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23	ROGER FRENCH,	Case No. 2:13-cv-02153-JJT	
24	Plaintiff,	DEFENDANTS' OPPOSITION TO STATE OF CALIFORNIA'S MOTION	
25	v.	FOR LEAVE TO FILE BRIEF AS	
26	KARLA STARR, et al.	AMICUS CURIAE IN SUPPORT OF PLAINTIFF	
27	Defendants.		
$_{28}$			

INTRODUCTION

Defendants oppose the State of California's Motion for Leave to File an Amicus Curiae Brief in Support of Plaintiff ("Motion"). The State's proposed amicus brief is not useful, the Motion is untimely, and the State's asserted "interests" have nothing to do with the specifics of this lawsuit. As a result, the State's Motion should be denied.

ARGUMENT

The State's proposed amicus brief is not useful to the Court because it focuses exclusively on an issue that Plaintiff has insisted is not part of his case: whether the United States has properly delineated the western boundary of the Colorado River Indian Reservation. Plaintiff has stated unambiguously that his case "is not about making a determination of whether the land [at issue in the case] is tribal, non tribal, or whether a boundary dispute exists or does not."). Reply Brief in Opposition to United States Amicus Curiae (ECF No. 76), at 1; *see also* Plaintiff's Opposition to Motion for Summary Judgment and Notice of Motion and Motion for Summary Judgment; Combined Opening/Opposition Brief (ECF No. 61), at 15 ("French is [] not challenging the status of the land"). In fact, if Plaintiff were challenging the location of the Reservation boundary, this Court would have to dismiss his case under Rule 19 because neither the United States nor the Colorado River Indian Tribes ("CRIT" or "Tribe") is a party to this suit. Defendant's Joint Motion for Summary Judgment (ECF No. 54), at 10-13. Because Plaintiff disavows any challenge to the Reservation boundary, an amicus brief arguing the location of that boundary "as a matter of law and fact" (Motion at 1-2) is useless to this Court.

The State's motion is also untimely, as it was filed six weeks *after* Defendants' final brief in support of their summary judgment motion. Contrary to the State's assertion that this delay will not prejudice the other parties (Motion at 2), the belated filing deprives Defendants of an opportunity to respond to the State's arguments.¹

¹ The State's proposed brief also urges this Court to hold a *trial* on the proper location of the boundary. *See* State's Proposed Amicus Brief at p. 12 and fn. 7. Putting aside the legal bars to such a trial (including the absence of two indispensable parties), the State's proposal would also (footnote continued on next page)

Finally, the State's asserted "interests" are wholly unrelated to the case at hand. The outcome of this case will have no impact on California's water rights (Motion at 2), which were first established by Supreme Court decree in 1964, with supplemental decrees in 1979, 1984, and 2000. Arizona v. California, 530 U.S. 392, 398-400, 418-19, 420-22 (2000). Plaintiff's case also has nothing to do with gaming. Motion at 2. And, the State provides no explanation of how the outcome of this case could possibly affect access to state courts for "non-tribal residents" of California seeking to "resolve disputes" with tribes, as the case has nothing to do with California state court jurisdiction over such disputes. Id. Plaintiff's own brief makes clear that this case is about one issue: whether the tribal court had jurisdiction to evict him, a non-Indian, from property on the west side of the Colorado River. Reply Brief in Opposition to United States Amicus Curiae (ECF No. 76), at 1.

In fact, the State's proposed brief appears to be nothing more than an attempt to relitigate its water rights dispute with the United States, a dispute that was put to rest more than a decade ago by the Supreme Court. A landlord-tenant dispute between the Tribe and a former lessee, to which neither the United States nor California is a party, is not the appropriate forum for the State to attempt to revive these claims. As a result, the State's Motion should be denied.

CONCLUSION & REQUEST FOR OPPORTUNITY TO RESPOND

For all of the foregoing reasons, Defendants urge this Court to deny the State's Motion for Leave to File an Amicus Curiae Brief in Support of Plaintiff. If the Court grants the State's Motion, Defendants respectfully request an opportunity to file an additional brief in response.

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27 28 (footnote continued from previous page)

dramatically expand the scope of Plaintiff's claims (which are necessarily limited to the record before the tribal court), and thus would impose significant new costs on Defendants.

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Opp.to CA's Motion for Leave to File Amicus Curiae Brief CASE NO. 2:13-cv-02153-JJT

CERTIFICATE OF SERVICE 1 I hereby certify that on October 15, 2014, I electronically filed the foregoing with the Clerk of the U.S. District Court using the CM/ECF System which will send notification of such filing to 3 all persons on the CM/ECF list for this matter, as indicated below: 4 Roger French Rob Roy Smith Claire Newman Pro Se 18001 Cowan, Ste. J Kilpatrick Townsend Irvine, CA 92614 1420 Fifth Avenue, Suite 4400 Seattle, WA 98101 Telephone: (206) 467-9600 Facsimile: (206) ¶3-6793 rvrrat3@cox.net 7 *Plaintiff* rrsmith@kilpatricktownsend.com 8 cnewman@kilpatricktownsend.com 9 Attorneys for Tribal Court Defendants Sam Hirsch Kamala D. Harris Acting Assistant Attorney General Attorney General Of California 11 Environment And Natural Resources Div. Sara J. Ďrake Amber Blaha Senior Assistant Attorney General **Assistant Section Chief** William L. Williams, Jr. 12 Judy B. Harvey (Co State Bar No. 40379) California Bar No. 99581 13 Trial Attorney Deputy Attorney General United States Department Of Justice 1300 I Street, Suite 125 Environment and Natural Resources Div. P.O. Box 944255 14 P.O. Box 7415 Sacramento, CA 94244-2550 Ben Franklin Station Telephone: (916) 324-3725 15 l Washington, DC 20044-7415 Telephone: 202-514-3932 Facsimile: (916)327-2319 bill.williams@doj.ca.gov 16 l Facsimile: 202-514-4231 17 judith.harvey@usdoj.gov Courtesy Copy via U.S. Mail Attorneys for the United States 18 Attorneys for Amicus Curiae the State of California 19 20 Executed on October 15, 2014 at San Francisco, California. 21 22 Sean P. Mulligan 23 24 25 26 27 28