

**CALIFORNIA COURT OF APPEALS
THIRD APPELLATE DISTRICT**

CESAR CABALLERO, on behalf of himself
and as Representative of all other authentic
members of the Miwok nation

Appellant/Plaintiff,

v.

REGINA CUELLER; ALLAN CAMPBELL;
PAT CUELLER; BRIAN FONSECA;
NICHOLAS H. FONSECA; ANNIE JONES;
JESSICA GODSEY OLVERA; JACKY
CALANCHINI

Respondents/ Defendants.

Case No. C091774

El Dorado County Superior
Court Case No. PC20190492

APPELLANTS' OPENING BRIEF

APPEAL FROM THE JUDGMENT OF DISMISSAL DATED
FEBRUARY 25, 2020, BY HON. DYLAN SULLIVAN, JUDGE
PRESIDING, EL DORADO COUNTY SUPERIOR COURT

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Appellant Cesar Caballero herewith submits this Appellant's Opening Brief.

I.
FACTS AND EVIDENCE

A. Allegations of the Complaint

Plaintiff/Appellant Cesar Caballero filed a Complaint against Defendants/Respondents Regina Cueller, Allan Campbell, Pat Cueller, Brian Fonseca, Nicholas H. Fonseca, Annie Jones, Jessica Godsey Olvera, and Jacky Calanchini, alleging the following causes of action [Clerk's Transcript Omission/ "CTO" 4]:

1. First Cause of Action for Intentional Interference with Prospective Economic Advantage;
2. Second Cause of Action for Negligent Interference with Prospective Economic Advantage
3. Third Cause of Action for Violation of California's Unfair Competition law, Business and Professions Code section 17200.

The complaint alleges the elements of each of the causes of action for intentional interference with prospective economic advantage (CTO

24-27, paras. 78-89); negligent interference with prospective economic advantage (CTO 27-29, paras. 90-100); and violation of Business & Professions Code section 17200 (CTO 29-35, paras. 101-118). The complaint also and requests compensatory damages, punitive damages and injunctive relief against each of the individual defendants. The defendant's tribal entity is not a defendant in the complaint.

The Complaint states at paragraphs 31-34 [CTO 12-13]:

“31. Defendants are not shielded by any sovereign immunity that a Native American tribe is given because defendants are sued herein in their individual and personal capacities, for conduct alleged herein was done outside the scope of their official roles. See *Lewis v. Clarke*, 581 U.S. ____ (2017).

32. Defendants should not have occupied the positions of council member at all since they are not Miwok-blood Native Americans.

33. Defendants' conduct as imposters in charge of the Miwok tribal government constitutes conduct prohibited by law [See 18 USC section 1001(a); 18 USC section 1031(a), and California Penal Code section 484(a), all quoted below]; constitutes illegal

fraudulent and unfair conduct outside the scope and course of their role as a tribal member of the Shingle Springs Band.

34. The non-justiciable political question doctrine does not apply to this case because Plaintiff does not allege that the BIA somehow made a mistake in designating the Shingle Springs Band of Miwoks as a federally-recognized tribe. Instead, the Complaint alleges that the present governing board of the tribe is made of non-Miwok blood individuals, and are thus imposters. In this regard, the complaint does not challenge the BIA's decision to issue a BIA Native American Identification Card to the members of the tribal council, because these individuals do not have BIA identification cards. The Complaint does not challenge any political decision by the BIA to a) recognize the Shingle Springs Band of Miwok Indians or b) recognize any particular individual Miwok Indian."

The title documents [Request for Judicial Notice/ "RJN" document 1] confirm the proper title. Appellant confirms that we do not dispute that title, and accept it as is. We said the same to the Federal Court

Judge in that matter. We claim we are those people, the Miwoks of Shingle Springs.

B. Facts Showing that Defendants' Conduct is not Shielded by Sovereign Immunity because their Conduct was Ultra Vires

The following facts and evidence set forth in the Complaint [CTO 2] are described in detail to show our point on appeal that defendants do not have sovereign immunity because their actions are *ultra vires*.

The Complaint [CTO 15-23; paragraphs 42-77]:

“42. Cesar Caballero refers the Court to the following series of real estate related documents:

- a. Order Executed Deed of reservation land from Claude C. Cooper to the United States dated October 6, 1919
- b. Title Statement giving land to Shingle Spring Rancheria dated October 6, 1919
- c. Series of Chain of Title Documents re Shingle Springs Rancheria collated by RR Title and Typing Service in Placerville, CA.
- d. Handwriting analysis of document showing land conveyed to Miwok tribe

43. The land grant created the Miwok officially-given lands. The land grant is specifically mentioning the Miwok tribe as the recipient. See Exhibit A hereto. It established the Shingle Springs Rancheria as land belonging to the Miwok tribe. The land grant was two official acts of Congress that have not been repealed [in contradiction to defendants' claims to an 1908 Act of Congress, which was raised, but not decided, in a related federal action, entitled Shingle Springs Band of Miwok Indians v. Caballero, USDC, Easter district of California Case No. 08-CV-03133-KJM-AC. The Tribe voluntarily dismissed their claims in that case, and thus none of the substantive issues were decided. That judgment of dismissal is currently on appeal by the Proposed Third Party Wopumnes Nisenan-Mewuk Tribe].
44. The defendants in this action were not parties to the federal action.
45. Attached hereto as Exhibit D is a true and correct copy of a DNA report he had ordered from Native American DNA Testing company based in Toronto, Ontario, Canada.
46. The DNA tests [Exhibit D] came out in a Visalia, CA family law custody case involving two children who are the direct

descendants of the Chairwoman of the current Miwok tribal government. The grandchildren of this Chairwoman have zero Miwok DNA, which means that the Chairwoman of the current government of Miwoks is NOT Miwok either.

47. An October 31, 2016 newspaper article from the Fresno Bee entitled "A crash killed their parents. Now they're caught in a fight over custody and tribal rights", shows the hurdles one often has to go through to prove California Indian ancestry.

48. A further news article from the Fresno Bee dated December 8, 2017 and entitled "Tribe fighting for custody of orphaned children might be Hawaiian, court papers say" regarding the Visalia family law action; includes links to various court filings.

49. The Shingle Spring Band of Miwok Indians' website shows the current members of the tribal council. Complainant states and alleges that each and all of these members are inauthentic Miwoks, in that they have zero Miwok blood. This group has perpetrated a giant fraud not only on the BIA, but also the state of CA, the County of ElDorado, that the members are indeed Miwok, when they in fact know they are not Miwoks.

50. Cesar Caballero also has documentation Caballero obtained showing the California Indian descent of him, his daughter Raven Blalock, and his son Joseph Caballero.
51. DNA tests of two granddaughters of a member of the tribe's governing board, the tribal council. The granddaughters of councilperson Efrim Renteria. The DNA report confirms that these grandchildren [all of whom are related] have zero Miwok blood in them. They do not have BIA registration card, such as the one that Cesar Caballero has.
52. See also news articles concerning the DNA testing and custody battle over three daughters [articles described above].
53. A series of DNA tests of three members of the authentic Shingle Springs tribe, Kayla U, Jennifer B, and Ramona V, and one test of an unknown individual. These current members have cooperated with Caballero by voluntarily submitting themselves to DNA testing through the GEDmatch, Inc. testing program [www.gedmatch.com]. Their test results ultimately show that they are Miwok, with between 9 – 33% Native American blood.
54. The tribal members Caballero represents are the true Miwoks. His BIA identification shows that he is a true Miwok.

55. The evidence is referenced so the that the Court can understand that the current governing body of the Miwok tribe is an imposter group that is not Miwok at all. The Court was tricked into thinking that that they were authentic members of the Miwok tribe, and the BIA has been similarly tricked.
56. Further evidence in support of Plaintiff's position is the District Court Eastern District of California's May 20, 2009 Order Granting the [Inauthentic] Shingle Springs Band of Miwok Indians' Motion to Dismiss the cross-complaint in federal case no. 08-cv-03133-KJM-AC.
57. Caballero appealed the dismissal to the Ninth Circuit Court of Appeals. The Ninth Circuit Court of Appeal issued an order on October 21, 2009 dismissing the appeal for lack of jurisdiction [challenging a non-appealable order].
58. Further evidence in support of Plaintiff's position is the District Court Eastern District of California's February 8, 2013 Order granting the [Inauthentic] Shingle Springs Band of Miwok Indians' motion for partial summary judgment and entry of permanent injunction.

59. Caballero appealed the dismissal to the Ninth Circuit Court of Appeals. The Ninth Circuit Court of Appeals on November 19, 2015 reversed the order granting the motion for summary judgment and remanded the case to the district court.

60. Further evidence in support of Plaintiff's position is the [Inauthentic] Shingle Springs Band of Miwok Indians' Motion to Dismiss the complaint in federal case no. 08-cv-03133-KJM-AC. This motion shows the end of this litigation, and shows that nothing was decided by the District Court.

61. Further evidence in support of Plaintiff's position is Caballero's legal brief/points and authorities in opposition to the motion to dismiss in federal case no. 08-cv-03133-KJM-AC.

62. Further evidence in support of Plaintiff's position is Caballero's declaration in opposition to the motion to dismiss in federal case no. 08-cv-03133-KJM-AC. The declaration includes the following exhibits:

Exhibit A: Real Estate Deeds to land on Shingle Spring Reservation

A-1: Executed Deed of reservation land from Claude C. Cooper to the United States dated October 6, 1919

A-2: Title Statement giving land to Shingle Spring
Rancheria dated October 6, 1919

A-3: Series of Chain of Title Documents re Shingle
Springs Rancheria collated by RR Title and Typing
Service in Placerville, CA.

A-4: Handwriting analysis of document showing land
conveyed to Miwok tribe

Exhibit B: DNA report from Native American DNA
Testing company based in Toronto, Ontario, Canada

Exhibit C: DNA report from GEDmatch.com

Exhibit D: October 31, 2016 newspaper article from the
Fresno Bee entitled "A crash killed their parents. Now
they're caught in a fight over custody and tribal rights"

Exhibit E: Series of documentation showing the
California Indian descent of Cesar Caballero, his
daughter Raven Blalock, and his son Joseph Caballero.

63. Further evidence in support of Plaintiff's position is the

[Inauthentic] Shingle Springs Band of Miwok Indians' Reply

Brief in support of its Motion to Dismiss in federal case no. 08-
cv-03133-KJM-AC.

64. These federal court filings show that that bottom line is that the federal court did not decide Caballero's challenge to the authenticity of the current tribal governments, who are all not Miwok. The court determined that it could not decide the issue based on non-justiciability [May 20, 2009 order, page 2].

Caballero attempted to appeal that decision. Caballero's appeal was dismissed on procedural grounds [Order from Appellate Case No. 09-16544].

65. Further evidence in support of Plaintiff's position is the Opinion letter/report by Nanette Barto, Eye for the Obvious re handwriting on Bureau of Indian Affairs Land Records. This shows that a) the handwriting on the land records came from the same individual; and b) was written contemporaneously to the dates referred to in the writing [1913-1918].

66. Further evidence in support of Plaintiff's position is a Series of four Requests for Judicial Notice submitted by Cesar [but rejected/never filed by the Court]. This shows that a) The authenticity of the letter of descendency of Cesar Caballero was accepted in order to issue his Social Security card; b) that the Shingle Springs Band of Miwoks was issued a federal

Employer Identification Number after Cesar Caballero requested one be assigned to the tribe; c) showing funds on deposit from the Department of Commerce to the Shingle Springs Rancheria, April 30, 1954; and verified the authenticity of a series of documents

67. Further evidence in support of Plaintiff's position is a copy from National Indian Law Library of "Indian Tribes, Bands, and Communities which voted to accept or reject the terms of in the Indian Reorganization Act, the dates when elections were held, and the votes cast. This shows that there were 3 members on the Shingle Spring Rancheria that voted on whether to accept or reject the terms of the Indian Reorganization Act, and that none of the 3 voted for it on June 13, 1935. This shows the authenticity of the historic Shingle Spring Band of Miwok Indians.

68. Further evidence in support of Plaintiff's position is the August 13, 2010 letter from Liz Walker to Dale Risling re ample evidence of validity of Cesar claim to ownership of Miwok name. This summarizes the various evidence and facts that

support Cesar's claim that his ownership of the Miwok name is valid and authentic.

69. Further evidence in support of Plaintiff's position is excerpts of

1952 Bureau of Indian Affairs Investigation – showing Miwok Indians listed as being on Shingle Springs Rancheria; 240 acres, est. 1917; This is evidence of the authenticity of Cesar's claims that his tribe is the true Shingle Spring Band of Miwok Indians.

70. Further evidence in support of Plaintiff's position is the October

8, 2008 letter from Paula Yost to Cesar re cease and desist use of name and trademark "Shingle Spring Band of Miwok Indians". This sets forth the arguments and claims of plaintiff in this matter, which incorrectly perpetuate the falsities spread by the inauthentic tribe.

71. Further evidence in support of Plaintiff's position is the

Declaration of William Miles Wirtz; former attorney with US Dept. of Interior, who gave services to BIA; This provides a discussion of history of tribal recognition and statutes relevant to tribal recognition by the federal government. See especially the following categories:

- History of BIA procedure for recognition of Indian tribes [paras. 9-19].
- History of tribal organization in California [paras. 20-37].
- History of the tribe [paras 38-51].
- Issue re voting fraud that resulted in the current governing council come up, none of whom are Miwok
- Issues re DNA evidence showing the current governing council is not Miwok [I don't think it does].

72. Further evidence in support of Plaintiff's position is the June 19, 2011 letter and attachments from George W. Peabody to Daisy West. This reiterates the authenticity of the historic tribe's [Cesar Caballero's tribe] identity, as they complied with IRS Revenue Ruling 94-16, and is recognized by the IRS as employer number [REDACTED] 1612 as of April 9, 2009.

73. Further evidence in support of Plaintiff's position is the March 5, 2012 Opinion of George W. Peabody. This opines that the Shingle Spring Band of Miwok Indians is actually the Sacramento Verona Band of Homeless Indians" and are not the indigenous Northern Miwok Indians of Shingle Springs, El Dorado County, California.

74. Further evidence in support of Plaintiff's position is the Map from CA Dept. of Public Works – Division of Water Resources showing location of recognized tribes in CA – includes Miwoks in Shingle Springs Rancheria as the recognized tribe Circa 1954.
75. Further evidence in support of Plaintiff's position is Excerpts of 4/3/2016 Tribal Newsletter re Voting at Annual Meeting re Verona name change proposal from "Shingle Spring Band of Miwok Indians" to "Shingle Spring Band of Maidu and Miwok Indians" which implicitly acknowledges that they are not the true Miwok Indians.
76. Further evidence in support of Plaintiff's position is the Fictitious Business Name Statement. This shows that Cesar Caballero registered the name "Shingle Spring Band of Miwok Indians" as representative of the tribe's descendance from the Indians described in the Federal Census of 1910.
77. Further evidence in support of Plaintiff's position is the Secretary of State Statement by Unincorporated Association re Miwok Tribe. This shows that Cesar Caballero registered the name "Miwok Tribe" to secure its exclusive use by the

78.authentic/historic Shingle Spring Band of Miwok Indians.”

C. Admissions by Virtue of Clerk’s Entry of Default

The case was also set for a default damage prove up on January 24, 2020. See SA 2 -18, Series of Clerk's Grant of Entry of Defaults Against each of Defendants Regina Cueller, Allan Campbell, Pat Cueller, Brian Fonseca, Nicholas H. Fonseca, Annie Jones, Jessica Godsey Olvera, and Jacky Calanchini; See CT 798-799, similar entry in the Clerk's Register of Actions; See also SA 20-106, Series of Request for Default Judgment (hearing required) and see SA 108 (Trial Court *sua sponte* Order setting damage prove up hearing for January 24, 2021.

Under California law, a default is an admission of all salient facts. See *Ostling v. Loring* (1994) 27 Cal.App.4th 1731, 1746:

“*Crackel* was questioned in *Buck v. Morrossis* (1952) 114 Cal.App.2d 461, 467 [250 P.2d 270], and effectively discarded in *Uva, supra*, which examined the evidence presented at a default judgment hearing to determine if the damages were “totally unconscionable and without evidentiary justification.” (83 Cal.App.3d at pp. 363-364.) Damages for which there is no

substantial evidence, a fortiori, satisfy this standard. This is recognized in *Don v. Cruz* (1982) 131 Cal.App.3d 695, 707, [182 Cal.Rptr. 581], which, building on *Uva* and *Carney*, holds that lack of substantial evidence of damages affords a valid ground for granting a new trial on the issue of damages after a default judgment.”

Thus, all charging allegations of the complaint [See section A above] should accordingly be accepted as admitted.

D. Defendants’ Failure to Supply Responsive Declarations and/or to Controvert Plaintiff’s Claims Constitutes an Implied Adoptive Admission

Defendants’ failure to file responsive declarations of Allan Campbell, Pat Cueller, Brian Fonseca, Nicholas H. Fonseca, Annie Jones, Jessica Godsey Olvera, and Jacky Calanchini, and failure to controvert plaintiff’s basic allegations, constitutes an implied adoptive admission.

Defendants Allan Campbell, Pat Cueller, Brian Fonseca, Nicholas H. Fonseca, Annie Jones, Jessica Godsey Olvera, and Jacky Calanchini further did NOT file declarations denying Appellant’s basic claim that they were not true Miwoks, and were regularly excluding true

Miwoks. This failure to provide a declaration is in the category of an implied adoptive admission. See Evid. Code Section 1221:

“Evidence of a statement offered against a party is not made inadmissible by the hearsay rule if the statement is one of which the party, with knowledge of the content thereof, has by words or other conduct manifested his adoption or his belief in its truth.”

See also CACI jury instruction no. 213 – Adoptive Admissions.

E. Evidence by Defendants/Respondents

Defendant Regina Cueller filed a declaration in support of the motion Quash/Dismiss [CTO 55-56] in which she admitted she excluded true Miwoks from the lands [paragraphs 15-18]:

“15. The Tribe enacted Articles of Association in 1976, amended them in 1997, and again amended those Articles in 2016. The Articles constitute the Tribe's governing document, and provide that its jurisdiction "shall extend to the land now and hereafter comprised within the Shingle Springs Rancheria." The Articles set forth the powers and authority of our governing body, the Tribal Council. The Articles also address who is

entitled to be included within the Tribe's membership, and who is eligible to be elected to our Tribal Council. A true and correct copy of the Articles, as amended in 2016, are attached to the RFJN as Exhibit EE.

16. With respect to eligibility for membership and leadership, there is no requirement that persons have a particular blood quantum, or even be of a particular Indian descent, although I understand the people for whom the Rancheria was established in 1916 were of Miwok and Maidu ("Nisenan") heritage.

Rather, the persons eligible for membership are generally those persons who descend from the group of homeless Indians for which the Shingle Springs Rancheria (Verona Tract) was established in 1916. Those persons were listed on a 1916 Census Roll taken by the federal government at the time.

Attached to the RFJN as Exhibit DD is a true and correct copy of that 1916 Census Roll, which is maintained in the Tribe's files in the ordinary course of its business.

17. In order to clarify who is entitled to be members, the Tribe amended its Articles in 2016, with reference to persons currently living, and confirmed the membership eligibility of all

persons listed on the existing membership roll. Under this amendment, the Tribe's membership criteria is as follows:

"Persons listed on the current membership roll as of the date of adoption of this amended Articles of Association, and their biological lineal descendants, who are all biological descendants of either Pamela Cleanso Adams or Annie Hill Murray Paris who were listed 'on the 1916 Census Roll of the Indians at and near Verona in Sutter County, California; also 15 living in Sacramento,' regardless of whether the ancestor through whom eligibility is claimed is living or dead." See RFJN, Ex. EE, p. 1.

18. It is true that members of the Tribe have married persons of other ethnicities, including Hawaiians, Caucasians, Mexicans and African Americans. Marrying persons of other races, or being of mixed ancestry, does not disqualify our people from membership in the Tribe."

Ms. Cueller is the Chairperson of the Tribal Council. This is her government speak for what is reality an excuse to exclude true Shingle Springs Band Miwoks from the land. It should be noted that

the BIA deeds [accompanying Request for Judicial Notice, Document 1] in no way place the limitations placed by the current Tribal Council of the Shingle Springs Band. The language of the BIA trust document states: "Grantee: Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California." See accompanying Request Judicial Notice, Documents 1 and 2. The BIA title documents prove up plaintiff's reasonable expectancy in the Shingle Springs Rancheria land.

This position that non-Miwoks, including those persons from Hawaii, could somehow replace true blood Miwoks is against the law, and is thus *ultra vires*. As further support of this point, Appellant cites Exhibit G to his Request for Judicial Notice in Support of Opposition to Motion to Quash/Dismiss, a letter by C.K. Haukes dated January 12, 1919, which expressly requires that the land be for the homeless Indians of Shingle Springs, which are plaintiff and those in the Miwok nation. The letter states: "It should be noted that the purchase should be made for the "landless Indians of California" and not for "Hawaiian Indians" who may have intermarried with the California Indians. If any of this class of intermarried Indians desire to join the

bands for whom the land is purchased, the Office will consider such particular case on its merits.” [Request for Judicial Notice filed by plaintiff in opposition to motion to dismiss motion to quash, Exhibit G thereto, CT 687].

F. The Court's Findings on Plaintiff's Witnesses' Testimony

During the hearing on the Motion to Dismiss/motion to quash and damage prove up, Plaintiff/Appellant arranged for around 40-50 true Miwok blood and BIA ID card-carrying Miwok Tribal Members to testify that they were true Miwoks, that they had BIA issued cards stating they were members of the Miwok Tribe, and that the defendants in this case were illegally excluding them from the Shingle Springs Rancheria lands.

The Trial Court would not let the group of true Miwoks testify during the hearing because she accepted plaintiff's offer of proof that these were true Miwoks not allowed on the lands. See Minute Order [SA 201; see also CT 803]:

“The Court acknowledges that the witnesses would state that they are Miwok Indians and that they are being excluded.”

Appellant does not challenge this sensible ruling on appeal [impacting about 40 witnesses], but instead asks that the Court treat the finding by the Trial Court, as reflected in the Minute Order, as a finding of fact.

II. STATEMENT OF THE CASE

Appellant concurrently submits a Separate Volume of Appendices with Items Inadvertently Omitted from the Clerk's Record ["Separate Appendices"/ "SA"].

The documents [listed and included hereto] were inadvertently omitted from Appellant's Designation of Clerk's Record on Appeal, and are the subject of a pending motion to augment the record. We submit the accompanying separate volume as a temporary holdover until receipt of the official record.

On September 13, 2019, Plaintiff/Appellant Caesar Caballero, Chief of the Miwok Nation, a federally-recognized Native American tribe brought a complaint [Clerk's Transcript Omission/ "CTO" 4] against

eight members of the Tribal Council of a group falsely using the name Shingle Springs Band of Miwok Indians. Appellant says falsely here, because they are in fact not Miwok, and have instead developed a reverse membership concept whereby true Miwok members are actually excluded.

On October 17, 2019, following defendants' failure to respond to the complaint, Plaintiff/Appellant applied for and obtained clerk's entry of default. [See SA 2, series of requests for entry of default and clerk's entry thereof]. See also CT 798, clerk Register of Actions, stating as to each defendant "Request for Default filed and Default entered."

On November 5, 2019, Plaintiff/Appellant submitted a request for clerk's/court's default judgment. [See SA 19, series of requests for Court judgments, hearing required]. See also CT 799, Registers of actions, entries re "Request for Court/Clerk Judgement" filed as to each defendant.

Following clerk's entry default, Plaintiff requested a hearing date on a damaged prove up, which was set for January 24, 2020 [CT 800]. See also SA 108]

On November 12, 2019, defendants Regina Cueller, Allan Campbell, Pat Cueller, Brian Fonseca, Nicholas H. Fonseca, Annie Jones, Jessica Godsey Olvera, and Jacky Calanchini filed a motion to dismiss the complaint pursuing to CCP section 430.10(a) [it was actually a motion to quash based on lack of subject matter jurisdiction]. The moving papers consisted of the following documents:

- a. Notice of motion and Motion MPA [CTO 61];
- b. Memorandum of Points and Authorities [CTO 64];
- c. Declaration of Regina Cueller in support of Motion to Quash/Dismiss [CTO 50];
- d. Declaration of Paula Yost in support of Motion to Quash/Dismiss [CT 4];
- e. Appendix of Secondary Authority [CT 18]
- f. Requests for judicial notice [CT 161].

Defendants did not submit any kind of general demurrer to the causes of action. Thus, whether plaintiff had stated all required elements of his claims for negligent and intentional interference with prospective economic advantage was never challenged. Likewise, the related Business & Profession section 17200 claim was not challenged either.

On January 10, 2020, Appellant/Plaintiff filed his opposition papers to the motion to dismiss. The opposition papers consisted of the following:

- a. Memorandum of Points and Authorities in support of opposition the motion to dismiss [CT 642];
- b. Declaration of Herman Franck in support of opposition to motion to dismiss [CT 625];
- c. Plaintiff's Objections to Request for Judicial Notice in Support of Motion to Dismiss [CT 662];
- d. Request for Judicial Notice of items A through T in support of opposition to motion to dismiss [CT 665].
- e. Plaintiff's Compendium of Federal Authority Submitted in Support of Opposition to Motion to Quash/Dismiss [SA 110].

On January 16, 2020, the defendants filed a reply brief [CT 760].

A tentative ruling was issued by the Court on January 23, 2020

GRANTING the motion to dismiss. The tentative ruling is 22 pages

long. [SA 175].

On January 24, 2020, the Court held the hearing on the motion to

dismiss, Judge Dylan Sullivan presiding. The hearing was not

reported, and thus no reporter's transcript is designated herein.

Defendants were represented at the hearing by Paula Yost. Plaintiff

was represented at the hearing by present counsel Herman Franck.

At oral argument, The Trial Court at first did not allow plaintiff's
witnesses, exemplar members of his tribe, who would if sworn in state

that they were Miwok Indians, designated as such by the US Bureau

of Indian Affairs ["BIA"] in the form of an official BIA Miwok

Identification card. Instead of hearing this, the Trial Court made a

ruling that she will just accept as true that there were approximately

40 or 50 such Miwok persons present during the hearing. See Minute

Order, SA 201; see also CT 803]. Appellant points this out to show

that the distinction of his side of the case being true Miwoks, and the Defendants/ Respondents' side being not Miwok at all.

Following the hearing, nevertheless, the Trial Court adopted its tentative ruling, and granted the motion to quash/motion to dismiss based on sovereign immunity and lack of subject matter to restriction. The Trial Court issued a final ruling on February 11, 2020 [CT 770].

Following that, plaintiff's counsel submitted a judgment of dismissal to the Trial Court, which the Trial Court signed on February 25, 2020 [CT 779]. The Judgment states in part: "Judgment of Dismissal is hereby issued and entered in favor of Defendants. The action is dismissed in its entirety." [CT 780].

On March 10, 2020, Appellant/Plaintiff filed a timely notice of appeal [CT 787].

**III.
EXCERPTS OF THE TRIAL COURT'S ORDER FOLLOWING
HEARING ON DEFENDANTS' MOTION TO
DISMISS/MOTION TO QUASH, AND PLAINTIFF'S
REQUEST FOR DEFAULT JUDGMENT [DAMAGE PROVE-
UP HEARING]**

The Trial Court's Minute Order [SA 201; see also CT 803] states in part: "The Court acknowledges that the witnesses would state that they are Miwok Indians and that they are being excluded."

The Trial Court granted Defendants' Motion to Quash/Dismiss. The trial court held as follows [CT 771]:

"The Court hereby affirms the tentative ruling issued in this action on January 23, 2020, granting the Motion to Quash/Dismiss the Complaint of Cesar Caballero for Lack of Jurisdiction.

Accordingly, it is hereby ordered that:

1. Defendants' Motion to Quash/Dismiss Plaintiff's Complaint is granted, and the action is hereby dismissed for lack of jurisdiction. Because amendment would be futile, Plaintiff's complaint is dismissed with prejudice.
2. Plaintiff's Request for Entry of Default is mott and thus stricken.

3. All other pending matter, including a hearing on Defendant's Motion to Quash Plaintiff's Notices to Appear in Lieu of Subpoenas, set for March 6, 2020, and the Case Management Conference set for February 24, 2020 are hereby taken off calendar."

The Trial Court's Tentative Ruling [Separate Appendices/ SA 189-190] elaborates on its reasoning:

"Internal matters of a tribe are generally reserved for resolution by the tribe itself, through a policy of Indian self-determination and self-government as mandated by the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1341. Unless surrendered by the tribe, or abrogated by Congress, tribes possess an inherent and exclusive power over matters of internal tribal governance. See *Nero v. Cherokee Nation*, 892 F.2d 1457, 1463 (10th Cir.1989). Moreover, a "tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community." *Id.* (quoting *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 n. 32, 98 S.Ct 1670, 56 L.Ed.2d 106 (1978)). Based on these principles, and

although the BIA has attempted through multiple decisions to define the Tribal Council for government-to-government purposes, the BIA will not interfere in the disenrollment issue. In a May 5, 2009 letter in response to Plaintiffs' dispute of the disenrollment, the BIA wrote: 11 The BIA adheres to a policy of Indian self-determination and self-government as mandated by the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1341. The BIA carries out a government-to-government relationship with the Timbisha Shoshone Tribe that includes the administration of trust and federally appropriated funds for which we are held accountable. It has long been the policy of the Department of the Interior and the BIA, in promoting self-determination, not become involved in the internal affairs of tribal governments. "I RJN, Ex. 20. Similarly, without authority, this Court will not interfere in the internal affairs of the Tribe. See, *Milam v. U.S. Dep't of Int.*, 10 Indian L Rep. 3013, 3015 (D.D.C.1982) (ordinarily, disputes "involving intratribal controversies based on rights allegedly assured by tribal law are not properly the concerns of the federal courts.")." (*Timbisha Shoshone Tribe v. Kennedy* /E.D. Cal. 2009) 687 F.Supp.2d 1171, 1185.)

Therefore, the determinations setting criteria for membership and who qualifies for tribal membership, whether or not they are true-blooded Miwoks or have any Miwok blood for that matter, is for the Tribe to decide and is clearly beyond the jurisdiction of this court to decide. The court lacks subject matter jurisdiction to decide who is and who is not a true Miwok entitled to be a member of the Tribe and eligible to be on the tribal council.

In addition, the court lacks subject matter jurisdiction to make any determination whether the defendants' election or appointment to the tribal council is proper, or that the current members are merely imposters unqualified to serve on the tribal council and unqualified to govern the tribe. The Tribe possesses an inherent and exclusive power over matters of internal tribal governance."

IV. ISSUES ON APPEAL

Appellant submits the following issues on appeal:

- a. Whether the trial court committed prejudicial error in not allowing the individual Tribal Members Exception to Sovereign

Immunity for *ultra vires* acts not part of the official affairs of the Tribe.

- b. Whether the State Court has Jurisdiction to hear this Non-Quiet Title Action.
- c. Whether Appellants have sustained their burden of showing prejudicial error.

V. STATEMENT OF APPEALABILITY

This is an appeal from a judgment of dismissal following the granting of a motion to dismiss pursuant to CCP section 430.10(a), lack of subject matter jurisdiction. The appeal is as a matter of right from a judgment of dismissal. See CCP section 904.1(a)(1):

“(a) An appeal, other than in a limited civil case, is to the court of appeal. An appeal, other than in a limited civil case, may be taken from any of the following:

(1) From a judgment, except an interlocutory judgment, other than as provided in paragraphs (8), (9), and (11), or a judgment of contempt that is made final and conclusive by Section 1222.”

VI. STANDARD OF REVIEW

The standard of review on a motion to quash/dismiss a complaint for lack of jurisdiction is de novo. See *Brown v. Garcia* (2017) 17 Cal.App.5th 1198, 1205:

“In the absence of conflicting extrinsic evidence relevant to the issue, the question of whether a court has subject matter jurisdiction over an action against an Indian tribe is a question of law subject to our de novo review.” (*Lawrence v. Barona Valley Ranch Resort and Casino* (2007) 153 Cal.App.4th 1364, 1369, 64 Cal.Rptr.3d 23.) But “[w]hen the facts giving rise to jurisdiction are conflicting, the trial court’s factual determinations are reviewed for substantial evidence. [Citation.] Even then, we review independently the trial court’s conclusions as to the legal significance of the facts.” (*CenterPoint Energy, Inc. v. Superior Court* (2007) 157 Cal.App.4th 1101, 1117, 69 Cal.Rptr.3d 202.) We affirm a trial court’s order if correct on any theory. (*J.B. Aguerre, Inc. v. American Guarantee & Liability Ins. Co.* (1997) 59 Cal.App.4th 6, 15–16, 68 Cal.Rptr.2d 837.)”

VII. ARGUMENT

A. The Trial Court Committed Prejudicial Error in Not Allowing the Individual Tribal Members Exception to Sovereign Immunity for *Ultra Vires* Acts Not Part of the Official Affairs of the Tribe

This appeal challenges the following decision by the trial court [See Tentative Ruling, SA 190]:

“Therefore, the determinations setting criteria for membership and who qualifies for tribal membership, whether or not they are true-blooded Miwoks or have any Miwok blood for that matter, is for the Tribe to decide and is clearly beyond the jurisdiction of this court to decide. The court lacks subject matter jurisdiction to decide who is and who is not a true Miwok entitled to be a member of the Tribe and eligible to be on the tribal council.”

The answer is, the conduct of excluding Miwoks is *ultra vires*, in that it directly contradicts the plain statement of the BIA land title records [Request for Judicial Notice, Document 1] stating: “Grantee: Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona

Tract), California.” See accompanying Request Judicial Notice, Documents 1 and 2.

1. Ultra Vires Exception to Sovereign Immunity Claims

The trial court committed prejudicial error in determining that the exception to sovereign immunity allowed in *Lewis v. Clarke* 581 U.S. ____ (2017) did not apply to the present action. *Lewis v. Clarke* stated:

“The identity of the real party in interest dictates what immunities may be available. Defendants in an official-capacity action may assert sovereign immunity. *Graham*, 473 U. S., at 167. An officer in an individual-capacity action, on the other hand, may be able to assert *personal* immunity defenses, such as, for example, absolute prosecutorial immunity in certain circumstances: *Van de Kamp v. Goldstein*, 555 U. S. 335 –344 (2009). But sovereign immunity “does not erect a barrier against suits to impose individual and personal liability.” *Hafer*, 502 U. S., at 30–31 (internal quotation marks omitted); see *Alden v. Maine*, 527 U. S. 706, 757 (1996).”

Lewis v. Clarke also states:

“In sum, although tribal sovereign immunity is implicated when the suit is brought against individual officers in their official capacities, it is simply not present when the claim is made against those employees in their individual capacities. An indemnification statute such as the one at issue here does not alter the analysis. Clarke may not avail himself of a sovereign immunity defense.”

Further support of Appellant’s claim of a reasonable expectancy in the Shingle Springs Rancheria is found in the recent US Supreme Court case of *McGirt v. Oklahoma*, 591 U. S. ____ (2020): “Today we are asked whether the land these treaties promised remains an Indian reservation for purposes of federal criminal law. Because Congress has not said otherwise, we hold the government to its word.”

These lands are properly stated to be for the Miwok people of Shingle Springs. Appellant does not seek to change or challenge title to the land, because title is already in the Miwok name.

The answer to this case in this appeal is that the exception to sovereign immunity did apply, and the Trial Court committed error in finding that there was no exception and quashing the complaint.

The reason the Trial Court should have reached the legal conclusion that the sovereign immunity exception of *Lewis v. Clark* did apply is because the complaint alleged facts which, if proven at trial, would show that the conduct of the individually-named tribal council members sued as defendants in this action was all *ultra vires*, and outside the scope of any legitimate official business of the tribe. Instead, it was conduct against true Miwok tribe citizens using fraud, imposters, and subterfuge as some kind of excuse to keep true Miwoks off of lands that were undisputedly earmarked for them. The complaint, paragraphs 10, 34, 39-41, and 49 [alleging the council members are not Miwok; that the lands were specifically designated by the US Bureau of Indian Affairs [“BIA”] as being for Miwoks; that Plaintiff and his tribal members are Miwok; and that Defendants/ Respondents are excluding them from the land].

See Complaint, paragraphs 33-34 [CTO 13]:

“33. Defendants’ conduct as imposters in charge of the Miwok tribal government constitutes conduct prohibited by law [See 18 USC section 1001(a); 18 USC section 1031(a), and California Penal Code section 484(a), all quoted below]; constitutes illegal fraudulent and unfair conduct outside the scope and course of their role as a tribal member of the Shingle Springs Band.

34. The non-justiciable political question doctrine does not apply to this case because Plaintiff does not allege that the BIA somehow made a mistake in designating the Shingle Springs Band of Miwoks as a federally-recognized tribe. Instead, the Complaint alleges that the present governing board of the tribe is made of non-Miwok blood individuals, and are thus imposters. In this regard, the complaint does not challenge the BIA’s decision to issue a BIA Native American Identification Card to the members of the tribal council, because these individuals do not have BIA identification cards. The Complaint does not challenge any political decision by the BIA to a) recognize the Shingle Springs Band of Miwok Indians or b) recognize any particular individual Miwok Indian.”

But see also the Trial Court's minute order from the day of the hearing on motion to dismiss/ plaintiff's request for default judgment [SA 201; see also CT 803] in which the trial court notes that present in the courtroom were a substantial group of BIA card-carrying Miwok Native Americans, who were being excluded from these Shingle Springs lands.

The fact that a default was entered on these facts can be evidence that the facts are admitted. See *Ostling v. Loring* (1994) 27 Cal.App.4th 1731, 1746). But that is all the default does. There is no penalty for defaulting. "A defendant has the right to elect not to answer the complaint. (*Greenup v. Rodman* (1986) 42 Cal.3d 822, 829.)

But, if proof be required, Plaintiff/Appellant was there in court with solid evidence that a) Plaintiff and his fellow tribal members are true me walks; b) that Respondents individual council members are not Miwok at all and that they are in fact imposters who have stolen the Miwok land and need to be ousted from their positions as council members. Appellant notes that he does not ask for their ejection from the land itself; what he asks for instead is a remedy that allows

the true Miwoks to occupy and enjoy the lands that the US BIA has earmarked for them or to have damages money damages on for their loss in being deprived of the use of those lands. See Complaint paragraphs 87-89 [CTO 26]; 99-100 [CTO 29]; and 115-118 [CT 34-35], specifying remedies requested.

Case law supporting this *ultra vires* exception to sovereign immunity is found in *Al Shimari v. CACI Premier Technology, Inc.*, 840 F.3d 147, 157 (4th Cir. 2016). The Trial Court would not apply immunity under a similar concept of sovereign immunity, the non-justiciable political question immunity. In *Al Shimari*, the court noted that private contractors in Iraq were engaging in conduct that, if true, would constitute war crimes and thus was *ultra vires* and not subject to the political question immunity:

“In examining the issue of direct control, when a contractor engages in a lawful action under the actual control of the military, we will consider the contractor's action to be a “de facto military decision []” shielded from judicial review under the political question doctrine. Taylor, 658 F.3d at 410.

However, the military cannot lawfully exercise its authority by

directing a contractor to engage in unlawful activity. Thus, when a contractor has engaged in unlawful conduct, irrespective of the nature of control exercised by the military, the contractor cannot claim protection under the political question doctrine. The district court failed to draw this important distinction. Accordingly, we conclude that a contractor's acts may be shielded from judicial review under the first prong of Taylor only to the extent that those acts (1) were committed under actual control of the military; and (2) were not unlawful.”

The same rule was applied in the case of *Alperin v. Vatican Bank*, 410 F.3d 532, 546 (9th Cir. 2005) .

“In the landscape before us, this lawsuit is the only game in town with respect to claimed looting and profiteering by the Vatican Bank. No ongoing government negotiations, agreements, or settlements are on the horizon. The outside chance that the Executive Branch will issue a statement in the future that has the “potentiality of embarrassment” when viewed against our decision today does not justify foreclosing

the Holocaust Survivors' claims, especially when "[t]he age and health of many of the class members also presses for a prompt resolution." In re Holocaust Victim Assets Litig., 105 F.Supp.2d at 148.

In sum, none of the Baker formulations is "inextricable" from the Property Claims. See Baker, 369 U.S. at 217, 82 S.Ct. 691. The Holocaust Survivors have presented a justiciable controversy.¹⁶

"*Ultra vires*" is defined as follows [see https://www.law.cornell.edu/wex/ultra_vires]:

"Latin, meaning "beyond the powers." Describes actions taken by government bodies or corporations that exceed the scope of power given to them by laws or corporate charters. When referring to the acts of government bodies (e.g., legislatures), a constitution is most often the measuring stick of the proper scope of power."

The concept applies here as well. See also the BIA Letter from C.K. Haukes dated January 12, 1919, CT 687, quoted above, which

expressly reserves this land for the shingle springs homeless Indians.

Plaintiff and his Miwok Nation tribe members are those people.

2. The Ultra Vires Exception to Sovereign Immunity Claims Applies to This Case

Section I of this brief cites the various pieces of evidence showing that without a doubt the Shingle Springs Rancheria lands were expressly given to the Shingle Springs Miwoks. All of those facts and evidentiary items add up to a showing that the defendants are guilty, and are not shielded by sovereign immunity because their conduct was *ultra vires*.

The conduct is *ultra vires* because it unlawfully excludes US BIA Identification Possessing Miwok Natives from lands expressly given to them in trust by the US government.

The fact that the Trial Court agreed the group of persons present (around 40 or so) were Miwok Indians being excluded from these lands establishes the facts of the ultra vires claims.

The tribal council members are being sued for *ultra vires* acts that they have taken on themselves personally and individually. The tribe itself is not a defendant/respondent in the action, nor is Appellant attempting to eject these members from the land. Appellant is seeking to oust them as council people, and as being basically the entire source of the reason that there are more than 200 true Miwoks without a proper home.

The Trial Court's minute order from the hearing on motion to dismiss [See SA 201; see also CT 803], in which the trial court accepted that all the various people present on behalf of plaintiff were true Miwoks being excluded from the lands. The trial court did not apply the *ultra vires* exception to official acts, and should have.

This court could reverse and instruct the trial court to apply that rule to this case; it was generally not applied. In the alternative, this Court has *de novo* independent jurisdiction to review and reverse this pure issue of law.

The Trial Court did not mention this issue in its decision. See Tentative Ruling, SA 175; and final ruling adopting tentative ruling [CT 771].

One option is to remand this matter back to the trial court to apply the *ultra vires* rules to the facts of this case, and to hold that *ultra vires* acts are outside the parameters of sovereign immunity.

Accordingly, plaintiff/appellant requests that this Court reverse the judgment of dismissal and to find that the exception to sovereign immunity stated in *Lewis v. Clark*, 581 U.S. ____ (2017) applies here, where the underlying conduct being sued upon is *ultra vires* unofficial conduct for which there is no sovereign immunity.

B. The State Court has Jurisdiction to hear this Non-Quiet Title Action

We note the California Supreme Court decision of *Boisclair v. Superior Court* (1990) 51 Cal.3d 1140, 1152, holding that any kind of title dispute over Indian lands must be filed in federal court:

“the threshold question must be whether one possible outcome of the litigation is the determination that the disputed property

is in fact Indian trust land. If that outcome is possible, then a state court is barred from assuming jurisdiction of the case.”

Thus, the Court can be aware the claims in this case were brought by Caballero in a counterclaim in federal court against the Shingle Springs Band [*Shingle Springs Band of Miwok Indians v. Caballero*, USDC EDCA Case No. :08-cv-03133-KJM-AC], purporting to be the Shingle Springs Miwok tribe, but the trial court in that matter would not permit Mr. Caballero's case on the grounds of political question matter, and related legal claims. That decision is currently on appeal before the US Ninth Circuit Court of Appeals, and is simply pointed out here to show this court that this particular case properly belongs in state court because title is not being challenged. Instead, Caballero is not seeking the ejectment from the land of any of the defendants; quite to the contrary, he is seeking to allow the true Miwoks to enter the lands and use those lands. Caballero is not seeking to redraw any title, boundaries, as the land is in the right name. It says Miwoks right in it, so Appellant does not need to change title, boundaries, or anything like that.

The title documents [RJN document 1] confirm the proper title.

Appellant confirms that we do not dispute that title, and accept it as is.

We said the same to the Federal Court Judge in that matter. We claim we are those people, the Miwoks of Shingle Springs.

The Complaint [CTO 4] alleges the following causes of actions:

1. First Cause of Action for Intentional Interference with Prospective Economic Advantage;
2. Second Cause of Action for Negligent Interference with Prospective Economic Advantage; and
3. Third Cause of Action for Violation of California's Unfair Competition law, Business and Professions Code section 17200.

The following relief is requested in the first cause of action for intentional interference with prospective economic relations, of the Complaint, page 88 [CTO 26]:

“Plaintiff will suffer irreparable relief unless and until some form of injunctive relief is issued. Plaintiff does not have an adequate remedy at law, and request such injunctive relief

including an Order requiring each of the council members sued herein as defendants to either prove up that they are true Miwok persons, or step aside and allow only Miwok-blooded tribespeople to control the tribal council. Plaintiff requests such other injunctive relief as the court deems just and appropriate.

See also the same injunctive relief requested in the second cause of action for negligent interference with prospective economic Advantage [paragraph 110] [CTO 33], and third cause of action for violation of Business & Professions Code section 17200 [paragraph 116] [CTO 35].

Nowhere in the Complaint is there any sort of claim, request for ejectment or any request for a declaration regarding title [e.g., a quiet title action].

The BIA deeds [accompanying Request for Judicial Notice, "RJN" Document 1] in no way place the limitations placed by the current Tribal Council of the Shingle Springs Band. The language of the BIA trust document states: "Grantee: Shingle Springs Band of Miwok

Indians, Shingle Springs Rancheria (Verona Tract), California.” See accompanying Request Judicial Notice, Documents 1 and 2. The BIA title documents prove up plaintiff’s reasonable expectancy in the Shingle Springs Rancheria land.

Appellant and the true Miwoks just need to be able to come into those lands. The current defendants/tribal council members aren't allowing this, and need to be stopped from excluding Plaintiff and true Miwoks. Because this is not a quiet title action, or an action seeking ejectment, the rule of *Boisclair v. Superior Court* (1990) 51 Cal.3d 1140, 1152, giving sole jurisdiction to the federal courts for that type of claim, or for a land title for an Indian lands title claim, does not apply here.

Accordingly, the judgment of dismissal should be reversed, and the case should be remanded for further proceedings on the merits.

C. Appellant Cesar Caballero has Sustained his Burden of Showing Prejudicial Error

Appellant is required to show prejudicial harm on appeal. See California Constitution, Article VI, section 13:

“No judgment shall be set aside, or new trial granted, in any cause, on the ground of misdirection of the jury, or of the improper admission or rejection of evidence, or for any error as to any matter of pleading, or for any error as to any matter of procedure, unless, after an examination of the entire cause, including the evidence, the court shall be of the opinion that the error complained of has resulted in a miscarriage of justice.”

See also CCP section 475, which states in part:

“.... No judgment, decision, or decree shall be reversed or affected by reason of any error, ruling, instruction, or defect, unless it shall appear from the record that such error, ruling, instruction, or defect was prejudicial, and also that by reason of such error, ruling, instruction, or defect, the said party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error, ruling, instruction, or defect had not occurred or existed. There shall be no presumption that error is prejudicial, or that injury was done if error is shown.”

Appellant has sustained his burden of showing prejudicial harm. He is unable to get a trial. His claims have been stopped. On remand, he has a solid probability of winning. Defendants have admitted their violation. See Declaration of Regina Cueller, [CTO 55-56], paragraph 15-18, quoted above, where she admits she excludes Miwoks.

As the authorities above state, not all legal error is grounds for reversal on appeal. Appellant recognizes that he must show the Court that he suffered prejudicial harm as a result of the Court's legal error, abuse of discretion, and orders based on fact findings opposite to the uncontroverted evidence.

Accordingly, the Court should find that Appellant has sustained his burden of showing prejudicial harm. The order granting the motion to dismiss/quash should be reversed with instructions to deny the motion to strike.

VIII. CONCLUSION

Based on the foregoing, this Court should reverse the judgment of dismissal and should remand the case with any instructions deemed just and appropriate, but to include a direction to apply the *ultra vires*

rule to this action; to see if there is then an exception to the sovereign immunity as per *Lewis v. Clark*; or such other remand instructions as a court deems just and correct; or to determine as part of its independent review that the *ultra vires* exception to official acts does apply, and that there is therefore no bar into this action based on sovereign immunity.

Respectfully submitted,



//s// Herman Franck, Esq.
HERMAN FRANCK, ESQ.
Attorney for Appellant
Cesar Caballero

Date: March 3, 2021

CERTIFICATE OF COMPLIANCE WITH RULE 8.204

I, Herman Franck, Esq., certify that according to the computer's word count program, this brief has 8,880 words, and complies with the type volume limitations of California Rules of Court, Rule 8.204, in that it has fewer than 14,000 words.


//s// Herman Franck, Esq.

Date: March 3, 2021

HERMAN FRANCK, ESQ. (SB#123476)

TO BE FILED IN THE COURT OF APPEAL

APP-008

| | | |
|---|--|---|
| COURT OF APPEAL Third APPELLATE DISTRICT, DIVISION | | COURT OF APPEAL CASE NUMBER: C091774 |
| ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 123476 NAME: Herman Franck, Esq. FIRM NAME: Franck & Associates STREET ADDRESS: 910 Florin Road #212 CITY: Sacramento STATE: CA ZIP CODE: 95831 TELEPHONE NO.: 916-447-8400 FAX NO.: 916-447-0720 E-MAIL ADDRESS: franckhermanlaw88@yahoo.com ATTORNEY FOR (name): Appellant Cesar Caballero | | SUPERIOR COURT CASE NUMBER: PC20190492 |
| APPELLANT/ Cesar Caballero PETITIONER: RESPONDENT/ Regina Cueller et al. REAL PARTY IN INTEREST: | | |
| CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE | | |
| Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed. | | |

1. This form is being submitted on behalf of the following party (name): Appellant Cesar Caballero
2. a. ☐ There are no interested entities or persons that must be listed in this certificate under rule 8.208.
- b. ☒ Interested entities or persons required to be listed under rule 8.208 are as follows:

| Full name of interested entity or person | Nature of interest (Explain): |
|--|---|
| (1) See attached roster of members of Miwok | Members of the Miwok Nation, of which Plaintiff/Appellant is Chief. |
| (2) Nation (Tribe), a federally-recognized tribe | They are the "landless/homeless" Indians of the Shingle Springs Rancheria |
| (3) | If Plaintiff/Appellant prevails, they all prevail. |
| (4) | |
| (5) | |

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: March 3, 2021

Herman Franck, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

Shingle Springs Band of Miwok Indians/El Dorado County

| Name | Roll # | parents # | GG # | GGG# | 1910 Federal Census | Senate resolution 115 | Initials | Email or address | Phone # |
|--------------------------------------|-------------------|-----------|------|------|---------------------------|-----------------------------|----------|---|--------------|
| VIRGINIA (VAROZZA) BASSFORD CLARK | 64918 | | | | | | UR | 3371 LA CANADA DR#8 CAMERON PARK CA | 530-344-3088 |
| Robert Bassford | | 64918 | | | | | | 3371 LA CANADA DR#8 CAMERON PARK CA | 530-344-3088 |
| JENNIFER BASSFORD | | 64918 | | | | | | 3371 LA CANADA DR#8 CAMERON PARK CA | 530-344-3088 |
| Matthew CLARK | | 64918 | | | | | | 3371 LA CANADA DR#8 CAMERON PARK CA | 530-344-3088 |
| Hailey WALZ | Grand- Mothers | 64918 | | | | | | 3371 LA CANADA DR#8 CAMERON PARK CA | 530-344-3088 |
| William E VAROZZA | | | | | | | | P.O. Box 694 WARRENTON, OREGON | 503-861-0768 |
| Daniel VAROZZA | | | | | | | | P.O. Box 694 WARRENTON, OREGON | 503-298-8733 |
| Bette (Karl Varozza) Reynolds | 52881 | | | | | | | 7855 CATTARAUGUS AVE SACRAMENTO CA 95825 | 916-688-9681 |
| EDWARD B Reynolds | 52881 | | | | | | | 1897 OGDON TOWNSHIP WARRENTON, OREGON | 503-298-8733 |
| London W Reynolds | 52881 | | | | | | | 7855 CATTARAUGUS AVE SACRAMENTO CA 95825 | 916-688-9681 |
| Laura Reynolds Trust | 52881 | | | | | | | 7855 CATTARAUGUS AVE SACRAMENTO CA 95825 | 916-688-9681 |
| David Reynolds | 52881 | | | | | | | 7855 CATTARAUGUS AVE SACRAMENTO CA 95825 | 916-688-9681 |
| SARA Reynolds Trust | 52881 | | | | | | | 7855 CATTARAUGUS AVE SACRAMENTO CA 95825 | 916-688-9681 |
| Gerald Reynolds | 52881 | | | | | | | 7855 CATTARAUGUS AVE SACRAMENTO CA 95825 | 916-688-9681 |
| JOSE BUSIO | 52881 | | | | | | | 7855 CATTARAUGUS AVE SACRAMENTO CA 95825 | 916-688-9681 |
| Grand- Mothers | 52881 | | | | | | | 7855 CATTARAUGUS AVE SACRAMENTO CA 95825 | 916-688-9681 |

(4910)

| Shingle Springs Band of Miwok Indians/El Dorado County | | | | | | | | | |
|--|--------|-----------|------|------|---------------------|-----------------------|----------|--|--------------|
| Name | Roll # | parents # | GG # | GGG# | 1910 Federal Census | Senate resolution 115 | Initials | Email or address | Phone # |
| SHARON COFFEY (VAROZZA) | | | | | | | | 14150 Collice Rd Grass Valley CA 95959 | 530-272-8254 |
| Lance ROYME NEW | | | | | | | | 130 Hickory Ave #1A Grass Valley CA 95946 | 530-272-5957 |
| Bailey McNEER | | | | | | | | 130 Hickory Ave #1A Grass Valley CA | 530-272-5957 |
| Sean COFFEY | | | | | | | | P.O. Box 123 Grass Valley CA 95946 | 530-559-6086 |
| Brendan COFFEY | | | | | | | | P.O. Box 123 Grass Valley CA 95946 | 530-559-6086 |
| Callie COFFEY | | | | | | | | P.O. Box 123 Grass Valley CA 95946 | 530-559-6086 |
| Scott COFFEY | | | | | | | | 12445 Rough & Ready Hwy Grass Valley CA 95946 | 530-575-2103 |
| James E. Nelson | | | | | | | | 995 Indian Creek Rd Selma Oregon 97538 | 541-659-1062 |
| Brook Nelson | | | | | | | | 995 Indian Creek Rd Selma Oregon 97538 | 541-659-1062 |
| Nicholas Nelson | | | | | | | | 995 Indian Creek Rd Selma Oregon 97538 | 541-659-1062 |
| Summer Nelson | | | | | | | | 995 Indian Creek Rd Selma Oregon 97538 | 541-659-1062 |

Mother Rosalind J VAROZZA Nelson
Deceased

Grandsons of
Rosalind J. VAROZZA Nelson (Deceased)
(GG Vincent John VAROZZA (Deceased) of Brock Nelson & Nicholas Nelson
& Summer Nelson)

Shingle Springs Band of Miwok Indians/El Dorado County

| Name | Roll # | parents # | GG # | GGG# | 1910 Federal Census | Senate resolution 115 | Initials | Email or address | Phone # |
|------------------|--------|-----------|------|------|---------------------------|-----------------------------|----------|---|---------|
| ALBERTA Stanford | 60362 | | | | | | AS | 2350229, McCaskey Bishop, Cal 93514 (909) 882-2394 | |
| Lorna BLAIR | 60367 | | | | | | LB | 2350229, McCaskey Bishop, Cal 93514 (909) 387-2394 | |
| Jim Tripp | | 60362 | | | | | | 1180 Carpenter St Colton, Cal 90324 (909) 422-1518 | |
| Danny Stanford | | 60362 | | | | | | | |

Shingle Springs Band of Miwok Indians/El Dorado County

[illegible]

[illegible]

**Shingle Springs Band
of Miwok Indians/El
Dorado County**

| Name | Roll # | parents # | GG # | GGG# | 1910 Federal Census | Senate resolution 115 | Initials | Email or address | Phone # | DOB |
|------------------------------------|--------|--|------|------|---------------------------|-----------------------------|------------|---------------------|--------------|------------|
| Ramona V Tripp- Valdez-Verbeck | 64445 | Lorena Rose Blackwell- Tripp/DOB 3/12/08/ 1928 Roll# 19902 | | | | | <i>RTV</i> | N/A | 530-672-1493 | 3/10/1939 |
| Joseph Gilbert Valdez Jr | 64445 | Ramona V Tripp-Valdez-Verbeck | | | | | <i>RTV</i> | N/A | 530-672-1493 | 1/7/1957 |
| Christina Louise Valdez-Buford | 64445 | Ramona V Tripp-Valdez-Verbeck | | | | | <i>CB</i> | N/A | 916-752-8173 | 2/9/1958 |
| Lisa Marie Buford | 64445 | Christina Louise Valdez-Buford | | | | | <i>LB</i> | N/A | 916-752-8173 | 5/3/1980 |
| Annette Eileen Valdez-Faircloth | 64361 | Ramona V Tripp-Valdez-Verbeck | | | | | <i>AF</i> | N/A | 530-919-4031 | 11/29/1981 |
| Randall Wayne Williams | 64361 | Annette Eileen Valdez-Faircloth | | | | | <i>AF</i> | N/A | 530-919-4031 | 3/29/1985 |
| Andrea Laine Musa | 64361 | Annette Eileen Valdez-Faircloth | | | | | <i>AF</i> | N/A | 530-919-4031 | 11/17/1992 |
| Anthony Lawrence Valdez | 64445 | Ramona V Tripp-Valdez-Verbeck | | | | | <i>AV</i> | N/A | 530-306-9889 | 12/1/1962 |
| Anthony Earl Valdez | 64445 | Anthony Lawrence Valdez | | | | | <i>AV</i> | N/A | 530-306-9889 | 5/20/1986 |
| Joseph Gilbert Valdez III | 64445 | Ramona V Tripp-Valdez-Verbeck | | | | | <i>JV</i> | N/A | 530-908-8161 | 3/18/1974 |

| | | | | | | | | | | | | | |
|------------------------------|--------|-------------------------------|--|--|--|--|--|--|--|----|-----|--------------|------------|
| Zachary James Taylor Valdez | 64445 | Joseph Gilbert Valdez III | | | | | | | | 9V | N/A | 530-908-8161 | 5/10/1992 |
| Gabrielle Rose Valdez | 64445 | Joseph Gilbert Valdez III | | | | | | | | 9V | N/A | 530-908-8161 | 11/15/1993 |
| Clarissa Lynn Valdez | 64445 | Joseph Gilbert Valdez III | | | | | | | | 9V | N/A | 530-908-8161 | 1/27/2002 |
| Kaitlyn Alisse Valdez | 64445 | Joseph Gilbert Valdez III | | | | | | | | 9V | N/A | 530-908-8161 | 8/4/2005 |
| Candace Marie Valdez-Kowalla | 64445 | Ramona V Tripp-Valdez-Verbeck | | | | | | | | 9V | N/A | 916-753-6115 | 9/7/1975 |
| Lindsay Michelle Jossick | 64445 | Candace Marie Valdez-Kowalla | | | | | | | | 9V | N/A | 916-753-6115 | 7/14/1995 |
| Genevive Rachael Kowalla | 64445 | Candace Marie Valdez-Kowalla | | | | | | | | 9V | N/A | 916-753-6115 | 7/16/2002 |
| Hannah Rose Kowalla | 64445 | Candace Marie Valdez-Kowalla | | | | | | | | 9V | N/A | 916-753-6115 | 10/10/2007 |
| Melody Jewel Tripp-Vonglahn | *19902 | Lorena Rose Blackwell-Tripp | | | | | | | | ML | N/A | 530-672-1493 | 4/7/1959 |

Shingle Springs Band of Miwok Indians/El Dorado County

| Name | Roll # | parents # | GG # | GGG# | 1910 Federal Census | Senate resolution 115 | Initials | email or address | phone# |
|---------------------|--------|-----------|------|------|---------------------------|-----------------------------|----------|-------------------------------------|--------------|
| Darlene Urjevich | 64243 | | | | | | | Po Box 106 El Dorado, Ca. 95623 | 530-622-2074 |
| Lisa Urjevich | 64244 | | | | | | | Po Box 232 El Dorado, Ca. 95623 | 530-622-2349 |
| Rose Evans | | 64244 | | | | | | Po Box 232 El Dorado, Ca. 956523 | 530-622-2349 |
| Madison Evans | | 64244 | | | | | | Po Box 232 El Dorado, Ca. 956523 | 530-622-2349 |
| Matthew S. Urjevich | 64247 | | | | | | | Po Box 106 El Dorado, Ca. 95623 | 530-377-4017 |
| Peter Hopka | | 64247 | | | | | | Po Box 106 El Dorado, Ca. 95623 | 530-677-4017 |
| Matthew B. Urjevich | | 64247 | | | | | | Po Box 106 El Dorado, Ca. 95623 | 530-677-4017 |
| Josh Urjevich | | 64247 | | | | | | Po Box 106 El Dorado, Ca. 95623 | 530-677-4017 |
| Martin R. Urjevich | 64246 | | | | | | | Po Box 106 El Dorado, Ca. 95623 | 530-622-2074 |
| Martin A. Urjevich | | 64246 | | | | | | Po Box 106 El Dorado, Ca. 95623 | 530-622-2074 |
| Kayla Urjevich | | 64246 | | | | | | Po Box 106 El Dorado, Ca. 95623 | 530-622-2074 |
| Gavin Urjevich | | 64246 | | | | | | Po Box 106 El Dorado, Ca. 95623 | 530-622-2074 |

| | | | | | | | | | |
|-------------------|-------|-------|-------|--|--|--|--|---|---------------|
| Catherine Colburn | 64242 | | | | | | | Po Box 4634 Incline Village, Nv. 89450 | 530-546-0801 |
| Gregory Colburn | | 64242 | | | | | | Po Box 4634 Incline Village, Nv. 89450 | 530-546-0801 |
| Peter S. Urjevich | 64248 | | | | | | | Deceased | |
| Leah Seldon | | 64248 | | | | | | Po Box 232 El Dorado, Ca. 95623 | 530-622-2349 |
| Jackson D Seldon | | | 64248 | | | | | Po box 232 El Dorado, Ca. 95623 | 530-622-22349 |
| Rachel Urjevich | | 64248 | | | | | | Po Box 232 El Dorado, Ca .95623 | 530-622-2349 |
| Camryn Urjevich | | | 64248 | | | | | Po Box 232 El Dorado, Ca .95623 | 530-622-2349 |
| Marie Waters | 64245 | | | | | | | Po Box 803 Plymouth, Ca. 95669 | 209-245-6760 |
| Jessi Goodman | | 64245 | | | | | | 83241 Beverly Court, Indio, Ca. 92201 | |
| Mischa Goodman | | | 64245 | | | | | 83241 Beverly Court, Indio, Ca. 92201 | |
| Norma Waters | | 64245 | | | | | | Po Box 803 Plymouth, Ca. 95669 | 209-245-6760 |
| Jacob Waters | | | 64245 | | | | | Po Box 803 Plymouth, Ca. 95669 | 209-245-6760 |
| Graig Gustafson | 25391 | | | | | | | Po Box 106 El Dorado, Ca. 95623 | |
| Heath Gustafson | | 25391 | | | | | | Po Box 106 El Dorado, Ca. 95623 | |
| Neil Gustafson | | 25391 | | | | | | Po Box 106 El Dorado, Ca. 95623 | |

Shingle Springs Band of Miwok Indians/El Dorado County

| Name | Roll # | Parents # | OG # | OGG# | 1910 Federal Census | Senate resolution 115 | Initials | Email or address | Phone # |
|---------------------|---------|-----------|-------|-------|---------------------|-----------------------|----------|------------------|----------------|
| Judy Tapp Peterson | 49536 | 19886 | 17369 | 19886 | ✓ | ✓ | JP | | (916) 543-8749 |
| Kimberly Peterson | Unknown | 49536 | 4332 | 19886 | | | KRP | | (916) 543-8749 |
| Dale Peterson Jr | Unknown | 49536 | 4332 | 19886 | | | DP | | (916) 543-8749 |
| Karen Peterson Hess | Unknown | 49536 | 4332 | 19886 | | | | | (916) 543-8749 |
| David L Peterson | Unknown | 49536 | 4332 | 19886 | | | DL | | (916) 543-8749 |

Shingle Springs Band of Miwok Indians/El Dorado County

| Name | Roll # | parents # | GG # | GGG# | 1910 Federal Census | Senate resolution 115 | Initials | Email or address | Phone # |
|---------------------------------------|--------|-----------|------|-------|---------------------------|-----------------------------|----------|-------------------------------|---------------------|
| Carla Daniels, MINOR | 42692 | 4330 | 4327 | 18294 | | ✓ | CM | grammyminor @cox.net | 623- 974-9512 |
| FawnCine Daniels, MINOR Wilden. | 42692 | 4330 | 4327 | | | ✓ | AM | littledeer 95381@yahoo.com | 623- 974-9512 |
| DeeAnne MINOR | 42692 | 4330 | 4327 | | | ✓ | AM | delish2221- @yahoo.com | 623- 7759 (cell) |
| William MINOR | 42692 | 4330 | 4327 | | | ✓ | AM | felix1313vm @yahoo.com | 623- 910-9512 |

Shingle Springs Band of Miwok Indians/El Dorado County

| Name | Roll # | parents # | GG # | GGS# | 1910 Federal Census | Senate resolution 115 | Initials | Email or address | Phone # |
|---|---------|-----------|------|------|---------------------|-----------------------|------------|------------------|--------------------|
| LYSA DANIELS | Unknown | | 4330 | 4327 | | ✓ | JR | | 1-896 281-5062 |
| TIMOTHY DANIELS | unknown | | 4330 | 4327 | | ✓ | WD | | 1-707- 573-8411 |
| WILLIAM DANIELS JR. <i>William father of Lyssa & Tim</i> | | | 4330 | 4327 | 1934 | | [initials] | | - - |

Single Springs Band of Minor League Baseball, County

Name: _____ DOB: _____ State: _____
 SSN # _____ SSN # _____ Federal: _____ Address: _____
 City: _____ State: _____ Zip: _____

SANDRA DANIELS
 MARTINEZ, Prati 39241 4330 4327 18294 ✓ SANDRA PRATT 1-888-530
 604-5198 SP Contact, 604-5198

DEBORAH
 MARTINEZ-
 TULYSEWSKI

Unknown 99241 4330 4327 ✓

916
 1495-018

JACQUELINE
 MARTINEZ-
 YOUNG

Unknown 99241 4330 4327 ✓

916
 371-0603

TONI MARTINEZ, Condon
 BOTTA

39241 4330 4327 ✓

916
 374-0560

| Shingle Springs Band of Miwok Indians/El Dorado County | | | | | | | | | |
|--|--------|------------|-------|-------|---------------------------|-----------------------------|---------|------------------|-------------------|
| Name | Roll # | parent's # | CG # | GG# | 1910 Federal Census | Se-ale resolution 116 | Initial | Email or address | phone # |
| DAVID L. PETERSON | 49536 | 49536 | 49536 | 49536 | 49536 | ✓ | SP | | (916) 543-8799 |
| DAVID A. PETERSON | | | 49536 | 49536 | 49536 | | | | (916) 543-8799 |
| SHELLEY E. PETERSON | | | 49536 | 49536 | 49536 | | | | (916) 543-8799 |

Shingle Springs Band of Miwok Indians/El Dorado County

Page 1 of 2

OCT-27-2008 MON 11:33PM ID:662-974-9512

| Name | Roll # | Parents # | GG # | GGC# | 1910 Federal Census | Sanata resolution 115 | Initials | Email or address | Phone # |
|---------------------|---------|-----------|-------|------|---------------------|-----------------------|----------|------------------|----------------|
| Karen Lee Hess | Unknown | Unknown | 49536 | 4332 | ✓ | ✓ | | | (916) 543-8749 |
| Cady Lee Panther | Unknown | Unknown | 49536 | 4332 | | | | | (916) 543-8749 |
| Justin Lee Panther | Unknown | Unknown | 49536 | 4332 | | | | | (916) 543-8749 |
| Alton Debra Panther | Unknown | Unknown | 49536 | 4332 | | | | | (916) 543-8749 |
| Berjen Debra Hess | Unknown | Unknown | 49536 | 4332 | | | | | (916) 543-8749 |
| Alegra G Hess | Unknown | Unknown | 49536 | 4332 | | | | | (916) 543-8749 |
| Kaylee J Panther | Unknown | Unknown | 49536 | 4332 | | | | | (916) 543-8749 |
| Jocelyn Panther | Unknown | Unknown | 49536 | 4332 | | | | | (916) 543-8749 |

* Additional documents thru
Roll # 5865 (Dora E. Miller)
Charles Miller (DOB 10/10/1905)

| Shingle Springs Band of Miwok Indians/El Dorado County | | | | | | | | | |
|--|---------|-----------|------|------|---------------------|-----------------------|----------|------------------|----------------|
| Name | Roll # | Parents # | GC # | GGG# | 1910 Federal Census | Senate Resolution 115 | Initials | Email or address | Phone # |
| Priscy L. Horley | Unknown | 4334 | 4326 | 4327 | 1894 | ✓ | NA | | (916) 543-8749 |
| Wanda L. Horley | Unknown | 4334 | 4326 | 4327 | 1894 | ✓ | RM | | (916) 543-8749 |

This is a Family list of Linda Josephine Blackwell 10-13-1949, daughter of Joseph A Blackwell, 7-21-1918 Roll# 6154

Linda Josephine Blackwell 10-13-1949
Cesar R. Caballero Jr. 11-29-1969
Leticia A. Caballero, Saldana 2-27-1972
Lisa E. Caballero, Colin 10-2-1975
Alma M. Caballero, Martinez 9-18-1983
Martha Patricia Caballero, -----2-23.88-----
Linda T. Saldana 4-22-1992.
Clarisa E. Colin 10-28-1994.
Jessica Colin 8-12-1996
Josette R. Saldana 11-25-1999
Cesar E Colin jr. 4-26-20001
Marco A. Martinez 11-29-2002
Tenaya J. Martinez 12-5-2006.
Joseph A. Caballero 1-07-2007. This is my family list in order of age.

Shingle Springs Band of Miwok Indians/EI Dorado County

| Name | Roll # | parents # | GG # | GG# | 1910 Federal Census | Senate resolution 115 | Initials | Email or address | Phone # | DOB |
|---------------------------------|--------|---|------|-----|---------------------------|-----------------------------|----------|-----------------------|--------------|------------|
| Ramona V Tripp-Valdez-Verbeck | 64445 | Lorena Rose Blackwell- Tripp/DOB 3/12/08/ 1928 Roll# 19902 | | | | | | | | |
| Joseph Gilbert Valdez Jr | 64445 | Ramona V Tripp-Valdez-Verbeck | | | | | | N/A | 530-672-1493 | 3/10/1939 |
| Christina Louise Valdez-Burford | 64445 | Ramona V Tripp-Valdez-Verbeck | | | | | | N/A | 530-672-1493 | 1/7/1957 |
| Lisa Marie Burford | 64445 | Christina Louise Valdez-Burford | | | | | | N/A | 916-752-8173 | 2/9/1958 |
| Annette Eileen Valdez-Faircloth | 64361 | Ramona V Tripp-Valdez-Verbeck | | | | | | N/A | 916-752-8173 | 5/3/1980 |
| Randall Wayne Williams | 64361 | Annette Eileen Valdez-Faircloth | | | | | | one sweet67@yahoo.com | 530-919-4031 | 1/29/1981 |
| Andrea Laine Musa | 64361 | Annette Eileen Valdez-Faircloth | | | | | | one sweet67@yahoo.com | 530-919-4031 | 3/29/1985 |
| Anthony Lawrence Valdez | 64445 | Ramona V Tripp-Valdez-Verbeck | | | | | | one sweet67@yahoo.com | 530-919-4031 | 11/17/1992 |
| Anthony Earl Valdez | 64445 | Anthony Lawrence Valdez | | | | | | N/A | 530-306-9889 | 12/1/1982 |
| Joseph Gilbert Valdez III | 64445 | Ramona V Tripp-Valdez-Verbeck | | | | | | N/A | 530-306-9889 | 5/20/1986 |
| Zachary James Taylor Valdez | 64445 | Joseph Gilbert Valdez III | | | | | | N/A | 530-908-8161 | 3/18/1974 |
| Gabrielle Rose Valdez | 64445 | Joseph Gilbert Valdez III | | | | | | N/A | 530-908-8161 | 5/10/1992 |
| Clarissa Lynn Valdez | 64445 | Joseph Gilbert Valdez III | | | | | | N/A | 530-908-8161 | 11/15/1993 |
| Kaitlyn Alisse Valdez | 64445 | Joseph Gilbert Valdez III | | | | | | N/A | 530-908-8161 | 1/27/2002 |
| Candace Marie Valdez-Kowalla | 64445 | Ramona V Tripp-Valdez-Verbeck | | | | | | N/A | 530-908-8161 | 8/4/2005 |
| Lindsay Michelle Joestek | 64445 | Candace Marie Valdez-Kowalla | | | | | | N/A | 916-753-6115 | 9/7/1975 |
| Genevieve Rachael Kowalla | 64445 | Candace Marie Valdez-Kowalla | | | | | | N/A | 916-753-6115 | 7/14/1995 |
| Hannah Rose Kowalla | 64445 | Candace Marie Valdez-Kowalla | | | | | | N/A | 916-753-6115 | 7/16/2002 |
| Melody Jewel Tripp-Vanglatm | *19902 | Lorena Rose Blackwell-Tripp | | | | | | N/A | 916-753-6115 | 10/10/2007 |
| | | | | | | | | N/A | 530-672-1493 | 4/7/1959 |

Figure 1 is a scatter plot showing the relationship between the number of children in the household (X-axis) and the number of children in the neighborhood (Y-axis). The X-axis ranges from 0 to 10, and the Y-axis ranges from 0 to 10. The data points are scattered, with a slight positive correlation. A regression line is drawn through the points, and a confidence interval is shown around it. The regression equation is $Y = 0.5X + 0.5$, and the R^2 value is 0.15.

தேவன்

| Name | Roll # | parents # | GG # | GGG# | 1910 Federal Census | Senate resolution 115 | Initials | Home or address | Phone # |
|-------------------|---------|-----------|--------------|--------------|---------------------------|-----------------------------|----------|-----------------|-----------------|
| Janice L. Ledesma | 24770 | 4333 | 4326 4327 | 4326 4327 | ✓ | ✓ | 98 | | 916 392-5034 |
| Brent M. Ledesma | unknown | 39770 | 4333 | 4326 4327 | | | BL | | 916 698-1913 |
| Michael L. Ryberg | unknown | 4333 | 4326 4327 | 4326 4327 | | | MP | | 916 392-5034 |

| Shingle Springs Band of Miwok Indians/El Dorado County | | | | | | | | | |
|--|---------|-----------|-------|------|---------------------------|-----------------------------|----------|------------------|------------------|
| Name | Roll # | parents # | GG # | GGG# | 1910 Federal Census | Senate Resolution 115 | Initials | Email or address | Phone # |
| Brent M. Lelesma | unknown | 34790 | 4333 | 4326 | ✓ | ✓ | BL | | 916- 698-9913 |
| Sydney S. Lelesma | unknown | unknown | 34970 | 4333 | | | SP | | 916 698-9913 |
| Spencer M. Lelesma | unknown | unknown | 34970 | 4333 | | | SP | | 916 698-9913 |

| PAGE | NAME | ROLL # | DATE OF BIRTH | ADDRESS | REFERENCE # |
|---------|--------------------------|--------|---------------|---------------------|-------------|
| 36 & 38 | Blackwell, Norman | 4086 | 10/2/1906 | Clarkville, Ca | |
| 38 & 39 | Blackwell, Sims | 4087 | 5/25/1913 | Clarkville, Ca | |
| 38 & 39 | Blackwell, Albert | 4088 | 9/1/1915 | Clarkville, Ca | |
| 38 & 39 | Blackwell, Joseph | 4089 | 7/21/1918 | Clarkville, Ca | |
| 39 | Craig, Marie | 4091 | 12-19-1898 | Clarkville, Ca | |
| 39 | Craig, William | 4092 | 10-15-1881 | Clarkville, Ca | |
| 39 | Craig, Ross | 4093 | 6-11-1849 | Clarkville, Ca | |
| 39 | Craig, John | 4094 | 4-12-1874 | Clarkville, Ca | |
| 39 | Craig, Robert | 4095 | 2-03-1880 | Clarkville, Ca | |
| 39 | Daniels, Lawrence | 4096 | 1-26-1872 | Clarkville, Ca | |
| 39 | Daniels, Lila A. | 4097 | 8-05-1891 | Clarkville, Ca | |
| 39 | Daniels, George | 4098 | 8/6/1913 | Shingle Springs, Ca | |
| 39 | Daniels, Leavellyn | 4099 | 10/10/1915 | Shingle Springs, Ca | |
| 39 | Daniels, William | 4100 | 12/0/1916 | Shingle Springs, Ca | |
| 39 | Daniels, Raymond | 4101 | 7/30/1919 | Shingle Springs, Ca | |
| 39 | Daniels, Arde | 4102 | 6/22/1920 | Shingle Springs, Ca | |
| 39 | Daniels, Thelma | 4103 | 5/14/1922 | Shingle Springs, Ca | |
| 39 | Daniels, Dorcas | 4104 | 5/10/1924 | Shingle Springs, Ca | |
| 39 | Daniels, Stanford | 4105 | 3/24/1904 | Shingle Springs, Ca | |
| 39 | Daniels, Myrtle | 4106 | 12/3/1900 | El Dorado, Ca | |
| 39 | Daniels, Vera | 4107 | 4/8/1921 | El Dorado, Ca | |
| 39 | Daniels, George | 4108 | 5/5/1924 | El Dorado, Ca | |
| 39 | Daniels, Steven | 4109 | 7/23/1901 | El Dorado, Ca | |
| 39 | Daniels, Elsie | 4110 | 5/12/1905 | El Dorado, Ca | |
| 39 | Daniels, Victor | 4111 | 12-05-1892 | Diamond Springs, Ca | |
| 39 | Duncan, Pearl | 4112 | 2/27/1911 | Diamond Springs, Ca | |
| 39 | Duncan, Edith | 4113 | 4/24/1905 | El Dorado, Ca | |
| 39 | Duncan, Walter | 4114 | 7/13/1928 | El Dorado, Ca | |
| 39 | Franklin, Joseph Timothy | 4115 | 3-11-1891 | El Dorado, Ca | |
| 39 | Franklin, Dan | 4116 | 3-14-1887 | El Dorado, Ca | |
| 39 | Franklin, William | 4117 | 12/25/1904 | El Dorado, Ca | |
| 39 | Franklin, David | 4118 | 10/5/1912 | El Dorado, Ca | |
| 39 | Jackson, Andrew | 4119 | 3/8/1910 | El Dorado, Ca | |
| 39 | Jackson, Susan | 4120 | 08-12-1860 | Camino, Ca | |
| 39 | Jackson, Bright | 4121 | 8-12-1851 | Camino, Ca | |
| 39 | Jackson, Beale Reed | 4122 | 11-05-1855 | Camino, Ca | |
| 39 | Jackson, Reginald | 4123 | 8-12-1895 | Camino, Ca | |
| 39 | Jackson, Raymond | 4124 | 12/28/1915 | Camino, Ca | |
| 39 | Nye, Fred | 4125 | 7/10/1919 | Camino, Ca | |
| 39 | Joseph, Jack | 4126 | 3/17/1908 | Camino, Ca | |
| 39 | Jackson, Riston L. | 4127 | 8/15/1905 | Camino, Ca | |
| 39 | Johnson, Katherine A. | 4128 | 11-28-1898 | El Dorado, Ca | |
| 39 | Johnson, George Carl Jr. | 4129 | 15/1910 | Diamond Springs, Ca | |
| 39 | Johnson, Colleen M8523 | 4130 | 2/16/1926 | Diamond Springs, Ca | |
| 39 | Jones, Wilford | 4131 | 2-19-1927 | Diamond Springs, Ca | |
| 39 | | 4132 | 6-04-1875 | Pescadero, Ca | |

| | | | | | |
|-----|---------------------------|-------|------------|---------------------|------------------|
| 203 | White, Catherine | 9795 | 4-28-1887 | Placerville, Ca | |
| 204 | Kellogg, Llew | 9874 | 5-05-1859 | Shingle Springs, Ca | |
| 205 | Kent, Mary A. | 10021 | 5-31-1857 | Placerville, Ca | |
| 206 | Kent, Elmer J. | 10022 | 9-09-1808 | Placerville, Ca | |
| 207 | Kessler, Samuel | 10030 | 8-04-1880 | Placerville, Ca | |
| 208 | Kessler, Stella | 10031 | 8-11-1872 | Placerville, Ca | |
| 209 | Kessler, Sarah | 10032 | 10-27-1889 | Placerville, Ca | |
| 210 | Kessler, Sam Jr. | 10033 | 3-12-1881 | Placerville, Ca | |
| 211 | Kessler, Vegli | 10034 | 4-06-1882 | Placerville, Ca | |
| 212 | Kessler, Annabelle | 10035 | 5-04-1883 | Placerville, Ca | |
| 213 | Kessler, Albert | 10036 | 4-08-1889 | Placerville, Ca | |
| 214 | Kessler, Herbert | 10038 | 4/21/1901 | Placerville, Ca | |
| 215 | Kessler, Ida Florence | 10039 | 11/28/1903 | Placerville, Ca | |
| 216 | Kessler, Edwin Donnell | 10040 | 12/7/1896 | Placerville, Ca | |
| 217 | Kessler, William What | 10041 | 2/8/1914 | Placerville, Ca | |
| 218 | Kessler, Ruthwin Franklin | 10042 | 4/30/1817 | Placerville, Ca | |
| 219 | Kessler, Charles Kenneth | 10043 | 8-04-1839 | Placerville, Ca | |
| 220 | Tom, Hattie | 10044 | 13/12/01 | Placerville, Ca | see Roll # 10846 |
| 221 | Kessler, William | | 10/30/1911 | Placerville, Ca | see Roll # 8405 |
| 222 | Kessler, Charlie | | 12/26/1913 | Placerville, Ca | see Roll # 8406 |
| 223 | Kessler, Polly | | 5/10/1916 | Placerville, Ca | see Roll # 8407 |
| 224 | Kessler, Bill | | | Placerville, Ca | |
| 225 | Laumann, Jonathan | 10599 | 7-04-1898 | Placerville, Ca | |
| 226 | Laumann, Josephine G. | 10600 | 9/5/1928 | Placerville, Ca | |
| 227 | Laumann, Earle | 10601 | 12/3/1906 | Placerville, Ca | |
| 228 | Lewis, Jane | 10646 | 10-18-1879 | Camino, Ca | |
| 229 | Lewis, Leonard | 10647 | 11/29/1898 | Camino, Ca | |
| 230 | Lewis, Thelma | 10648 | 4/14/1811 | Camino, Ca | |
| 231 | Lewis, Ernestine | 10649 | 12/3/1818 | Camino, Ca | |
| 232 | Lewis, Bertha | 10650 | 8/13/1914 | Camino, Ca | |
| 233 | Lewis, Anna | 10651 | 8/4/1916 | Camino, Ca | |
| 234 | Lewis, Velma | 10652 | 12/1/1918 | Camino, Ca | |
| 235 | Lowe, Josephine G. | 10653 | 2/14/1924 | Camino, Ca | |
| 236 | Rose, George J. | 11322 | 8-28-1858 | El Dorado, Ca | |
| 237 | Mayer, Marquante C. | 11323 | 1-01-1897 | El Dorado, Ca | |
| 238 | Mayer, Antone L. | 12636 | 2/29/1911 | Diamond Springs, Ca | |
| 239 | Mayer, Josephine I. | 12637 | 10/10/1912 | Diamond Springs, Ca | |
| 240 | Mayer, Earl Carl | 12638 | 2/5/1914 | Diamond Springs, Ca | |
| 241 | Mayer, George P. | 12639 | 8/21/1916 | Diamond Springs, Ca | |
| 242 | Molina, Antonio | 12640 | 8/13/1918 | Diamond Springs, Ca | |
| 243 | Padilla, Charles | 13327 | 6-18-1870 | Shingle Springs, Ca | |
| 244 | Padilla, Lizzie C.R. | 14748 | 4-07-1860 | El Dorado, Ca | |
| 245 | Padilla, Herbert | 14749 | 1-08-1873 | El Dorado, Ca | |
| 246 | Padilla, Manuel | 14749 | 2/17/1911 | El Dorado, Ca | |
| 247 | Padilla, Charles Earl | 14750 | 3/4/1916 | El Dorado, Ca | |
| 248 | Padilla, John M. | 14751 | 4-07-1882 | El Dorado, Ca | |
| 249 | Padilla, Louella | 14752 | 10-12-1885 | El Dorado, Ca | |
| 250 | | 14753 | 8/17/1917 | El Dorado, Ca | |

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|-----------|------------------------|-------|------------|------------|-----------------------------------|-----------------|
| 305 | Pedilla, Lillian | 14754 | 11-27-1889 | | El Dorado, Ca | |
| 306 | Pedilla, Clarence E. | 14755 | 11-15-1895 | | El Dorado, Ca | |
| 307 | Pedilla, Mamie | 14756 | | 7/24/1908 | El Dorado, Ca | |
| 308 | Pedilla, Helen | 14758 | | 7/29/1907 | El Dorado, Ca | |
| 318 | Peterson, Hester H. | 15278 | | 10/13/1908 | Diamond Springs, Ca | |
| 319 | Peterson, Elliott Jr | 15279 | | 5/24/1928 | Diamond Springs, Ca | |
| 319 | Peterson, Eleanor Hors | 15280 | | 9/22/1927 | Diamond Springs, Ca | |
| 318 | Varozza, Vincent J. | 15281 | | 5/22/1912 | Diamond Springs, Ca | |
| 318 | Varozza, Emily Annette | 15282 | | 10/17/1920 | Diamond Springs, Ca | |
| 318 | Caswell, Walter | 15283 | | 5/28/1910 | Diamond Springs, Ca | |
| 318 | Caswell, Joseph John | 15284 | | 9/27/1912 | Diamond Springs, Ca | |
| 319 & 194 | Peterson, LeRoy | 9320 | | 1/31/1916 | Diamond Springs, Ca | see Roll # 9320 |
| 319 & 194 | Peterson, Anna | 9321 | | 4/7/1916 | Diamond Springs, Ca | see Roll # 9321 |
| 318 & 194 | Peterson, Henry | 9322 | | 4/20/1920 | Diamond Springs, Ca | see Roll # 9322 |
| 318 & 194 | Peterson, William | 9323 | | 8/8/1921 | Diamond Springs, Ca | see Roll # 9323 |
| 319 & 194 | Peterson, Grace | 9324 | | 5/19/1924 | Diamond Springs, Ca | see Roll # 9324 |
| 319 & 194 | Peterson, Lyman | 9325 | | 12/3/1924 | Diamond Springs, Ca | see Roll # 9325 |
| 322 | Piatti, John C. | 15425 | 11-28-1885 | | Diamond Springs, Ca | |
| 322 | Piatti, Frank A. | 15426 | | 6/23/1913 | Diamond Springs, Ca | |
| 322 | Piatti, Haze Mae | 15427 | | 8/17/1915 | Diamond Springs, Ca | |
| 322 | Piatti, Marion Claire | 15428 | | 9/12/1917 | Diamond Springs, Ca | |
| 322 | Piatti, Lloyd Lewis | 15429 | | 9/21/1925 | Diamond Springs, Ca | |
| 322 | Piatti, Lawrence | 15430 | 7-28-1883 | | Diamond Springs, Ca | |
| 322 | Piatti, Floyd Eugene | 15431 | | 7/13/1908 | Diamond Springs, Ca | |
| 322 | Piatti, Maggie | 15432 | 6-08-1892 | | Diamond Springs, Ca | |
| 322 | Piatti, Antera | 15433 | 12-09-1885 | | Diamond Springs, Ca | |
| 322 | Piatti, Frank | 15434 | 3-08-1893 | | Diamond Springs, Ca | |
| 322 | Piatti, Norman | 15435 | | 1/22/1908 | Diamond Springs, Ca | |
| 329 | Praff, Evelyn | 15818 | | 12/17/1919 | Pleasantville, Ca | |
| 347 | Roberts, Ida | 16970 | 3-09-1860 | | Diamond Springs, Ca | |
| 347 | Roberts, Mary Jane | 16971 | 6-06-1863 | | Diamond Springs, Ca | |
| 347 | Roberts, William | 16989 | 2-05-1883 | | Diamond Springs, Ca | |
| 347 | Roberts, Blanche | 16990 | | 11/28/1920 | Diamond Springs, Ca | |
| 357 | Sabid, Andrew | 17087 | 9-08-1890 | | Diamond Springs, Ca | |
| 357 | Sabid, Grace | 17088 | 5-30-1888 | | Diamond Springs, Ca | |
| 357 | Sabid, Viola | 17089 | | 1/31/1910 | Diamond Springs, Ca | |
| 364 | Schmitt, Edna May | 17459 | 4-14-1884 | | Diamond Springs, Ca | |
| 364 | Schmitt, Bernice | 17460 | | 7/30/1913 | Diamond Springs, Ca | |
| 364 | Schmitt, Arthur | 17481 | | 3/29/1919 | Diamond Springs, Ca | |
| 370 | Sharp, Lena | 17733 | 1-14-1896 | | Diamond Springs, Ca | |
| 370 | Sharp, Jack | 17734 | | 5/28/1915 | Diamond Springs, Ca | |
| 370 | Sharp, Ethel L. | 17735 | | 3/4/1916 | Diamond Springs, Ca | |
| 382 | Smith, George | 18294 | 4-03-1855 | | Diamond Springs, Ca | |
| 382 | Smith, Valentine | 23257 | 7-09-1890 | | Shingle Springs & San Quentin, Ca | |
| 385 | Snider, Josephina | 19459 | 12-24-1894 | | Old Ranch, El Dorado, Ca | |
| 385 | Snider, Mae | 19460 | | 9/20/1913 | Camling, Ca | |
| 385 | Snider, Harold | 19461 | | 1/2/1914 | Camling, Ca | |

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|-----|----------------------------|-------|-----------|----------------|--|--|
| 385 | Sider, Natalie | 18462 | 5/6/1922 | Camino, Ca | | |
| 385 | Sider, Jerome | 18463 | 6/9/1925 | Camino, Ca | | |
| 418 | Tibo, Melvin Elmer | 18893 | 4/4/1901 | Camino, Ca | | |
| 422 | Verhaas, Josephine | 20215 | 1-07-1859 | Pacerville, Ca | | |
| 441 | Wilkinson, Ellen | 21132 | 8-31-1899 | Pacerville, Ca | | |
| 441 | Wilkinson, Thelma | 21133 | | Pacerville, Ca | | |
| 441 | Wilkinson, Fannie Margaret | 21134 | 8/3/1924 | Pacerville, Ca | | |
| 450 | Wilson, Thomas J. | 21382 | 5-12-1859 | Pacerville, Ca | | |
| 450 | Wilson, George J. | 21393 | 4-21-1878 | El Dorado, Ca | | |
| | | | 3-16-1881 | El Dorado, Ca | | |

PROOF OF SERVICE

I, Elizabeth Betowski, declare as follows: That I am an adult over the age of 18, and reside in Sacramento, California, and am not a party to the present action. On the date signed below, I caused to be mailed by first-class mail postage prepaid, the following documents:

1. Appellant's Opening Brief
2. Appellants Separate Volume of Appendices with Items Inadvertently Omitted in the Clerk's Record; Subject to Pending Motion to Augment Record
3. Appellant's Request for Judicial Notice or to Permit Further Evidence on Appeal
4. Appellant's Compendium of Federal Authority Cited in Opening Brief

The above-listed document was served on all parties by mailing via e-service to the following addressees:

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Attorneys for Defendants/Respondents

California Supreme Court
350 McAllister Street
San Francisco, CA 94102-4797

[via electronic filing only]

The above-listed document was served on all parties by mailing via first-class mail to the following addressees:

Clerk
El Dorado County Superior Court
Civil Division
3321 Cameron Park Drive
Cameron Park, CA 95682
Tel: 530-621-6430

Trial Court

I declare under oath and under penalty of perjury that the foregoing is true and correct and that this Declaration was executed in Sacramento, California, on March 3, 2021.

//s/ Elizabeth Betowski

Elizabeth Betowski

