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SHINGLE SPRINGS BAND OF MIWOK INDIANS
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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
9

10 UNITE HERE INTERNATIONAL
UNION,

11 Petitioner,

12 v.

13 SHINGLE SPRINGS BAND OF
14 MIWOK INDIANS; DOES 1-100,

15 Respondent.
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Case No. 2:16-CV-00384-TLN-EFB

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
TO DISMISS

Date: May 19, 2016
Time: 2:00 p.m.
Courtroom: 2, 15th Floor

18 I. INTRODUCTION

19 Petitioner UNITE HERE INTERNATIONAL UNION (“Petitioner”) initiated this original
20 proceeding against SHINGLE SPRINGS BAND OF MIWOK INDIANS (“Respondent”) by filing a
21 “Petition to Compel Arbitration” (the “Petition”). The Petition asserts one cause of action for an
22 “order compelling arbitration” which is improper under the Federal Rules of Civil Procedure.
23 Petitions instituting suit without a concurrent complaint are treated as *motions* in accordance with the
24 Federal Arbitration Act. The Petition therefore fails to state a cause of action upon which relief may
25 be granted as to its sole cause of action. Accordingly, Respondent moves to dismiss Petitioner’s sole
26 cause of action with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6).
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1 regarding interpretation or application of the MOA pursuant to Section 10 of the MOA, including
2 but not limited to disputes over the discharges of two former employees of the Tribe.¹

3 On or about February 29, 2016, Petitioner properly served the Petition, along with a
4 Summons, on Respondent.

5 III. LEGAL ARGUMENT

6 A Rule 12(b)(6) motion tests the legal sufficiency of the claim stated in the complaint. Strom
7 v. United States (9th Cir. 2011) 641 F.3d 1051, 1067. For purposes of Rule 12(b)(6), “claim” means
8 a set of facts that, if established, entitle the pleader to relief. Bell Atlantic Corp. v. Twombly (2007)
9 550 U.S. 544, 555. A Rule 12(b)(6) dismissal is proper when the complaint either fails to allege a
10 “cognizable legal theory” or fails to allege sufficient facts “to support a cognizable legal theory.”
11 Shroyer v. New Cingular Wireless Services, Inc. (9th Cir. 2010) 622 F.3d 1035, 1041; see Seismic
12 Reservoir 2020, Inc. v. Paulsson (9th Cir. 2015) 785 F.3d 330, 335 (Rule 12(b)(6) dismissal can be
13 based on dispositive legal issue). In addition, to survive a Rule 12(b)(6) motion to dismiss, the facts
14 alleged must state a “facially plausible” claim for relief. Shroyer, 622 F3d at 1041.

15 Here, the Petition seeks an order compelling the parties to arbitrate the termination of two
16 former Tribe employees. The Petition, however, couches the request as a “cause of action” for an
17 “order compelling arbitration.” While a broad interpretation is given to “action” in the Federal Rules
18 of Civil Procedure, there is no legally cognizable right of action for an “order compelling
19 arbitration.” See Bridgeport Mgmt., Inc. v. Lake Mathews Mineral Props., Ltd., No 14-cv-00070-
20 JST, 2014 WL 953831, at *2 (N.D. Cal. March 6, 2014) (“petitions to compel arbitration filed as
21 instituting suit are not “actions” to which responsive “pleadings” are possible in the first instance”);
22 ISC Holding AG v. Nobel Biocare Fin. AG, 688 F.3d 98, 112 (2d. Cir 2012) (voluntary dismissals
23 pursuant to FRCP 41 do not apply to petitions to compel arbitration filed as instituting document of a
24 suit). Indeed, the Federal Rules of Civil Procedure draw a clear and consistent distinction between
25 “pleadings” and “motions.” Compare F.R.C.P. 7(a) with F.R.C.P. 7(b)(1)-(2); see also F.R.C.P.
26 11(a)-(b), 12(b). Moreover, FRCP 7(a) exhaustively sets forth the various “pleadings” available
27 under the FRCP. Motions are not enumerated under that subsection, but are rather discussed in

28 ¹ The Tribe disputes that Union’s contention that the discharges concern the interpretation or application of the MOA.

1 FRCP 7(b). See F.R.C.P. 7(b)(1) (“A request for a court order must be made by motion.”).
2 Consistent with this principle, the Federal Arbitration Act (“FAA”) provides that petitions for orders
3 compelling arbitration are made and heard “in the manner provided by law for the making and
4 hearing of **motions.**” Id. § 6 (emphasis added).

5 As set forth above, Petitioner’s failure to serve Respondent with a concurrent complaint renders
6 Respondent unable to properly respond pursuant to the FRCP.² The Petition has failed to state a
7 cause of action upon which relief may be granted because an “order compelling arbitration” is not an
8 action under the FRCP. Accordingly, Respondent’s motion to dismiss under FRCP 12(b) should be
9 granted.

10 IV. CONCLUSION

11 The Petition to Compel Arbitration is procedurally defective. The Petition sets forth one
12 cause of action for an “order compelling arbitration.” However, Petitioner’s request for an “order” is
13 not a cause of action, but a motion. In light of this deficiency, the Petition should be dismissed for
14 failure to state a claim upon which relief can be granted under Rule 12(b)(6). Respondent
15 respectfully requests that the Court grant its Motion to Dismiss in all respects.

16 Dated: March 21, 2016

PALMER KAZANJIAN WOHL HODSON LLP

18 By: /s/ Christopher F. Wohl
19 Christopher F. Wohl
Tiffany Tran

20 Attorneys for Respondent
21 SHINGLE SPRINGS BAND OF MIWOK
INDIANS

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24 ² Moreover, Eastern District Local Rule 230 sets forth the proper notice and motion procedures with which parties
must comply. Rule 230(b) states, in relevant part:

25 Except as otherwise provided in these Rules or as ordered or allowed by the Court, all motions shall be noticed on
26 the motion calendar of the assigned Judge or Magistrate Judge. The moving party shall file a notice of motion,
27 motion, accompanying briefs, affidavits, if appropriate, and copies of all documentary evidence that the moving
party intends to submit in support of the motion. The matter shall be set for hearing on the motion calendar of the
Judge or Magistrate Judge to whom the action has been assigned or before whom the motion is to be heard not less
than twenty-eight (28) days after service and filing of the motion.

28 The Petition failed to properly notice its motion to compel arbitration, thus also rendering Respondent unable to
determine when to file its opposition.