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**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 REPLY TO  
PLAINTIFF'S OPPOSITION TO MOTION  
TO QUASH**  
Date: : August 14, 2014  
Time: 2:00 pm  
Department: 53

17 **I. INTRODUCTION**

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19 In its opposition, Plaintiff Indian Tribe argues that this is a simple case about a former Tribal  
20 Chairman who allegedly went to adult entertainment venues and he should pay the Tribe back for  
21 such purely personal charges he made using the Tribe's credit card. That is a complete  
22 oversimplification of a complex matter involving Tribal money, Tribal assets, a leader's "official  
23 capacity," Tribal politics, and sovereign immunity. A remedy, if any, is available in a Tribal forum.  
24 This matter should be adjudicated there. Further, the complaint lacks the specificity required to  
25 demonstrate Mr. Franklin's credit card charges were made outside his official capacity as the Tribal  
26 Chairman. Specially Appearing Defendant Franklin's motion to quash should be granted. All  
27 claims against Mr. Franklin should therefore be dismissed.  
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## II. ARGUMENT

### A. The Dueling Tribal Chairman Declarations Confirm This is An Internal Tribal Matter About Tribe Money and Tribal Chair Authority Best Resolved in a Tribal Forum

Mr. Franklin is the former Tribal Chairman for Plaintiff. He states in his declaration that all the credit card charges he made were related to his broad duties as chairman, including his efforts related to a new gaming project that took place over several years. (Franklin, Decl. ¶ 6.) These charges were made in his official capacity, as the Chair. (*Id.*) Ms. Yvonne Miller is the current Chair of the Tribal Council. (Miller Decl., ¶ 1.) She maintains that Mr. Franklin made unauthorized charges to strip clubs and made other undefined personal charges. (*Id.*, ¶ 2.) She references “Tribal governmental expenses,” the “Tribal Governmental Credit Card,” an “audit,” the “unauthorized diversion of Tribal assets,” “misuse of the Tribe’s money.” (*Id.*, ¶¶ 2-4, 8.) She states: “*I am familiar with the laws, rules and actions of the Tribe and know of no provisions in the Tribe’s laws or records that authorize such expenditures . . .*” (*Id.*, ¶ 5.)

These statements by Ms. Miller support the essence of Mr. Franklin’s argument – ***this is an internal Tribal dispute***. The emphasis in this matter is *Tribal*; not ordinary business expense protocols or policies. The alleged violations concern acts and duties specific to an Indian Tribe’s Chairman. Ms. Miller alleges that the current Tribe’s General membership and governing Tribal Council ***would not approve of Mr. Franklin’s credit card purchases***. Hence, the Tribe – not this Court – should apply the Tribe’s laws, records, and customs. The Tribe should decide if Mr. Franklin “diverted” Tribal assets or “misused Tribal money.” The Tribe should decide if attending “strip clubs” (assuming *arguendo* that even occurred) was an appropriate activity related to lobbying for a gaming project over several years.

One can think of no more identifiable intra-tribal and political dispute than the present elected officers of the Ione Band of Miwok Indians targeting its former Chairman. The only policies

1 or procedures subject to review in this matter are exclusively Tribal in nature. If the Court had  
2 jurisdiction, it would necessarily be required to: (1) establish what the Tribe’s laws were during the  
3 relevant time period and the scope of the Chairman’s delegated authority; (2) establish the Tribe’s  
4 expense protocols and policies (if they even existed at the time of the alleged wrongful acts); and,  
5 (3) determine whether Mr. Franklin, as the Chairman of a federally recognized Indian Tribe, with its  
6 attendant responsibilities, acting and paying expenses related to the duties as Chairman, violated  
7 these Tribal law and policies, in total, or the degree of violation, permitting none, all, or some of the  
8 recovery Plaintiff seeks.

10 Plaintiff does not deny a Tribal forum exists to resolve this matter. Such a forum is provided  
11 for in the Tribe’s Constitution. (Article VIII of Constitution attached to Franklin Declaration.) In  
12 such a forum, Ms. Miller may present her case. Mr. Franklin may present his case. Then the Tribe  
13 can decide if Mr. Franklin’s credit card purchases were exclusively personal or were related to his  
14 duties as the Tribal Chair. The motion to quash should be granted.

16 **B. The Complaint Lacks the Specificity Required to Demonstrate that Mr. Franklin  
17 Acted Outside the Scope of His Authority as Tribal Official Chair**

18 There is a second reason why the motion should be granted. It relates to Plaintiff’s argument  
19 that Mr. Franklin’s use of the Tribe’s credit card fell outside the scope of his authority. It is black  
20 letter law that when tribal officials act in their official capacity and within the scope of their  
21 authority, they are immune. (*United States v. Oregon* (9<sup>th</sup> Cir. 1981) 657 F.2d 1009, 1012 n. 8;  
22 *Snow v. Quinault Indian Nation* (9th Cir.1983) 709 F.2d 1319, 1321.) “[A] tribal official—even if  
23 sued in his ‘individual capacity’—is only ‘stripped’ of tribal immunity when he acts  
24 ‘manifestly or palpably beyond his authority.’” (*Bassett v Mashantucket Pequot Museum &*  
25 *Research Ctr., Inc.* (D. Conn. 2002) 221 F.Supp.2d 271, 280; see generally *Doe v. Phillips,*  
26 (2d Cir. 1996) 81 F.3d 1204, 1209–1211.)  
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1 In *Frazier v. Turning Stone Casino*, former World Boxing Champion “Smoking” Joe Frasier  
2 attempted to sue an Indian tribe and tribal officials for various civil rights violations. In analyzing  
3 the claims against the tribal officials, the Court held that the claims against the officials failed  
4 because they lacked specificity demonstrating that the acts were outside the scope of their official  
5 duties as tribal officers. (*Frazier v. Turning Stone Casino* (N.D. N.Y. 2003) 254 F.Supp. 295, 309-  
6 310.) In its decision to dismiss the claims, the court cited the analysis used in *Bassett v.*  
7 *Mashantucket Pequot Museum & Research Ctr., Inc.* 221 (D.Conn. 2002) F.Supp.2d 271, 280, a  
8 case involving copyright allegations brought against a tribe and tribal officials. In reaching its  
9 conclusion rejecting mere allegations of tortious interference with contract, the *Bassett* court  
10 reasoned that:

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12 "it is insufficient for the plaintiffs merely to allege that [the  
13 individual defendants] violated state and federal law in order to  
14 state a claim that [the individual defendants] acted beyond the scope  
15 of their authority; it would be tantamount to eliminating tribal  
16 immunity from damages actions because a plaintiff must always  
17 allege a wrong in order to state a claim for relief."

18 (*Id.* at p. 281.)

19 Instead, the *Bassett* court found that "to state a claim for damages against [the individual  
20 defendants], the plaintiffs would have to allege and prove that [the individual defendants] acted  
21 ‘without any colorable claim of authority,’ apart from whether they acted in violation of federal or  
22 state law." (*Id.*) Plaintiff’s complaint is similar to the claims made in *Bassett* and *Frazier*, which the  
23 court held failed to state a claim against Indian tribe officials. Plaintiff’s claims that Mr. Franklin  
24 had a Tribal credit card and incurred unauthorized charges on the card, and “personally” benefitted  
25 from some of those charges -- in the absence of showing that incurring the charges was outside any  
26 colorable claim of authority -- is not enough to establish jurisdiction over him.

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1 Plaintiff's opposition recognizes this fatal flaw and attempts to fabricate specificity by  
2 alleging that some of the charges involve *trips to adult entertainment venues*, which is supported by  
3 a declaration, under oath, from the Tribe's present Chairperson. These allegations may raise  
4 questions, but trips to adult entertainment venues, similar to golf outings, or Disneyland for that  
5 matter, are not *per se* outside the scope of official Tribal conduct. Plaintiff must show with  
6 specificity how a trip to an adult entertainment venue is outside the scope of official conduct. As in  
7 *Bassett and Frazier*, Plaintiff's artful pleading does not demonstrate that Mr. Franklin, "*palpably*  
8 *and manifestly acted beyond [his] authority.*" (*Bassett*, 204 F.3<sup>rd</sup> at p. 359, citing *Doe v. Phillips* (2d  
9 Cir. 1996) 81 F.3d 1204, 1210 ("A government official does not have absolute immunity for acts  
10 that are manifestly or palpably beyond his authority . . ."))  
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12 Because Plaintiff has not plead facts showing that Mr. Franklin's alleged acts were outside  
13 the scope of authority, it has not met its jurisdictional burden. The motion to quash should be  
14 granted.  
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16 Dated: August 8, 2014

DURAN LAW OFFICE

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

JACK DURAN, Jr.

Attorney for Specially Appearing Defendant

Matthew Franklin  
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