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

Herman Franck, Esq. (SBN. 123476)
Elizabeth Betowski, Esq. (SBN, 245772)
FRANCK & ASSOCIATES
910 Florin Road, No. 212
Sacramento, CA 95831
Tel. 916-447-8400; Fax 916-447-0720
Attorneys for Appellant/Plaintiff Cesar Caballero

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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]:

- First Cause of Action for Intentional Interference with Prospective Economic Advantage;
- Second Cause of Action for Negligent Interference with Prospective Economic Advantage
- 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]:

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- "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
 - 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 Tribel.
- 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 counsel. 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-KJMAC. 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 descendancy 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.

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- 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 trial 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 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.

and the state of

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 Generates, CT 687].

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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. <u>Ultra Vires Exception to Sovereign Immunity Claims</u>

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 ejectment from the land itself; what his 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 <u>Taylor</u> 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 an 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-ACl, 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:

- First Cause of Action for Intentional Interference with Prospective Economic Advantage;
- Second Cause of Action for Negligent Interference with Prospective Economic Advantage; and
- 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 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 quite title action].

The BIA deeds [accompanying Request for Judicial Notice, "RJN"

Document 1] in no way place the limitations placed by the current

Trial 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."

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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

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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)

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Joseph Gilbert Valdez Jr	64445	64445 Ramona V Tripp-Valdez-Verbeck	Superior or to the superior or fine	The second second second	A District and the second second	Professional Control of the Control			030-072-1493	d/10/1939
Christina Louise Valdez-Buford	6445	64445 Ramona V Tripp-Valdez-Verbeck			Communication of the Property of the Property of	The state of the s	3	5 5	050-072-1493 046-752-8173	7/0/1957
Lisa Marie Bufford	64445	64445 Christina Louise Valdez-Buford	manufation alternative descriptions (Aug.	granded principles (see - p.	The growthen has the base of the con-		3. 2.	NA	016.752.8772	Z13/1900
Annette Eileen Valdez-Faircloth	64361	64361 Ramona V Tripp-Valdez-Verbeck	and the second s	and above remainment of a second plant debanase.	To the second se		*			000000000000000000000000000000000000000
Randall Wayne Williams	64361	64361 Annette Eileen Valdez-Faircloth	and a second Hill Contract of	S. Committee of the Com	A Commence of the Commence of	and the second s	1	S S	530-919-4031	3/20/108E
Andrea Laine Musa	64361	6436 / Annette Eileen Valdez-Faircloth			Symptomic in process	The state of the s	7	Y.	530-010-4031	14/17/14000
Anthony Lawrence Valdez	64445	64445 Ramona V Tripp-Valdez-Verbeck		The state of the s				N/A	530-308 0880	10/1/4020
Anthony Earl Valdez	64445	64445 Anthony Lawrence Valdez	The state of the s	Berger and American Species an		- Tonnestonal		teritori, produtoria	000000000000000000000000000000000000000	200111121
Joseph Gilbert Valdez III	64445	64445 Ramona V Tripp-Valdez-Verbeck		100 mm m					530-908-8161	3/18/1974

Zachary James Taylor Valdez	54445	54445 Joseph Gilbert Valdez III	A A A A A A A A A A A A A A A A A A A		almay, margin
Gabrielle Rose	4.00-0001-00000		W/W	530-908-8161	5/10/1992
Valdez	64445	64445 Joseph Gilbert Valdez III		000	
Clarissa Lynn		100 Marie Comment and Comment	MAN Juneary and the state of th	330-908-8161	11/15/1993
Valdez	64445	64445 Joseph Gilbert Valdez III		0000	
Kaitlyn Allsse		to the grade of the surface of the s	William and the second	530-908-8161	1/27/2002
Vaidez	64445	64445 Joseph Gilbert Valdez III		200 000	
Candace Marie		The state of the s	Samuel Communication of the Co	1010-202-000	8/4/2005
Vaidez-Kowalla	64445	64445 Ramona V Tripp-Valdez-Verbeck		i	,
Lindsay Michelle		to the second se		910-703-0115	9/7/1975
Jossick	64445	64445 Candace Marie Valdez-Kowalla	VIV	016 753 6415	70000
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Rachael Kowalla	64445	64445 Candace Marie Valdez-Kowalla		040 JRO 844R	7645/0000
Hannah Rose		CPE (1) Comment of the Comment of th	I NIT	010-010	7.007/91//
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Darlene Urjevich	64243	The state of the s	The industrial lands to the control of the control		The state of the s	To get the Arthur Innovation and the	pedia control de la control de	Po Box 106 El Dorado, Ca. 95623	530-622-2074
Lisa Urjevich	64244	Part of the second seco	Section (Section)	-		Ozamania wakaza kata na kata n		Po Box 232 El Dorado, Ca. 956523	530-622-2349
Rose Evans	All Administrações por estados de la constante	64244			of a plan and grant gran	A demanda (constituting for the constitution of the constitution o	Control of the contro	Po Box 232 El Dorado, Ca. 956523	530-622-2349
Madison Evans		64244	The second of th	To the second se	The state of the s	A system (or playment) of the control of the contro		Po Box 232 El Dorado, Ca. 956523	530-622-2349
Matthew S. Urjevich	64247		Military manual programme of without account	Contact with page (1) (See July 1)	A STATE OF THE STA	definitions and page and a top day a con-	and the state of t	Po Box 106 El Dorado, Ca. 95623	530-377-4017
Peter Hooka	The state of the s	64247	Semantary of the physical excessory and property or again the	All Sections of Management (1970)	A control of the cont	. Side of the second se	Security of the second of the	Po Box 106 El Dorado, Ca. 95623	530-677-4017
Matthew B. Urjevich		64247				And the second s	And the second s	Po Box 106 El Dorado, Ca. 95623	530-677-4017
Josh Urjevich	HEREO ALCOHOLOGICA CONTRACTOR CON	64247			de de la constante de la const	de la constante de la constant		Po Box 106 El Dorado, Ca, 95623	530-677-4017
Martin R. Urjevich	64246			Principle of Patrick Parish	October or Martine, gr. 1995, 200 et al. 2000, 20000, 2000,	Section and the commence of the control of the cont		Po Box 106 El Dorado, Ca. 95623	530-622-2074
Martin A. Urjevich	Andrew Print and Andrews and Gorde	64246		, on the state of		Property of the same of the sa		Po Box 106 El Dorado, Ca. 95623	530-622-2074
Kayla Urjevich	And the second of the second o	64246	de September (1988) de la companya d	tunk 114 manus (1994)	Andrew Company of the	Section (1) (1) (1) (1) (1) (1) (1) (1) (1) (1)		Po Box 106 El Dorado, Ca. 95623	530-622-2074
Gavin Urjevich	SART TOOLS ON THE	64246	And the second s	or former or many or management	77 y			Po Box 106 El Dorado, Ca. 95623	530-622-2074

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Catherine Colbum	64242			Po Box 4634 Incline Villege, Nv. 89450	530-546-0801
Gregory Colburn		64242	· · · · · · · · · · · · · · · · · · ·	Po Box 4634 Incline Village, Nv. 89450	430 44R 0801
Peter S. Urjevich	64248			Des se de	
Leah Seldon		64248		Po Box 232 El Dorado, Ca. 956523	530-622-2349
Jackson D. Seldon	and the second s		64248	Po box 232 El Dorado, Ca. 956523	Considerate Calabana de Considera
Rachel Urjevích	ETITE AT A VILLA CA QUARTE	64248	g ja till flytimmad a vistoria	Po Box 232 ElDorado.Ca	
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Maria Matere	6 6 6 7			Po Box 803 Plymouth,	530-522-2349
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Jessi Goodman	ARRIVE AND ALLY	64245		83241 Beverly Court, India,Ca. 92201	Acceptants on a
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Norma Waters	erri de la Companya d	64245	- 1	Po Box 803 Plymouth,	200 24K B780
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Graig Gustafson	2539			Po Box 106 El Dorado,	209-245-6760
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This is a Family list of Linda Josephine Blackwell 10-13-1949, daugther 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 m

This is my family list in order of age.

		Stiingle Springs Band of Miwok Indians/El Dorado County	2 2	nd ans/E	Scade	3		The second secon	
Name	Ro⊪ #	parents #	#9 9	1910 GGG# Federal Census	Senate resolution tritials 115	8	Email or address	Phone #	008
Ramona V TrippValdez-Verbeck		Lotena Rose Blackwell-Tripp/DOB 3/12/08/ 64445 1928 Rol# 19902		The second secon	The second secon		NVA		
Joseph Gilbert Valdez Jr	64445	6445 Ramons V Tripp-Veldez-Verbeck	of the second se		I (garanta)		MA	530-672-1493	3/10/1939
Christina Louise Valdez-Buford	84445	84445 Ramona V Tripp-Valdez-Verbeck		and the state of t			NAT.	530-072-1493	177/1957
Lisa Marie Bufford	6445	64445 Christina Louise Valdez-Buford	170 100	A contract of the contract of	n by vinne adjustes	100	MA A	915-752-8173	2/9/1958
Amette Elven Valdez-Farcioth	64361	64361 Ramona V Tripp-Valdez-Verbeck	- Shift Sill i receileanai	Problem Inches	MARCHAN AND WE		1	" - f 'seemed - moral course	3000
Randall Wayne Williams	64361	64381 Americ Elloca Valdez-Faircloth	The second secon	O Temporario and process and process of the process			one swed 67 @yahoo.com	530-919-4031	11/29/1961
Andrea Laine Musa	64361	64381 Annette Eilsen Valdaz-Faircioth			heritonia		UNE SWEED (10/10/10/10/10/10/10/10/10/10/10/10/10/1	530-919-4031	3/29/1985
Anthony Lawrence Valdez	64445	64445 Ramona V Tripp-Valdez-Verbeck					one sweeth/Qyahoo com		11/17/11992
Anthory Earl Valdez	6445	6446 Anthory Lawrence Valdez	The state of the s				WATER TO THE PROPERTY OF THE P	550-308-9889	12/1/1962
Joseph Gilbert Valdez III	64445	64445 Ramona V Tripp-Valdez-Verbeck		The first supporting		The second second second	M/A	530-306-9889	5/20/1986
Zachary James Taylor Valdez	64445	64445 Joseph Gilbert Vaklez III					S VI PA Printede begrund grande de de maria en	530-908-8161	3/18/1974
Gabrielle Rose Valdez	54445	64445 Joseph Cilbert Vaidez III			To deliver the state of the sta		N/A	530-908-8163	5/10/1992
Clarissa Lym Valdez	64445	64445 Joseph Gitbert Valdez III	k-1Fry hadronier	en (1 to A. Newson and).	A COLUMN TO A COLU		WA	2307-300-0 to 1	17.15(1483
Kailyn Alisse Valdez	64445	64445 Joseph Gilbert Valdaz III	· ·				NIA	#03.000 0403	20021128
Candace Marte Valdez-Kovalla	64445	64445 Ramona V Trpp-Valdez-Verbeck		Andrew Comments and the Comments of the Commen			N/A	916-753-8118	9/4/4005
Lindsay Michelle Jossick	84445	64445 Candace Marie Valdaz-Kowalla	1	-			N/A	916-753-6115	7/14/1995
Genelvive Rachael Kowalia	64445	64445 Candace Marie Valdez Kowalla					WA	916-753-8115	7/36/2009
Hannah Rose Kowella	64445	64445 Candace Marie Valdaz Kowalie	the characteristic and the con-			Z	N/A	916-753-8115	10/10/2007
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a Elaine Mendoza 41749 ulanna Mendoza 41749 ha Jade Mendoza 41749 e Anne Blackwell 6154 Warrick	Sean Robert Thurman		41749	The second	Provide Provid	September of the second of the			orz walobusa Ave Krigedrest La 93655	(760) 375-2919	etaen eta	
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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 eservice to the following addressees:

Paula Yost, Esq. 5022 Dublin Ave. Oakland, CA 94602 (510) 501-7093 paula.yostboitano@gmail.com

Attorneys for Defendants/Respondents

Sarah Dutschke Kaplan Kirsch & Rockwell LLP 595 Pacific Ave., Floor 4 San Francisco, CA 94133-4685 Tel: 628-209-4152 sdutschke@kaplankirsch.com

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 _______, 2021.

//s// Elizabeth Betowski

Elizabeth Betowski