mihlon v Superior Ct.* (1985) 169 Cal. App.
15 3rd 703, 710.) In this case, the Plaintiff Tribe bears the burden of proof to establish the
16 Court has jurisdiction. Plaintiff has failed to establish this Court has jurisdiction because: (1)
17 at all times alleged in the Complaint Mr. Franklin was an officer of the Tribe and entitled to
18 sovereign immunity from civil suit; (2) the Tribe’s claims against him are a non-justiciable
19 internal-tribal matter; (3) and the Tribe retains exclusive jurisdiction over this matter given
20 the alleged acts and omissions of Mr. Franklin occurred within sovereign tribal federal trust
21 lands and were related to tribal government affairs. Thus, the summons and complaint are
22 subject to quash for lack of personal and subject matter jurisdiction.

23 **1. Plaintiff’s Allegations**

24 Plaintiff’s allegations concern an internal tribal dispute related to alleged credit card
25 usage that occurred while Mr. Franklin was serving as the duly elected Chairman of the Ione
26 Band of Miwok Indians. (RJN, Ex. 1, Complaint, ¶¶ 5-14; Franklin Declaration, ¶ 6.)
27 Plaintiff alleges that Defendant Franklin incurred credit card charges that are personal in
28 nature, unrelated to Tribal Business, and requests repayment of the charges. (Complaint, ¶¶

1 5-14.)

2 Mr. Franklin disputes the Tribe's allegations. The charges were legitimate business
3 expenses, related to Tribal business, and incurred due to his position as Tribal chair --
4 namely while working on the Tribe's Class III gaming project over the course of several
5 years. (Franklin Declaration, ¶ 6.) Hence, the dispute is very simple: were the credit card
6 charges related to tribal purposes, or were they incurred solely for Mr. Franklin's personal
7 use and enjoyment? To determine if the charges were solely personal, or for tribal purposes,
8 would require this Court to review, analyze and interpret 1) Federal tribal law; 2) Tribal
9 custom and practice (including oral tradition and business practices); 3) and Tribal
10 Constitutional provisions, resolutions, and ordinances.

11 Before Mr. Franklin discusses why the Court lacks jurisdiction over him and the
12 subject matter of Plaintiff's claims, a review of the Tribe, its governance and authority, and
13 Mr. Franklin's official former position with the Tribe is briefly set forth below.

14 **2. The Ione Band of Miwok Indians**

15 The Ione Band of Miwok Indians is a federally recognized Indian tribe reaffirmed to
16 federal status by administrative action by Assistant Interior Secretary, Ada Deer, on March
17 22, 1994. (Franklin Declaration ¶ 1.) The Tribe is governed by a Tribal Constitution ratified
18 by the Tribe on August 10, 2002. (Ex. 1, Franklin Declaration.) The Tribe's Constitution
19 sets forth the territory and jurisdiction of the Tribe (Article II sections 1 & 2), Tribal
20 Membership, (Article III), and sets forth the governing body of the Tribe, which is the Tribal
21 Council (Article IV). The Tribal Council consists of a Chairperson, Vice-Chairperson, a
22 Secretary, a Treasurer and a Member-at Large. (Article V, Sec. 2).

23 The Constitution also sets forth the Powers of the Tribal Officers at Article IV. The
24 duties of the Chairman include:

25 (a) Presiding over meetings of the General Council;

26 . . .

27 (d) To execute such contracts, agreements and other documents on behalf of the Tribe
28 as have been duly authorized by the Tribal Council in the exercise of authority delegated by

1 the Constitution or by the General council;

2 (e) To act as principal spokesperson and representative of the Tribe in its dealings
3 with all other governmental and non-governmental duties.

4 The Constitution also sets forth the powers of the Tribal Council at Article VIII,
5 which include the powers to:

6 . . .

7 (c) To conduct and regulate trading and business activities within and outside and
8 enforce those regulations by appropriate ordinances;

9 . . .

10 (h) To promulgate and enforce civil and criminal ordinances governing the
11 conduct, affairs, and transactions of members of the Tribe. . .

12 . . .

13 (k) To promulgate and enforce rules of conduct relating to the Tribal Council and
14 other tribal agencies and tribal officials, within its jurisdiction as approved by the General
15 Council.

16 The Tribe’s Constitution also details a Judicial system at Article VIII, specifically
17 vesting the power of the Judiciary in the Tribal Council, until such time a tribal court or
18 other appropriate forum may be established. In short, the Tribal Council may sit as a trial or
19 appellate court.

20 The Tribe’s Constitution also immunizes Tribal Council members from lawsuits.
21 Article XIV (Section 1) states: “. . . that when acting within the scope of their authority the
22 members of the Tribal Council . . . are immune from unconsented suit. Such immunity shall
23 extend beyond the Term of Office for actions taken *during said employment.*” (emphasis
24 added.)

25 **3. Matthew Franklin**

26 Matthew Franklin is an enrolled member of the Ione Band of Miwok Indians.
27 (Franklin Decl., ¶ 1.) In 1996, Mr. Franklin was elected to Tribal Office, and served as
28 Chairman from 2003 through May of 2010. (Franklin Decl., ¶ 2.) During his term as

1 Chairman, the Tribe’s constitution required that he represent the Tribe, necessitating periodic
2 travel, meals and other business expenses. (Franklin Decl., ¶ 2.) The entirety of Plaintiff’s
3 claims against Mr. Franklin occurred while Mr. Franklin was serving as Tribal Chairman.
4 (Franklin Decl., ¶ 5.) Whether those credit card purchases were proper or not under Tribal
5 law and practices must be decided via the Tribe’s own forum. The Tribe is the expert in this
6 area – not this Court.

7 **B. THE SUMMONS AND COMPLAINT MUST BE QUASHED BECAUSE**
8 **TRIBAL SOVEREIGN IMMUNITY DIVESTS THIS COURT OF**
9 **JURISDICTION**

10 The principal that Indian Tribes and their officers enjoy sovereign immunity from
11 civil suit, is well settled and former tribal government officials may properly challenge this
12 Court’s personal jurisdiction over them, as well as the Court’s subject matter jurisdiction
13 over the claims alleged against them pursuant to the California Code of Civil Procedure.

14 “The policy of leaving Indians free from state jurisdictional and control is deeply
15 rooted in this nation’s history.” (*McClanahan v. Arizona State Tax Comm’n* (1973) 411 U.S.
16 164, 168.) Indian tribes are unique aggregations possessing attributes of sovereignty over
17 both their members and territory and the jurisdiction to resolve internal tribal disputes,
18 interpret tribal membership determinations lies with Indian tribes and not in the district
19 courts. (*United States v. Wheeler* (1978) 435 U.S. 313, 323-36.) United States Indian Tribes,
20 including tribal officials, are entitled to sovereign immunity and are immune from civil suit
21 or unless Congress has issued a clear and unequivocal abrogation of that immunity. (*C & L*
22 *Enterprises, Inc. v Citizens Band Potawatomi Indian Tribe of Oklahoma* (2000) 532 U.S.
23 411, 418; *Oklahoma Tax Comm’n v. Citizens Band Potawatomi Indian Tribe of Okla.*
24 (1991) 498 U.S. 505, 509.)

25 Tribal sovereign immunity is a mandatory doctrine that a Court must honor and
26 invoke. Both state and federal courts have made clear that sovereign immunity involves a
27 right, which in the absence of waiver, courts must recognize. (*People of the State of*
28 *California v Quechan Tribe* (9th Cir. 1979) 595 F.2nd 1153, 1155.) This means a Court must

1 recognize a tribe’s inherent immunity from suit irrespective of the merits of the alleged
2 claims. (*See Pan American Co. v. Sycuan Band of Mission Indians* (9th. Cir. 1989) 884
3 F.2nd 416, 420-421; *Quechan, supra*, at p. 1155.) That is, this threshold issue of a Tribe’s
4 sovereign immunity must be satisfied before addressing the merits of the factual allegations
5 in the complaint.

6 Here, there is no dispute that Plaintiff is a federally recognized Indian Tribe.
7 (Complaint, ¶ 1.) Thus, as the Tribe is a federally recognized Indian Tribe, sovereign
8 immunity against unconsented civil suit exists.

9 1. Tribal Sovereign Immunity extends to Tribal Officers

10 Sovereign immunity extends to Mr. Franklin. In general, the agent of a sovereign
11 may be held liable when he acts in “excess of his authority or under an authority not validly
12 conferred.” (*Larson v. Domestic & Foreign Corp.* (1949) 337 U.S. 682, 691.) The
13 commission of a tortious act is not per se exempt from immunity – “if the actions of an
14 officer do not conflict with the terms of his valid statutory authority, then they are actions of
15 the sovereign, whether or not they are tortious under general law . . .” (*Id.* at p. 695.) If tribal
16 officials act within the scope of their authority, they share the Tribe’s immunity from suit
17 because it is effectively a suit against the officials in their official capacity. (*Fletcher v U.S.*
18 (10th Cir. 1997) 116 F.3rd 1315, 1324.) When tribal officials act in their official capacities
19 and within the scope of their authority, they are immune. (*Imperial Granite Company v. Pala*
20 *Band of Mission Indians* (9th Cir. 1991) 940 F32d 1269, 1271.) The complaint must allege
21 Mr. Franklin acted outside his authority. (*Id.*) It does not. Absent such allegation, tribal
22 officials enjoy the same immunity from suit as the Tribe. (*United States v. Oregon* (9th Cir.
23 1981) 657 F.2d 1009, 1012, fn. 8.

24 A creative plaintiff cannot subvert or side step the doctrine of sovereign immunity
25 simply by naming individual defendants when there is no evidence to suggest they were
26 acting outside the scope of their official duties. Here, Plaintiff does not allege that Mr.
27 Franklin actions were performed outside the scope of his authority as Tribal Chairman, or his
28 official capacity that would disqualify him from sovereign immunity. Again, Plaintiff has

1 the burden of establishing sovereign immunity does *not* apply here – and its complaint fails
2 to nullify this jurisdictional defense available to Mr. Franklin.

3 As set forth above, the Tribe’s Constitution provides for sovereign immunity for all
4 members of the Tribal Council. The immunity, as adopted by the Tribe in its Constitution at
5 Article XIV, Section 1, survives beyond a council member’s term in office. Here, Mr.
6 Franklin served as Tribal Chairman for the Ione Band during the period of time within which
7 Plaintiff’s allegations arose. (Franklin Decl., ¶ 5.) As a Council member he is entitled to
8 sovereign immunity. (*Great Western Casinos, Inc. v Morongo Band of Indians* (1999) 74
9 Cal. App.4th, 1407, 1421-22; *Imperial Granite Co., supra.*, 940 F.2d at p. 1271.)

10 The motion to quash should be granted.

11 **2. Mr. Franklin has not Waived Sovereign Immunity from Civil Suit**

12 To successfully initiate a suit against Mr. Franklin, Plaintiff has the burden to
13 demonstrate that Mr. Franklin waived immunity from suit with respect to Plaintiff’s claims.
14 (*Kiowa Tribe of Oklahoma v Manufacturing Technologies, Inc.* (1989) 523 U.S. 751, 754-
15 56; *Cheyenne Arapahoe Gaming Comm’n. v National Indian Gaming Comm’n* (N.D. Okla.
16 2002) 214 F. Supp.2d 1155, 1164 (because immunity is assumed until proven otherwise
17 Plaintiff bears the burden of proving that sovereign immunity has been waived.). Absent
18 sufficient proof of a waiver, Mr. Franklin is inherently immune from suit. (*Kiowa*, 523 U.S.
19 at p. 754; *Cheyenne Arapahoe Gaming Comm’n* at 214 F.Supp 2d at 1164.)

20 Defendant Franklin has not waived his immunity from civil suit, and Plaintiff has not
21 pled that he has clearly and unequivocally waived immunity from civil suit within the four
22 corners of its Complaint. (Franklin Decl., ¶ 5; see RJN, Ex. 1, Complaint.) It is well settled
23 that a waiver of tribal immunity cannot be implied but must be unequivocally expressed.
24 (*Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49, 58 (holding that suit against the Tribe
25 was barred without an unequivocal waiver of tribal immunity).) As such, the Court must
26 find that it lacks personal and subject matter jurisdiction over Mr. Franklin and grant this
27 motion to quash.

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2 **C. THE SUMMONS AND COMPLAINT MUST BE QUASHED BECAUSE**
3 **THE SUBJECT MATTER OF THE COMPLAINT IS A NON-**
4 **JUSTICIABLE INTERNAL TRIBAL MATTER**

5 Internal tribal disputes have long been held as non-judicable by federal Courts and
6 administrative agencies. (*Longie v Spirit Lake Tribe* (8th Cir. 2005) 400 F. 3rd. 586, 589; *see*
7 *also United States v. Seneca Nation of New York Indians* (W.D.N.Y.1921) 274 F. 946, 951
8 (in the absence of Congressional action bestowing upon the individual Indians the right to
9 litigate internal questions concerning property rights in the federal courts and conferring
10 jurisdiction upon this court to determine such controversies this court should not assume
11 jurisdiction). “A dispute over the meaning of tribal law does not ‘arise under the
12 Constitution, laws, or treaties of the United States,’ as required by 28 U.S.C. §§ 1331 and
13 1362. This is the essential point of opinions holding that a federal court has no jurisdiction
14 over an intra-tribal dispute.” (*Kaw Nation v. Phil Lujan* (10th Cir. 2004) 378 F.3rd 1139,
15 1143.)

16 In *Healy Lake Village v. Mt. McKinley Bank* (Alaska 2014) 2014 WL 1408554,
17 members of Healy Lake Village Tribe (Tribe) who claimed to constitute the newly elected
18 tribal council, brought suit in Alaska superior court against Mt. McKinley Bank after the
19 Bank refused to change the signatory authority on the Tribe’s accounts to reflect the alleged
20 leadership change. A second group of tribal members, who also claim to represent the Tribe
21 based on a competing election, intervened to contest the superior court’s jurisdiction. The
22 superior court dismissed for lack of jurisdiction and the Alaska Supreme Court affirmed:
23 “Because the state has no interest in determining the outcome of this internal tribal dispute,
24 the tribal election and membership dispute in this case remains within the tribe’s retained
25 inherent sovereign powers. We therefore conclude that the state court lacks subject matter
26 jurisdiction in this case because the state lacks an interest, and the exercise of jurisdiction
27 would require the state court to apply tribal law to determine the outcome of a tribal election
28 dispute and issues of tribal membership.” (*Id.* at p. 20, attached hereto as Exhibit A.)

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2 Here, the current Tribal Council claims Mr. Franklin made improper purchases while
3 chair of the Council. (Complaint, ¶¶ 5-14.) Mr. Franklin denies he made any improper
4 purchases and that all the purchases were proper and within the scope of his duties as chair
5 of the Tribal Council. (Franklin Decl., ¶ 6.) The allegations made by the Tribe, are political
6 in nature and an intra-tribal matter. (Franklin Decl., ¶¶ 8-9.)

7 Plaintiff's claims are non-justiciable for another reason. The issue of whether the
8 credit card charges were legitimate tribal business expenses, incurred within the scope of Mr.
9 Franklin's official capacity, will necessarily require the Court to interpret tribal law, custom
10 and practice. Hence, the subject matter of the complaint is an internal tribal matter, which
11 courts lack jurisdiction to decide.

12 Here, Mr. Franklin claims the charges were proper. Plaintiff claims they were not.
13 Irrespective of either party's position, the Court, in making a determination as to what party
14 "wins" -- the Tribe or tribal member -- must necessarily intrude upon, review, consider and
15 interpret Ione tribal law, custom, practice and tradition. Similar to the outcome affirmed by
16 the Alaskan Supreme in *Healy Lake Village*, there exists no cognizable state interest in
17 determining the outcome of a dispute between the Tribe and Mr. Franklin. Such a
18 determination is best left to the Tribe and an internal tribal process, e.g., the current Tribal
19 Council. The motion to quash should be granted.

20 **D. THE SUMMONS AND COMPLAINT MUST BE QUASHED BECAUSE**
21 **THE TRIBE HAS EXCLUSIVE JURISDICTION OVER ITS CLAIMS**

22 As enumerated in the Tribe's Constitution at Article VIII, the Tribal Council has the
23 authority to act as the Tribe's judiciary over Tribal matters. The allegations against Mr.
24 Franklin occurred entirely while he was the duly elected Chairman of the Tribe, and the
25 actions or omissions relate entirely to tribal funds. Thus, the Tribe has exclusive jurisdiction
26 over this matter. Additionally, given that the Tribe's Constitution enumerates at Article VIII,
27 its power "to enumerate and enforce rules of conduct relating to the Tribal Council and other
28 tribal agencies and tribal officials, within its jurisdiction as approved by the General

1 Council,” reinforces the Tribe’s exclusive jurisdiction over both Mr. Franklin and the subject
2 matter of this case.

3 Section VIII, expressly confers upon the Council the ability to act as both a trial and
4 appellate Court. If the Tribe would rather not act as either concerning the sensitivity of this
5 matter, the Section provides authority to create an appropriate judicial forum if needed. The
6 Tribe can create a special court to deal with this case if it so chooses. In sum, the Tribe has
7 both jurisdiction and the authority over Mr. Franklin to resolve this matter and the Court
8 should quash the summons and complaint for lack of jurisdiction.

9 **IV. CONCLUSION**

10 Specially Appearing Defendant Matthew Franklin requests this Court issue an Order
11 to Quash Plaintiff’s Summons and Complaint based on Mr. Franklin’s (1) sovereign
12 immunity against unconsented civil suit; (2) the non-justiciability of claims against him; and
13 (3) the Tribe’s exclusive jurisdiction over Mr. Franklin in this matter.

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Dated: July __, 2014

DURAN LAW OFFICE

By: _____

JACK DURAN, Jr.
Attorney for Specially Appearing Defendant
Matthew Franklin