No. F086849

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

PICAYUNE RANCHERIA OF CHUKCHANSI INDIANS,

APPELLANT,

v.

EDMUND G. BROWN JR.,

RESPONDENT;

NORTH FORK RANCHERIA OF MONO INDIANS,

INTERVENOR AND RESPONDENT.

Fresno County Superior Court, Case No. MCV072004
The Honorable Michael J. Jurkovich

RESPONDENT'S BRIEF

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May 5, 2025

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
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Case Name:	*PICAYUNE RANCHERIA OF CHUKCHANSI INDIANS V. EDMUND G. BROWN JR., ET AL.*	Court of Appeal No.:	F086849

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(Cal. Rules of Court, Rule 8.208)

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[XX] Interested entities or persons are listed below:

Full Name of Interested Entity or Party	Party *Check One*	Non-Party *Check One*	Nature of Interest *(Explain)*
North Fork Rancheria of Mono Indians	[XX]	[ ]	Intervenor [F088551]
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	

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 (i) an ownership interest of 10 percent or more in the party if an entity; or (ii) 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).

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

CONSTITUTIONAL PROVISIONS

OTHER AUTHORITIES

INTRODUCTION

Plaintiff-Appellant Picayune Rancheria of the Chukchansi Indians (Picayune) has spent over a decade litigating whether the North Fork Rancheria of Mono Indians (North Fork) may conduct class III gaming on a parcel of land in Madera County (Madera Site). In its sprawling efforts, Picayune has asked federal courts to answer questions of state law and asked state courts to grant relief only available in federal court. Having repeatedly failed in these attempts, Picayune has constantly sought to muddy the waters and now conflates what controversies persist and which parties they involve. But as the superior court below correctly held, there is no live controversy between Picayune and the Governor.[1] Any ongoing dispute as to the significance of Governor Brown's 2012 concurrence is between Picayune and North Fork, not between Picayune and the Governor.

Picayune's arguments to the contrary fail to address this fatal flaw—the parties here lack the type of adverse interests necessary to create a live controversy. Moreover, Picayune's unsuccessful lawsuits in federal court foreclose this court from granting any effectual relief. The claims

[1] Former Governor Edmund G. Brown Jr. (Governor Brown) was the original defendant in this proceeding. (1 AA 10-19.) Governor Gavin Newsom (Governor) has since been substituted as the Defendant and Respondent in place of former Governor Brown. (3 AA 638, n. 1; 4 AA 660, n. 1, 758, n. 1.) This respondent's brief is filed on behalf of the Governor in his official capacity as Governor of the State of California. The Office of the Governor of the State of California is not a party to this matter. (4 AA 929, n. 1, 985, n. 1.)

involving the Governor are therefore moot, as the court below correctly held.

Meanwhile, Picayune's attempt to revive its writ claim against the Governor is also flawed. Over the course of numerous briefings, Picayune has failed to allege a ministerial duty owed by the Governor and instead can only muster conclusory arguments that seek to shoehorn more and more meaning into Proposition 48, an over decade-old ballot initiative that did not expressly address Governor Brown's 2012 concurrence. Even if this court were to entertain such conclusory arguments, though, the remedy Picayune seeks exceeds the type of relief available through a writ of mandate. The entirety of the Governor's role and authority relating to his concurrence concluded in 2012. The Governor has no obligation, no legal duty, nor any authority, to take any further action related to that concurrence.

This court should therefore affirm the superior court's decisions below dismissing all of Picayune's claims against the Governor.

STATEMENT OF FACTS

North Fork seeks to conduct class III gaming[2] on the Madera Site. (1 AA 168.) Picayune owns and operates the Chukchansi Gold Resort and

[2] Class III gaming consists of "the types of high-stakes games usually associated with Nevada-style gambling." (*In re Indian Gaming Related Cases* (9th Cir. 2003) 331 F.3d 1094, 1097.) Examples of Class III gaming include blackjack, baccarat, slot machines, and parimutuel horse-wagering. (*Artichoke Joe's Cal. Grand Casino v. Norton* (9th Cir. 2003) 353 F.3d 712, 715.)

Casino, a class III gaming facility, on its Rancheria lands, approximately 26.4 miles from the Madera Site. (1 AA 11.) Picayune seeks to prevent North Fork from conducting class III gaming on the Madera Site. (1 AA 17; Appellant's Brief at p. 18.)

In March 2005, North Fork submitted a request to the United States Department of the Interior (Interior) to have the Madera Site taken into trust. (1 AA 168-170, 202; see *Stand Up for California! v. State of California*, (2021) 64 Cal.App.5th 197, at p. 202 (*Stand Up II*).) In 2006, North Fork requested a two-part determination pursuant to 25 U.S.C. § 2719(b)(1)(A). (*Ibid*.) The two-part determination requires that the Secretary of the United States Department of the Interior (Secretary) must determine, after consulting with local officials and nearby tribes, whether a gaming establishment on the newly acquired Indian lands "[1] would be in the best interest of the Indian tribe and its members, and [2] would not be detrimental to the surrounding community." (25 U.S.C. § 2719(b)(1)(A).) The Governor "of the State in which the gaming activity is to be conducted" must then concur in the Secretary's two-part determination for a tribe to operate casino-style gaming on Indian lands acquired after 1988. (*Ibid*.)

In response to North Fork's requests, then Assistant Secretary-Indian Affairs Larry Echo Hawk (Assistant Secretary Echo Hawk) on September 1, 2011, made the two-part determination under the Indian Gaming

Regulatory Act (IGRA) in favor of North Fork and requested the Governor's concurrence. (1 AA 13; see *Stand Up II*, *supra*, 64 Cal.App.5th at p. 202.) On August 30, 2012, the Governor issued a letter concurring in Assistant Secretary Echo Hawk's decision. (1 AA 13, 21-22; see *Stand Up II*, *supra*, 64 Cal.App.5th at p. 202.) On August 31, 2012, the State of California (State) and North Fork executed the Tribal-State Compact Between the State and North Fork (North Fork Compact). (1 AA 13, 21, 25-144; 2 AA 221-454; see *Stand Up II*, *supra*, 64 Cal.App.5th at p. 203.) On or about February 5, 2013, Interior took the land into trust for North Fork. (1 AA 13.)

On June 27, 2013, the California Legislature passed Assembly Bill 277 (AB 277) ratifying the North Fork Compact. (1 AA 13.) The Governor signed AB 277 on July 3, 2013. (*Ibid*.) Pursuant to the California Constitution, AB 277 would not take effect until January 1, 2014, unless a voter referendum qualified for the ballot and was passed by a majority of California voters. (1 AA 4; Cal. Const., art. IV, § 8(c)(1) and art. II, §§ 9, 10.) Proposition 48, a voter referendum challenging AB 277, qualified for the statewide ballot. (1 AA 14; see *Stand Up II*, *supra*, 64 Cal.App.5th at p. 205.) On November 4, 2014, California voters approved

Proposition 48 thereby rejecting AB 277 and the North Fork Compact.[3] (*Ibid*.)

PROCEDURAL HISTORY

On March 21, 2016, Picayune initiated this suit by filing a complaint against Governor Brown, seeking (1) a declaration that "the Governor's concurrence did not take effect and is not in effect," (2) a writ of mandate "directing the Governor to vacate and set aside the concurrence and to take all action as may be necessary to notify the Secretary that the concurrence did not take effect and is not in effect," and (3) "injunctive relief precluding the Governor from taking any action predicated in whole or in part upon the effectiveness of the concurrence." (1 AA 10, 18.) In June 2016, the trial court granted North Fork's motion to intervene. (1 AA 147-177.) In July 2016, both the Governor and North Fork filed demurrers to the complaint. (1 AA 145, 178-179.) In December 2016, the court granted both demurrers. (1 AA 181-185.)

[3] Following the vote on Proposition 48, North Fork requested that the Governor negotiate a new tribal-state compact, but the Governor declined to do so. (See *Stand Up II*, *supra*, 64 Cal.App.5th at 205.) On March 17, 2015, North Fork filed suit against the State to compel tribal-state compact negotiation. (*Ibid*.) Pursuant to 25 U.S.C. § 2710(d)(7)(B)(iii), the court ordered the State and North Fork to conclude a tribal-state compact for the Madera Site within 60 days. (*Picayune Rancheria of Chukchansi Indians v. U.S. Dept. of Interior* (E.D. Cal. 2017) 2017 WL 3581735, *3.) The State and North Fork did not complete a compact in 60 days. (*Ibid*.) The State and North Fork then entered into IGRA's remedial process, which resulted in the Secretary issuing Secretarial Procedures for class III gaming on the Madera Site. (3 AA 457-593; see *Stand Up II*, *supra*, 64 Cal.App.5th at 206.)

In granting the demurrers, the court reasoned that under the Third District Court of Appeal's ruling in *United Auburn Indian Community of the Auburn Rancheria v. Brown* (2016) 4 Cal.App.5th 36, the Governor had the authority to concur in the Secretary's determination. Shortly thereafter, the Fifth District Court of Appeal issued a conflicting decision in *Stand Up for California! v. State of California* (2016) 6 Cal.App.5th 686, ruling that the Governor lacked authority to concur. In January 2017, the California Supreme Court granted review in both cases to "resolve the split" that had emerged after these rulings. (*United Auburn Indian Community of the Auburn Rancheria v. Newsom* (2020) 10 Cal.5th 538, 548, (*United Auburn*).) Accordingly, in February 2017, the parties stipulated to a vacatur of the December 2016 rulings pending resolution of the Supreme Court proceedings. (1 AA 187-193.)

In August 2020, the California Supreme Court issued its decision in *United Auburn*, which involved a challenge to a gubernatorial concurrence issued on the same day (August 30, 2012) as the concurrence here, but for a different tribe. The Supreme Court found that under state law, the Governor possessed the implied power to concur in the Secretary's two-part determination under IGRA. (*United Auburn*, *supra*, 10 Cal.5th at p. 543.) The Supreme Court remanded the *Stand Up* case to the Fifth District "with directions to vacate [its 2016] decision and reconsider the matter in light of *United Auburn*." (*Stand Up II*, *supra*, 64 Cal.App.5th at p. 201.) After

supplemental briefing from the Governor, the plaintiffs, and North Fork, this court ruled that the people of California impliedly revoked the Governor's concurrence for the Madera Site through a subsequent vote on Proposition 48 such that the concurrence is not in effect. (*Stand Up II*, *supra*, 64 Cal.App.5th at pp. 201, 210, 216.)

The Governor does not contend otherwise: the Governor does not argue that the concurrence has any force or effect going forward with respect to the gaming eligibility of the Madera Site. (4 AA 673.) Picayune argues that this is not enough: in Picayune's view, the voters' rejection of Proposition 48 rendered the Governor's concurrence "void *ab initio*." (Appellant's Brief at p. 37; 4 AA 769.) On that basis, Picayune seeks to establish a controversy between itself and the Governor sufficient to support its causes of action for declaratory and mandamus relief. (Appellant's Brief, pp. 60-61; 4 AA 770.)

In January of 2022, Picayune filed its motion for judgment. (1 AA 194-214.) In February 2022, North Fork filed its motion for judgment on the pleadings. (3 AA 594-612.) In February 2022, the Governor filed his motion for judgment on the pleadings. (3 AA 634-645.) All three motions were filed following this court's decision in *Stand Up II*. (4 AA 665.) On July 15, 2022, the trial court issued its tentative ruling indicating its intention to grant the Governor's motion for judgment on the pleadings and granting North Fork's motion for judgment on the pleadings on the grounds

that the issues in Picayune's complaint were mooted by the decisions in *United Auburn* and *Stand Up II*. (4 AA 660-677.) However, during the hearing on the motion held September 9, 2022, the court reserved adoption of its tentative ruling and granted Picayune's motion for leave to file a first amended complaint. (4 AA 758.)

On October 21, 2022, Picayune filed a motion for leave to file a first amended complaint. (4 AA 678-679.) The Governor and North Fork opposed the motion. (4 AA 680-702, 721-735.) On or about December 12, 2022, the court issued its Order After Hearing, granting Picayune leave to file an amended complaint for declaratory relief and denying leave to file an amended complaint seeking writ of mandate. (4 AA 758.) The court otherwise adopted its July 15, 2022, tentative ruling and granted the Governor's and North Fork's motions for judgment on the pleadings without leave to amend with respect to Picayune's petition for writ of mandate. (*Ibid*.)

On December 28, 2022, Picayune filed its First Amended Complaint against the Governor and North Fork alleging a single cause of action for declaratory relief against both defendants. (4 AA 761-770.) Picayune alleges that a controversy exists regarding whether the Governor's 2012 concurrence was void *ab initio* and therefore was never effective such that North Fork could not reasonably rely upon it to authorize class III gaming on the Madera Site. (4 AA 762.)

In February of 2023, the Governor and North Fork filed separate demurrers to Picayune's Fist Amended Complaint. (5 AA 898-920, 921-942.) On July 5, 2023, the court issued its tentative ruling on the demurrers. (5 AA 985-1012.) The matter was heard on July 14, 2023. (5 AA 1013.) On July 17, 2023, the court issued its Order After Hearing in which it granted the Governor's Demurrer to the First Amended Complaint and denied North Fork's Demurrer to the First Amended Complaint. (5 AA 1013-1017.) Picayune timely filed this appeal.[4]

Meanwhile, Picayune filed separate actions in federal court also seeking to challenge the gaming eligibility of the Madera Site. In 2012, Picayune filed suit in a United States District Court for the District of Columbia challenging "three separate but related decisions of the Secretary regarding the Madera Site," including the decision to take the Madera Site into trust. (*Stand Up for California! v. United States DOI*, (D.D.C. 2016) 204 F.Supp.3d 212, 226, *aff'd*. (D.C. Cir. 2018) 879 F.3d 1177.) Then, in 2016, Picayune filed a complaint in the United States District Court for the Eastern District of California again challenging gaming eligibility of the Madera Site as well as the issuance of Secretarial Procedures. (*Picayune Rancheria of Chukchansi Indians v. U.S. Dept. of Interior* (E.D. Cal. 2017) 2017 WL 3581735.) In both cases, Picayune's efforts failed.

[4] North Fork has also filed an appeal. On November 15, 2024, this court set a joint briefing and argument schedule for appeals F086849 and F088551.

STANDARD OF REVIEW

"When a demurrer is sustained, appellate courts conduct a de novo review to determine whether the pleading alleges facts sufficient to state a cause of action under any possible legal theory." (*Gutierrez v. Carmax Auto Superstores Cal.* (2018) 19 Cal.App.5th 1234, 1242 (internal citations omitted).) Similarly, "[t]he standard of review for a motion for judgment on the pleadings is the same as that for a general demurrer" and the operative complaint is reviewed de novo. (*Tarin v. Lind* (2020) 47 Cal.App.5th 395, 403.)

As to the superior court's decision denying leave to amend, a denial of leave to amend the pleadings is reviewed for abuse of discretion. (*Record v. Reason* (1999) 73 Cal.App.4th 472, 486.) A "trial court's discretion will not be disturbed on appeal unless it clearly has been abused." (*Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, 230.) Additionally, "[t]he plaintiff bears the burden of proving an amendment could cure the defect. [Citation.]" (*T.H. v. Novartis Pharmaceuticals Corp.*, (2017) 4 Cal.5th 145, 162.)

ARGUMENT

I. THE SUPERIOR COURT CORRECTLY GRANTED THE GOVERNOR'S DEMURRER AS TO THE DECLARATORY RELIEF CLAIM

Picayune fails to address the crux of the Governor's mootness argument and the primary basis for the holding below: to the extent there is

a present controversy related to Governor Brown's concurrence, it is between Picayune and North Fork, not between Picayune and the Governor. Whether the Governor's concurrence was ever effective is also mooted by Picayune's unsuccessful challenges in federal court to the Secretary's two-part determination, and by the running of the applicable statute of limitations, as this court cannot grant Picayune any effectual relief.

A. The Issue Is Moot Because There Is No Live Controversy with the Governor

California courts can "decide only justiciable controversies." (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1573.) Generally, it is a court's duty to decide "actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." (*Eye Dog Fdtn. v. State Bd. Of Guide Dogs for the Blind* (1967) 67 Cal.2d 536, 541.) A matter is moot when there is no "genuine and existing controversy, calling for present adjudication as involving present rights." (*Housing Group v. United Nat'l Ins. Co.* (2001) 90 Cal.App.4th 1106, 1111.)

Moot cases include cases "in which an actual controversy did exist but, by the passage of time or a change in circumstances, ceased to exist." (3 Witkin, Cal. Procedure (5th ed. 2008) Actions § 21, p. 86.) Thus, "the

pivotal question in determining if a case is moot is therefore whether the court can grant the plaintiff any effectual relief." (*Giles v. Horn* (2002) 100 Cal.App.4th 206, 227; [citation omitted].) Additionally, "[b]efore a controversy is ripe for adjudication, it 'must be definite and concrete, touching the legal relations of parties having adverse legal interests. [Citation.]'" (*Centex Homes v. St. Paul Fire & Marine Ins. Co.* (2015) 237 Cal.App.4th 23, 28.)

As an initial matter, in its opening brief, Picayune implicitly acknowledges the lack of an actual, present controversy here. Picayune distills its interest in this case as follows: "Picayune thus faces the possibility (albeit remote) of a feedback loop—a loop it hopes will never come to fruition and would conflict with the law, but which it nevertheless must guard against." (Appellant's Brief at p. 13.) This type of future, "(albeit remote)" possibility is an almost textbook example of a cause that does not rise to an actual controversy.

This fundamental principle was discussed in *Cardellini v. Casey* (1986) 181 Cal.App.3d 389, 396-397, which involved a dispute regarding the payment of fees for connection to a city water line. The Court stated "[a]lthough there is potential for a future dispute with the city if appellants' second lot is made subject to a different refunding agreement, *such an eventuality is clearly speculative and does not therefore present an actual*

controversy which can be resolved by means of declaratory judgment. [Citation.]" (Italics added.)

In a similar vein, the court below correctly noted that because "there is no allegation that the Governor has any future plans or abilities to effectuate the since invalidated concurrence, there does not appear to be an allegation of an 'active controversy' to support Picayune's cause of action of Declaratory Relief." (5 AA 1004.) The superior court's subsequent decision finding that the concurrence was rendered void *ab initio* is not to the contrary. The fact that the court afforded some relief to Picayune vis-à-vis North Fork does not necessarily mean there was, or is, any present controversy involving the Governor. Courts *could* decide all manner of cases where two parties disagree as to the scope or proper interpretation of a law. But courts do not decide all such cases because to do so would be to inappropriately render advisory opinions on academic disputes. As the superior court correctly stated, "[t]o assert a cause of action for declaratory relief, there must be an "'actual controversy relating to the legal rights and duties of the respective parties,' not an abstract or academic dispute." (*Centex Homes v. St. Paul Fire & Marine Ins. Co.* (2015) 237 Cal.App.4th 23, 29 (citing *Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739 (*Connerly*).)

Picayune's reliance on *Golden State Water Co. v. Public Utilities Com.* (2024) 16 Cal.5th 380, and *Chafin v. Chafin* (2013) 568 U.S. 165 to

contend the Governor confuses merits arguments with mootness is unavailing for two reasons. First, as the court below found, there is no justiciable controversy *between the Governor and Picayune*. In *Chafin*, the Supreme Court considered a child custody dispute which spanned international borders and involved the interplay of federal and international law. (*Chafin*, 568 U.S. at 168.) Most pertinently, *Chafin* involved a custody dispute between two parents—parties with directly adverse interests who actively pursued incompatible outcomes. (*Id*. at pp. 170-171.) By contrast, in the matter at hand, "there is no allegation that the Governor has any future plans or abilities to effectuate the since invalidated concurrence" and the Governor has no "impact or control over North Fork's proposed future actions." (5 AA 1004.) Simply put, the Governor has no ongoing dispute with Picayune regarding the status of the concurrence or the fate of class III gaming on the Madera Site. That dispute is between Picayune and North Fork, and the Governor lacks the type of adverse legal interests necessary to give rise to a justiciable controversy. (*Centex Homes v. St. Paul Fire & Marine Ins. Co.* (2015) 237 Cal.App.4th 23, 28.)

Second, *Chafin* is further distinguishable from the present case because the Governor is not asking the court to speculate as to what relief may or may not be given in a foreign tribunal. Instead, as discussed in greater detail below, Picayune has already tried, and failed, to obtain relief in federal court. The Governor's arguments do not rely on speculation as to

what "IGRA means or should mean." (Appellant's Brief at p. 39.) The matter at hand is fundamentally different because the pertinent questions have been resolved in federal court, the only forum that could grant Picayune the relief it seeks.

Thus, the court below correctly identified *Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739 as the most analogous authority to the present circumstances. In *Connerly*, a citizen plaintiff sued the Governor of California and the Attorney General of California seeking a declaration that Government Code section 8315 was invalid, as well as a permanent injunction preventing the defendants from implementing or enforcing the statute. (*Connerly*, *supra*, 146 Cal.App.4th at p. 743.) After the lawsuit was filed, though, an intervening decision held section 8315 was ineffective, and the parties agreed the statute was invalid and unenforceable. (*Ibid*.) While the plaintiff contended there was still a controversy as to one of section 8315's subdivisions, the *Connerly* court "held that even if a cause of action for declaratory relief . . . were to lie, the Governor and the Attorney General would not be proper parties[.]" (*Id*. at p.747; 5 AA 1003.) Specifically, because subdivision (c) barred actions by private individuals and the defendants were "public officers . . . [with] no control over the commencement of private actions," the court refused to "entertain a declaratory relief action 'the sole object of which is to settle

rights of third persons who are not parties.' [Citation.]" (*Id*. at pp. 747-748.)

Analogizing to the case at hand, the court below therefore correctly held that "while Picayune and the Governor clearly have a 'difference of opinion' regarding the reach of the passage of Proposition 48 and *Stand Up II*, as there is no allegation that the Governor has any future plans or abilities to effectuate the since invalidated concurrence, there does not appear to be an allegation of an 'active controversy' to support Picayune's cause of action of Declaratory Relief." (5 AA 1004.) The absence of any live controversy with the Governor is fatal to Picayune's position.

Separately, the declaratory relief claim against the Governor is also moot because Picayune has unsuccessfully challenged North Fork's proposed plans to conduct class III gaming on the Madera Site in federal court. Any further state law adjudication as to Governor Brown's 2012 concurrence will not affect whether class III gaming may take place at the Madera Site under federal law, foreclosing the effectual relief Picayune seeks and further underscoring that there is no live controversy involving the Governor.

In 2012, Picayune and a coalition of community groups sued the Department of the Interior and North Fork in a United States District Court for the District of Columbia. (*Stand Up for California! v. United States DOI*, (D.D.C. 2016) 204 F.Supp.3d 212, *aff'd*. (D.C. Cir. 2018) 879 F.3d

1177.) The D.C. District Court, in a decision affirmed by the circuit court of appeals, granted summary judgment in 2016 for the defendants "to the extent [Picayune] 'argue[s] that the Secretary's two-part determination is invalid because the [Governor's] concurrence was void *ab initio*.'" (*Id.* at p. 250.) The court further stated that even if Governor Brown's concurrence "is determined to have been invalid," the validity of the two-part determination would not be affected. (*Ibid.*)

Separately, in July 2016, Picayune brought suit in the United States District Court for the Eastern District of California. (*Picayune Rancheria of Chukchansi Indians v. U.S. Dept. of Interior* (E.D. Cal. 2017) 2017 WL 3581735.) This effort also failed as the court granted summary judgment for Interior and North Fork, concluding the Secretary "did not err by prescribing procedures under which North Fork could conduct class III gaming at the Madera site." (*Id*. at p. *13.) Moreover, any further challenges to the Secretary's actions are barred as the applicable statute of limitations has run its course. Specifically, the applicable six-year statute of limitations for the 2012 decision to accept the Madera Site into trust and the 2016 issuance of Secretarial Procedures ran its course in 2018 and 2022 respectively.[5] (28 U.S.C. §2401(a) (providing six-year statute of limitations

[5] It should be noted that, while the federal courts did dismiss some causes of action on the basis that the Governor was an indispensable party, there is no federal proceeding awaiting this court's direction. Picayune seems to suggest otherwise, but the federal suits mentioned have been fully (continued…)

for civil claims against the United States); *Big Lagoon Rancheria v. California* (9th Cir. 2015) (en banc), 789 F.3d 947, 954 (holding that six-year statute of limitations applies to Administrative Procedure Act claims challenging the Secretary's trust decisions under IGRA).)

Thus, resolving the question of whether Proposition 48 rendered Governor Brown's concurrence void *ab initio* will "have no practical effect". (*Lincoln Place Tenants Assn. v. City of L.A.* (2007) 155 Cal.App.4th 425, 454.) The Secretarial Procedures would remain valid. (*Stand Up for California! v. United States DOI*, (D.D.C. 2016) 204 F.Supp.3d at p. 250). And even more crucially, to the extent there is any ongoing dispute regarding the significance of Governor Brown's concurrence to class III gaming on the Madera Site, that dispute is between Picayune and North Fork. Picayune's claim for declaratory relief is therefore moot because there is no live controversy involving the Governor and no effective relief available under state law.

B. Even If the Issue Were Not Moot, the Concurrence Was Not Rendered Void *Ab Initio*

On the merits, Picayune is mistaken: Governor Brown's concurrence was not rendered void *ab initio* by Proposition 48. As noted, *United Auburn* conclusively held that the Governor has the authority to concur in two-part determinations under IGRA. (*United Auburn*, *supra*, 10 Cal.5th at

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litigated and further challenges are barred by the applicable statute of limitations.

pp. 543 & 563.) Then, in the *Stand Up II* decision's recitation of the facts and procedural background, that court noted, "[t]he Governor's concurrence fulfilled a condition set forth in IGRA." (*Stand Up II*, *supra*, 64 Cal.App.5th at p. 203.) The *Stand Up II* court also explained one of the key issues presented was "whether the Governor's concurrence, once given, can be invalidated by subsequent action of the electorate." (*Stand Up II*, *supra*, 64 Cal.App.5th at p. 210.) Thus, even *Stand Up II's* language affirms that the Governor's concurrence was valid at the time it was given.

Further, the court's holding in *Stand Up II* that Proposition 48 "impliedly revoked" Governor Brown's concurrence rendering it "no longer valid" supports the conclusion that the concurrence was valid for some period of time. (*Stand Up II*, *supra*, 64 Cal.App.5th at pp. 201, 210-11.) The court did not say the concurrence was "never valid" nor that it was "void *ab initio*." The plain language of the *Stand Up II* decision demonstrates that Governor Brown's concurrence was valid for a time. Importantly, Proposition 48 addressed AB 277, not the Governor's concurrence. Consequently, Proposition 48 did not purport to render Governor Brown's concurrence void *ab initio*. Thus, Picayune's conjectural leap to expand the significance of Proposition 48 and its effect on Governor Brown's 2012 concurrence is wholly unsupported by the plain language of Proposition 48 or by the decision in *Stand Up II*.

II. PICAYUNE CANNOT STATE A CAUSE OF ACTION FOR ITS WRIT CLAIM AND AMENDMENT WOULD BE FUTILE

The court below was also correct to reject Picayune's writ claim and deny leave to amend. Although given ample opportunity over the course of many briefings, Picayune has failed to articulate a ministerial duty owed by the Governor. Moreover, Picayune's contention that Governor Brown abused his discretion is a conclusory argument utterly unsupported by the relevant law or facts. Meanwhile, even if this court were inclined to entertain such conclusory and unsupported legal theories, Picayune's requested remedy exceeds the scope of relief available through a writ of mandate.

A. Picayune Fails to State a Ministerial Duty

"Ordinary mandamus lies to compel the performance of a clear, present, and ministerial duty where the petitioner has a beneficial right to performance of that duty." (*California Assn. Of Professional Scientists v. Department of Finance* (2011) 195 Cal.App.5th 1228, 1236 (*CAPS*), (internal citations omitted.) "A ministerial act is an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning such act's propriety or impropriety, when a given state of facts exists." (*Ibid*. (internal citations omitted).) Furthermore, "[i]n order to construe a statute as imposing a mandatory duty, the mandatory nature of

the duty must be phrased in explicit and forceful language. [Citation.]" (*Quackenbush v. Superior Court* (1997) 57 Cal.App.4th 660, 663.)

And as the court below noted, Picayune bears the burden because "[t]o obtain a writ of mandate under Code of Civil Procedure section 1085, the petitioner has the burden of proving a clear, present, and beneficial right in the petitioner for the performance of that duty." (4 AA 667, 741) (citing *Skulason v. California Bureau of Real Estate* (2017) 14 Cal.App.5th 562, 567.) But Picayune has had ample opportunities throughout this case to allege a "ministerial duty" owed by the Governor and has failed to do so. On appeal, Picayune's latest effort is to argue that "the People retroactively withdrew the power of the Governor to concur as to the Madera site, and his concurrence therefore breached a ministerial duty he had *not* to concur." (Appellant's Brief at p. 55.)

This conclusory argument should be rejected. Picayune cites no authority to justify such a perversion of the plain language of Proposition 48, and it is completely contradicted by *United Auburn's* holding that the Governor has the authority to concur in the Secretary's two-part determinations. (*United Auburn*, *supra*, 10 Cal.5th at pp. 543 & 563.) Even assuming for the sake of argument that Proposition 48 withdrew the Governor's power to concur as to the Madera Site, which would itself be a convoluted legal fiction this court should not entertain, such an interpretation would still not meet the high bar required to give rise to

mandamus, namely that "[i]n order to construe a statute as imposing a mandatory duty, the mandatory nature of the duty must be phrased in explicit and forceful language. [Citation.]" (*Quackenbush v. Superior Court* (1997) 57 Cal.App.4th 660, 663.) Moreover, the *CAPS* court noted "[m]andate lies to enforce a specific ministerial duty, not a broad legislative purpose," (*CAPS* at p. 1237), but that is exactly what Picayune seeks to do.

The court below, therefore, correctly held that there is no ministerial duty giving rise to mandamus.

B. The Governor Did Not Abuse His Discretion

Having failed to allege a ministerial duty and in an effort to save its writ claim, Picayune changed tact in the proceedings below to allege an abuse of discretion. (5 AA 746, 747, n.4). On appeal, Picayune argues "'that mandamus may issue to compel the performance of a ministerial duty *or* to correct an abuse of discretion.'" (Appellant's Brief at p. 54) (citing *Glendale City Emps' Assn., Inc. v. City of Glendale* (1975) 15 Cal.3d 328, 344.) Seeming to rely on the same conclusory reasoning cited above, Picayune's argument fails both because Governor Brown did not abuse his discretion and because the requested remedy exceeds the scope of relief available through issuance of a writ of mandate.

As has been well documented in the many briefings throughout this case, the Governor's role in a two-part determination is limited and governed by federal law. (25 U.S.C. § 2719(b)(1)(A).) If the Secretary

decides that "a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and it would not be detrimental to the surrounding community," the Governor of the affected state can concur in that determination, not concur, or take no action at all. (*Ibid*.) That is the beginning and end of the Governor's role as it relates to concurrences under IGRA. Further, as has also been covered in detail, the California Supreme Court's decision in *United Auburn* conclusively affirmed the Governor's authority to concur in two-part determinations. (*United Auburn*, *supra*, 10 Cal.5th at pp. 543 & 563.) Thus, Governor Brown unambiguously had the authority to exercise his discretion to concur at the time he did so.

And despite Picayune's claims to the contrary, neither Proposition 48 itself nor *Stand Up II* even remotely suggest that the Governor abused his discretion at the time he concurred. *Stand Up II* held that Proposition 48 impliedly revoked the Governor's concurrence. (*Stand Up II*, *supra*, 64 Cal.App.5th at pp. 201, 210-11.) But indeed, as discussed above, even the *Stand Up II* decision acknowledges the concurrence was valid at the time it was issued (*Stand Up II*, *supra*, 64 Cal.App.5th at p. 203 [stating that "[t]he Governor's concurrence fulfilled a condition set forth in IGRA."].) Thus, Picayune's claim that Governor Brown abused his discretion is conclusory

and merely the only argument left as Picayune advances its kitchen-sink strategy.[6]

Meanwhile, the requested remedy exceeds the scope of relief available through issuance of a writ of mandate even if there were an abuse of discretion. The court below correctly analogized to *CAPS*, which considered "the extent to which a court can order the Department of Finance [] to seek an appropriation to implement" salary adjustments approved by the Department of Personnel Administration. (*CAPS* at p. 1233.) The Department of Personnel Administration had approved increased salary ranges for 14 supervisory scientist classifications, but the Department of Finance determined that funds were not available within existing salary appropriations. (*Id*. at p. 1233-1234.) The trial court had thus issued an order compelling the state Department of Finance "to take all feasible steps necessary to present salary adjustments approved by the state Department of Personnel Administration to the Legislature for possible appropriation." (*Id*. at p. 1231.) But on appeal, the *CAPS* court reversed the order holding that neither of the relevant Government Code sections at

[6] Indeed, Picayune has advanced numerous conclusory arguments that were wholly without merit, and at times even advanced mutually exclusive theories in different proceedings, causing Senior District Judge Ishii to note over seven years ago that Picayune was "playing fast and loose with the courts, seeking advantage by advancing mutually exclusive contentions to different courts." (*Picayune Rancheria of Chukchansi Indians v. U.S. Dept. of Interior* (E.D. Cal. 2017) 2017 WL 3581735 (internal citation and quotation marks omitted).) This strategy belies the inherent challenges Picayune faces in trying to shoehorn more and more meaning into a more than decade-old referendum.

issue imposed ministerial duties on the Department of Finance, and that one section indeed placed no duty on the Department of Finance whatsoever. (*Id*. at p. 1236.)

Particularly pertinent here, the court noted "[n]or can it be seriously argued the Legislature would not know of, or consider the need for additional appropriations to fund the proposed salary adjustments." (*Id*. at p. 1237.) The court continued "the Legislature will be informed of the need for additional appropriations to fund the adjusted salaries without the trial court having to expand section 19826's mandate beyond the statute's express language." (5 AA 736) (quoting *CAPS* at p. 1237.)

Here, there is no doubt the Secretary will be made aware if it is ultimately determined that the concurrence was in fact void *ab initio*. Indeed, it is implausible that Picayune would not immediately notify the Secretary of any such judicial determination. Given this reality, it is particularly striking that Picayune has failed to articulate any plausible reason why such a notification would carry any more legal weight if it came from the Governor's office than from Picayune. Certainly, the Secretary will be made aware one way or another, but in the meantime, Picayune seeks to dramatically expand the scope of appropriate relief available via a writ of mandate.

Ultimately, there is simply no legal basis to conclude Governor Brown abused his discretion or that a writ of mandate would be the appropriate remedy even if he had.

C. Amendment Would Be Futile

When a plaintiff has not had the opportunity to amend a complaint, "leave to amend is liberally allowed as a matter of fairness, *unless the complaint shows on its face that it is incapable of amendment*." (*City of Stockton v. Superior Court* (2007) 42 Cal.4th 730, 747 (emphasis added).) A court "undoubtedly has discretion to deny leave to amend where a proposed amendment fails to state a valid cause of action." (5 AA 740) (citing *California Cas. Gen. Ins. Co. v. Sup. Ct.* (*Gorgei*) (1985) 173 Cal.App.3d 274, 280-281, disapproved on other grounds in *Kransco v. American Empire Surplus Lines Ins. Co*. (2000) 23 Cal.4th 390, 407, fn. 11).) On appeal, a denial of leave to amend the pleadings is reviewed for abuse of discretion. (*Record v. Reason* (1999) 73 Cal.App.4th 472, 486.) Indeed, a "trial court's discretion will not be disturbed on appeal unless it clearly has been abused." (*Foxborough v. Van Atta* (1994) 26 Cal.App.4th 217, 230.)

For all the reasons described above, Picayune cannot state a claim for a writ of mandate as a matter of law. The court below, therefore, did not abuse its discretion in denying leave to amend because amendment would be futile. The superior court's ruling should be affirmed.

CONCLUSION

For the foregoing reasons, the superior court's judgment should be affirmed.

Respectfully submitted,

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May 5, 2025

CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S BRIEF uses a 13 point Times New Roman font and contains 6296 words.

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