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

APPELLANT'S REPLY BRIEF

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

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

I.
ARGUMENT

A. Non-Miwok Persons Cannot Assert Miwok Sovereign Immunity

When we speak of national sovereignty, it is necessarily connected to an actual nation. We don't just say sovereign immunity, for example, we say tribal sovereign immunity of a specific tribe, just like we would say the national sovereignty of Mexico. You would not get sovereignty if you were not a nation. It is an oxymoron to speak of sovereignty that does not apply to an actual nation. The Defendants/ Respondents do not have an actual nation at all; they have hoodwinked the US Bureau of Indian Affairs ["BIA"] into thinking that they are Miwok people. The BIA looks upon them as being Native American, and won't get into the issue of are they Miwok or not, but this Court in applying sovereign immunity must ask this question: sovereign immunity based on which nation? What is your nation?". This is what the defendants don't really have a good answer to; they can only say Miwok Nation, but one cannot claim Miwok Nation sovereign immunity unless one is Miwok.

Here is a super simple way of looking at this case: the Defendants/ Respondents are a group of non-Miwok people that are invoking Miwok sovereign immunity. It would be a little bit like Plaintiff/ Appellant's counsel, a white man with blue eyes born in California, somehow asserting the national sovereignty of Mexico as giving immunity to suit; of course, that's a ridiculous example, but it is exactly what the Defendants/respondents are doing here. They are not Miwok, but are asserting Miwok sovereignty. This type of conduct is quite obviously *ultra vires*; this type of conduct is in the category of a giant lie. The Trial Court was very well aware that the people were not Miwoks, and that the non-Miwoks were keeping the true Miwoks out of the Shingle Springs lands. The Trial Court fully accepted that and said basically it doesn't matter; tribal sovereignty applies. To that we say no it doesn't; if you're not a Miwok, you cannot assert Miwok tribal sovereignty.

Accordingly, the judgment of dismissal should be reversed, and this case should be remanded with instructions to hear the case on its substantive merit

B. Respondents and the Trial Court Fail to Mention or Grapple with the *Ultra Vires* Nature of All of Appellant's Claims

Conspicuously missing from Respondents' brief is any mention or grappling with the core issue of this appeal, that the respondents individual conduct is actionable here as an exception to any claim of tribal sovereign immunity, because their conduct is *ultra vires* in all respects.

Appellant argued this before the Trial Court, and the Trial Court similarly disregarded this claim. Appellant points out though that this is the current state of the law that immunities such as the political question immunity [similar to sovereign immunity] does not apply where the conduct of the offending parties is *ultra vires*. See *Al Shimari v. CACI Premier Technology, Inc.*, 840 F.3d 147, 157 (4th Cir. 2016) [Attached in Compendium of Federal Authority, item 3] cited in our opening brief and not mentioned at all by Respondents.

A recent example of the use of ultra vires doctrine to strike down an otherwise a political question matter, can be seen in *Alabama Association of Realtors et al. v. United States Department of Health*

and Human Service, 20-cv-03377-DLF (DC Dist. 2021) [Attached in Compendium of Federal Authority, item 4], page 19-20:

> “"It is the role of the political branches, and not the courts, to assess the merits of policy measures designed to combat the spread of disease, even during a global pandemic. The question for the Court is a narrow one: Does the Public Health Service Act grant the CDC the legal authority to impose a nationwide eviction moratorium? It does not. Because the plain language of the Public Health Service Act, 42 U.S.C. § 264(a), unambiguously forecloses the nationwide eviction moratorium, the Court must set aside the CDC Order, consistent with the Administrative Procedure Act, see 5 U.S.C. § 706(2)(C), and D.C. Circuit precedent, see National Mining Ass’n, 145 F.3d at 1409."

“*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."

This is a case that should be remanded for the simple reason that this *ultra vires* issue was not dealt with by either the Respondents, or the Trial Court. The fact is the law allows an action to go through sovereign immunity if one can show that the conduct complained of is *ultra vires.*

The Court is thus referred to the following series of evidentiary items and legal authorities showing a solid case that the Defendants/ Respondents are indeed engaged in *ultra vires* conduct [against or outside legal authority]:

1. Requests for Judicial Notice, Exhibits E and F [CT-682-685] [Public laws: Act of Congress 06/30/13 (28 stat. 86) [CT 683] and Act of Congress 5/25/18 (40 stat. 570) [CT 685]];
2. Series of land title documents from the US Bureau of Indian Affairs ["US BIA"/"BIA"] given to Appellant by Philip Scarborough. See Request for Judicial Notice, Item 1, exhibits

4-6 thereto [unopposed and should be granted] in which the Land title documents include the following unambiguous grantee language: “Shingle Springs Band of Miwok Indians, Shingle Spring Rancheria (Verona Tract), California.”;

3. BIA Index to Indian Land Records document [CT 672, Request for Judicial Notice, Exhibit A [which states: “Grantor: U.S.; Grantee: MeWuk Tribe; Remarks: “Shingle Springs Rancheria”];
4. Request for Judicial Notice, Exhibits I [CT 691; Excerpts of “Progress Report to the Legislature by the Senate Interim Committee on California Indian Affairs” (Senate Resolution No. 115)];
5. Request for Judicial Notice Exhibit J [CT 694; Excerpts of “Progress Report to the Governor and Legislature by the State Advisory Commission on Indian Affairs” (Senate Bill No. 1007) (February 1966)];
6. Request for Judicial Notice Exhibit O [CT 729, “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”];

7. Request for Judicial Notice Exhibit Q [CT 742; Excerpts of 1952 Report with Respect to the House Resolution authorizing the committee on Interior and Insular affairs to conduct an investigation of the Bureau of Indian Affairs; House Report 2503, Monday, July 7, 1952];
8. Request for Judicial Notice, Exhibit B, Cesar Caballeros USA BIA identification showing that he is a member of the Miwok tribe;
9. January 24, 2020 minute order of the Superior Court El Dorado county [Motion to Augment Record, Exhibit F;
10. Request for Judicial Notice Exhibit H, April 1, 2019 letter from BIA regional superintendent Troy Burdick;
11. The following federal law colon 25 USC section 1322 [anti-alienation statute] and 18 USC section 1162 [making it a federal crime to alienate a Native American from their own lands].
12. Excerpts from Plaintiff's complaint, paragraphs 33-34, and 82, describing Respondents' *ultra vires* acts.

To remind the Court what Appellant said in his opening brief, here is the reason these are *ultra vires* [outside of authority granted by law]: First, Appellant says again for the record that this case in no way request a change of the underlying title holders of the land. The title is in the Shingle Springs Band of Miwok Indian's name. This is exactly how it should be.

Appellant is and represents those true Miwok people. Respondents simply are not Miwoks, and are imposters. This imposter status goes against the express law that created the land: Act of Congress 06/30/13 (28 stat. 86) [CT 683] and Act of Congress 5/25/18 (40 stat. 570) [CT 685]. See Request for Judicial in Support of Default Damage Prove Up Proceedings and in Support of Opposition to Motion to Quash/Dismiss Complaint for Lack of Jurisdiction [CT 665], Exhibit E [CT 683] and F [CT 685] thereto [full text of the laws that authorize the budget to purchase then-privately held ranch land, to be given to the homeless Native Americans in California. Act of Congress 06/30/13 (28 stat. 86) [CT 683] [Attached in Compendium of Federal Authority, item 1] states in part:

> "For the support and civilization of Indians in California, including paid of employees, and for the purchase of small tracts of land situated adjacent to land heretofore purchased, and for improvements on land for the use and occupancy of Indians in California, $57,000."

Act of Congress 5/25/18 (40 stat. 570) [CT 685] [Attached in Compendium of Federal Authority, item 2] states in part:

> "For the purchase of lands for the homeless Indians in California including improvements thereon, for the use and occupancy of said Indians, $20,000, said funds to be expended under such regulation and conditions as the Secretary of the Interior may prescribe."

When Appellant filed this action, he did not have in his possession the series of title documents now given by US attorney Philip Scarborough, Esq. in connection with an *in rem* action filed in federal court. Appellant points out that the current action does not seek any kind of title alteration or change, and indeed the way the title is spelled out in the US Bureau of Indian Affair ["BIA"] official records

is quite perfect: “Shingle Springs Band of Miwok Indians, Shingle Spring Rancheria (Verona Tract), California.” See Request for Judicial Notice filed in this court, Item 1, Exhibits 4, 5, and 6 thereto [Exhibit 4: TAAMS Title Status Report for the Verona Tract; Exhibit 5: TAAMS Title Status Report for Tract 546 T 5595; and Exhibit 6: TAAMS Title Status Report for Tract 546 T 5474].

Appellant/plaintiff is and represents the very Miwok people that are described in the title document.

The problem here isn't the way title is described; the problem here is that the Respondents are controlling these lands and the Respondents are not Miwoks. The problem is that the Respondents are regularly excluding the true Miwok people. Respondent’s decision to somehow take over these lands and exclude true Miwoks is quite simply *ultra vires*. It is against the law; it's against the legal authority; it's against the title documents; it's against all of these Federal rules and positions taken by the BIA [that this land belongs to Miwok people].

Further proof that the Respondents' conduct is ultra vires is found in the initial US BIA Index to Indian Land Records document [CT 672, Request for Judicial Notice, Exhibit A [which states: "Grantor: U.S.; Grantee: MeWuk Tribe; Remarks: "Shingle Springs Rancheria"].

Further evidence that the defendant respondents conduct complained of in this matter constitutes *ultra vires* conduct is found in the series of official reports elected as plaintiff's requests for judicial Notice Exhibits I [CT 691; Excerpts of "Progress Report to the Legislature by the Senate Interim Committee on California Indian Affairs" (Senate Resolution No. 115)]; J [CT 694; Excerpts of "Progress Report to the Governor and Legislature by the State Advisory Commission on Indian Affairs" (Senate Bill No. 1007) (February 1966)]; O [CT 729, "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"]; and Q [CT 742; Excerpts of 1952 Report with Respect to the House Resolution authorizing the committee on Interior and Insular affairs to conduct an investigation of the Bureau of Indian Affairs; House Report 2503, Monday, July 7, 1952].

RJN Exhibit I [CT 691; Excerpts of "Progress Report to the Legislature by the Senate Interim Committee on California Indian Affairs" (Senate Resolution No. 115)] states:

> "County and Reservation: El Dorado County, Shingle Springs; Tribe: Me-wuk; Population: 1; Reservation acreage: 240; mailing address: El Dorado"

RJN Exhibit J [CT 696; Excerpts of "Progress Report to the Governor and Legislature by the State Advisory Commission on Indian Affairs" (Senate Bill No. 1007) (February 1966)] states:

> "Shingle Springs; Tribe: Me-wuk; Total Population: 5; population adjacent to units: 5; tribal land: 240"

RJN Exhibit O [CT 729; Copy from National Indian Law Library pamphlet/report on "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"] states: "Reservation: Shingle Springs; Voting Pop.: 3; Total Yes: 0; Total No: 3; election date: June 13."

RJN Exhibit Q [CT 742; Excerpts of 1952 Report with Respect to the House Resolution authorizing the committee on Interior and Insular affairs to conduct an investigation of the Bureau of Indian Affairs; House Report 2503, Monday, July 7, 1952] states: "Shingle Springs: California Indian Agency; El Dorado County, Calif.; 2 Me-Wuk Indians; 240 acres; est. 1917."

All these reports have unmistakable language in them that shows that the Miwok people are absolutely an officially recognized tribe. Appellant points this out because Respondents take the position that Appellant somehow should go out and get recognized. The reality is these reports make it clear Appellant and his tribe was a recognized Native American tribe. The reports also show that the land in Shingle Springs was purchased by the USA with the expressly-stated intent to give it over to the new people and that they actually did that they got the money they bought the land and transferred it to them.

Further evidence that the Defendants/Respondents' conduct is *ultra vires* is found in their argument that the BIA has somehow sanctified or certified them. The only thing the BIA certified was their vote. The

BIA has never certified that these people are Miwoks. The fact is that the BIA has certified Appellant Caballero as a Miwok by giving him a Miwok ID. See CT 674-675, Request for Judicial Notice Exhibit B thereto. See also the Court's January 24, 2020 minute order where it accepts an offer approved that not only does Caballero have his ID, but also, the whole courtroom of other Miwoks present, if called to testify, would claim that they have a BIA ID, and that the Defendants/ Respondents are excluding them from the lands. See Minute Order, Motion to Augment, Exhibit F thereto, which states in part: "The Court acknowledges that the witnesses would state that they are Miwok Indians and that they are being excluded."

In fact, the BIA has made it clear to us that it has no legal authority to investigate the claims that they are fake, imposter Miwoks who have illegally described themselves as Miwok. In fact, they are not Miwok, and are regularly excluding Miwoks from these lands. Appellant attempted to get the USA BIA to get involved in this dispute and received a letter from the regional superintendent Mr. Troy Burdick, [CT 689, Request for Judicial Notice, Exhibit H], which states:

> "There is no statute or authority that we know of that would authorize such actions on our part, nor did your client's complaint cite any authority under which we could take any such actions. As such, we are unable to act on your client's request for relief as described in the complaint."

It is actually the Respondents who are the people in the house that don't have a US BIA Miwok ID. The reason they don't have them is that they are not Miwok. That's the point of this case: non-Miwoks have taken over these lands, and are excluding true Miwoks. This is against the law. See 28 USC section 1322 and See 18 USC section 1162, two federal laws that prohibit the alienation of a Native American from Native American lands. One cannot do that, and yet these Respondents are. Their conduct in violating these two Federal statues is further evidence of the *ultra vires* nature of their conduct. Plaintiff/Appellant further cites the following allegations of the operative complaint [CTO 13, paragraphs 33 [CTO 13], 34 [CTO 13], and 82 [CTO 25]:

> "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 PLau [sic] 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.

See also Complaint, paragraph 82:

> 82. In addition, defendants intentionally disrupted the relationship between Caballero and the Indigenous Shingle Springs Miwoks and the United States Government by eliminating the Indigenous Shingle Springs Miwoks from the PLAN FOR THE DISTRIBUTION OF THE ASSETS OF THE SHINGLE SPRINGS RANCHERIA ACCORDING TO THE PROVISIONS OF P.L. 85-671, AS AMENDED BY P.L. 88-419."

Plaintiff/Appellant also invokes the rule of *Kim v. Westmoore Partners, Inc*. (2011) 201 Cal.App.4th 267, 281-282, which says a default admits as true all principal allegations [and thus asserts that for purposes of this Court's review, the above alleged facts are all true correct and admit it]:

> "We begin with the basic guidelines for analyzing the legal effect of a default. "Substantively, `[t]he *judgment by default* is said to "confess" the material facts alleged by the plaintiff, i.e., the defendant's failure to answer has the same effect as an express admission of *the matters well pleaded in the complaint.*'" (*Steven M. Garber & Associates v. Eskandarian*

(2007) 150 Cal.App.4th 813, 823 [59 Cal.Rptr.3d 1], second italics added.) The "well-pleaded allegations" of a complaint refer to "`"all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law."'" (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6 [40 Cal.Rptr.3d 205, 129 P.3d 394], quoting *Serrano v. Priest* (1971) 5 Cal.3d 584, 591 [96 Cal.Rptr. 601, 487 P.2d 1241].)"

See Separate Appendices ["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.

The foregoing makes it clear that Plaintiff/Appellant has shown a credible and solid case for *ultra vires* acts by the Defendants/ Respondents as individuals which would constitute or no which does constitute an exception to sovereign immunity and qualified or and political question immunity accordingly the court should reverse the trial courts dismissal of this action with remand instructions to allow these *ultra vires* claims as an exception to sovereign immunity and

political question matter immunity, to proceed forward on these on their substantive merits.

Accordingly, the Court should remand this case with instructions to consider and apply the exception to sovereign immunity for *ultra vires* acts, or such other remand instructions as the Court deems just and appropriate.

C. Respondents' Argument that the Trial Court Lacked Power to Decide Whether the United States Should Recognize Appellant's "True Miwok" Group *Instead of* Respondents' Allegedly "Non-Miwok" Group is Without Merit

Respondents argue that the Trial Court lacked power to decide whether the United States should recognize Appellant's "True Miwok" Group *Instead of* Respondents' allegedly "Non-Miwok" Group.

This argument is without merit for the following reasons:

As pointed out above in Argument A, the US government has never decided that the current tribal council members are the true Miwoks, and that Appellant and his tribe are not true Miwoks. The proof of that

is in the letter from Troy Burdick of the BIA in response to Appellant having submitted a similar complaint to the BIA. See April 1, 2019 letter by BIA regional Superintendent Troy Burdick, Appellants Request for Judicial Notice Exhibit H [CT 689], quoted above.

The reality is that at no time has the US BIA determined that any of the current Shingle Springs Band Tribal Council members are Miwok. In fact, they don't have Miwok IDs. Appellant's side all have Miwok IDs. See Request for Judicial Notice, Exhibit B [CT 674; Cesar Caballero's BIA ID saying he is a Miwok]; and see the Court's minute order of the proceedings, Motion to Augment Exhibit F thereto], also quoted above. If there was ever a true trial on the merit of the issue of whether or not the Miwok people are on Appellant's side or Respondent's side, Appellant would win because they already have US BIA IDs. Respondents do not, a fact that they admitted by allowing a default, and a fact that they further impliedly admitted by filing paperwork without showing any US BIA Miwok-designated ID. They did not give it, because they do not have it. See CACI jury instruction number 203 - Party Having Power to Produce Better Evidence ["You may consider the ability of each party to provide

evidence. If a party provided weaker evidence when it could have provided stronger evidence, you may distrust the weaker evidence."].

Accordingly, the judgment of dismissal should be reversed, and this case should be remanded with instructions to the Trial Court to consider the *ultra vires* nature of Respondent's conduct, on the merit, or such other remand instructions as this Court deems appropriate.

D. Respondents' Argument that the Trial Court Properly Concluded It Lacked Power to Delve Into Matters Involving Tribal Membership, Leadership and Rights to Tribal Benefits is Without Merit

Respondents argue that the Trial Court properly concluded it lacked power to delve into matters involving tribal membership, leadership, and rights to tribal benefits.

This argument is without merit for the following reasons:

Respondents attempt to hide behind the "we're just running the sovereign nation, leave us alone" aspect of sovereign immunity. The reality is what Appellant is complaining about is that they are excluding Miwok people; they are not Miwok people; they are falsely stating that they are; and they are excluding true Miwok people from

these Miwok lands. That is what Appellant's complaint is about, not about their procedures on voting.

Accordingly, the judgment of dismissal should be reversed, and this case should be remanded with instructions to the trial court to consider the *ultra vires* nature of Respondent's conduct, on the merit, or such other remand instructions as this Court deems appropriate.

E. Respondents' argument that Dismissal is also Properly Affirmed on Jurisdictional Grounds Because Appellant's Cases Rests on a Claimed Interest in Indian Lands is Without Merit

Respondents argue that dismissal is also properly affirmed on jurisdictional grounds because Appellant's cases rests on a claimed interest in Indian lands.

This argument is without merit for the following reasons:

One of the interesting aspects of Respondents' argument in this regard is that it brings us to the substantive merits of Plaintiff/Appellant's claims. That is exactly what we are requesting, that the merits of these claims be duly heard, tried, and adjudicated. So far, they haven't been,

because the Trial Courts have allowed the tribe and these tribal members sovereign immunity. This current argument by the Respondents/tribal council members should be looked upon as a waiver of sovereign immunity, because it gets to the merits of the claim. Sovereign immunity doesn't mean you can say “you can't sue me for that, and by the way I'm not guilty.” If you're going to say “I'm not guilty” that means you're in the case. This argument should be construed as a waiver of sovereign immunity and is a separate basis to permit this case on remand to be heard on the substantive merits.

At a trial on remand, Plaintiff/Appellant will establish through the evidence cited above an argument that a) the lands in question are for the Miwok people; b) that plaintiff/appellant is a member of, and represents those Miwok people; c) that Respondent/Defendants are not Miwok people, and are masquerading falsely as though they were, and are unlawfully excluding true me walks from the lands. If Appellant ever has the chance to actually prove it up in court, plaintiff Appellant is ready to do so. This argument by Respondents should be enough to get us to a trial on the merits.

Accordingly, the judgment of dismissal should be reversed, and this case should be remanded with instructions to the trial court to consider the *ultra vires* nature of Respondent's conduct, on the merit, or such other remand instructions as this Court deems appropriate.

F. Respondents' Argument that The Trial Court Correctly Found the Tribe's Sovereign Immunity Separately Barred Appellant's Claims Against Respondents, Who Were Sued for Their Acts of Governance is Without Merit

Respondents argue that The Trial Court correctly found the Tribe's Sovereign Immunity separately barred Appellant's claims against Respondents, who were sued for their acts of governance.

This argument is without merit for the following reasons:

This Argument E appears to be repetitive and redundant of Argument C. The same arguments that apply in Argument C and the same evidence of law cited in our Argument A above apply here to defeat this claim.

Accordingly, the judgment of dismissal should be reversed in this case should be remanded with instructions to the trial court to consider the *ultra vires* nature of Respondent's conduct, on the merit, or such other

remand instructions as this Court deem appropriate.

G. Respondents' argument that The Trial Court's Dismissal is Separately Supported by Appellant's Inability to Join the United States and the Tribe, Each of Which is Necessary and Indispensable and Possessing Sovereign Immunity is Without Merit

Respondents argue that the Trial Court's dismissal is separately supported by Appellant's inability to join the United States and the Tribe, each of which is necessary and indispensable and possessing sovereign immunity.

This argument is without merit for the following reasons:

The reason they respondents are so keen on joining the United States as an indispensable party is that so far, the United States' sovereign immunity has been a further cloak on the tribal immunity. The concept is you have to bring the USA into this dispute, even though Plaintiff/Appellant has zero dispute with the USA. Appellant also points out by the letter from Troy Burdick of the BIA, that they have no interest or legal authority in getting involved in this dispute.

The reason the Respondents like the United States listed as a

necessary party is that once the United States is in the case, they will move to dismiss. This happened in one related case which resulted in a hearing in which it was dismissed and is currently on appeal to the US Ninth Circuit Court of Appeals.

In the First Amendment of the United States Constitution [Attached in Compendium of Federal Authority, item 5], we all share a right and all that imposes an obligation on the government to allow everybody to petition the government for redress of grievances. See *California Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 513 (1972) [Attached in Compendium of Federal Authority, item 6]:

> "Petitioners, of course, have the right of access to the agencies and courts to be heard on applications sought by competitive highway carriers. That right, as indicated, is part of the right of petition protected by the First Amendment."

See also corollary provisions of the California State Constitution Article 1, Section 3:

“(a) The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good.

(b) (1) The people have the right of access to information concerning the conduct of the people’s business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

(2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people’s right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

(3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning

the official performance or professional qualifications of a peace officer.

(4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that a person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided in Section 7.

(5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings of public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.

(6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions; nor does it affect the scope of permitted discovery in judicial or administrative proceedings

> regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses."

This means that you cannot just flat out bar a person from gaining access to court. To do so would require a violation of this First Amendment Right, and the current case where there is zero dispute that they have no legal authority in to do anything about this dispute.

To eliminate Plaintiff/Appellant's First Amendment right to petition the court for redress of grievances, is itself a constitutional violation, and should not be allowed. The state court rules defining necessary party must give way to the supremacy of the US Constitution's right of access to courts, a right secured in the right to petition the government for redress of grievances.

Accordingly, the judgment of dismissal should be reversed in this case should be remanded with instructions to the trial court to consider the *ultra vires* nature of Respondent's conduct, on the merit, or such other remand instructions as this Court deems appropriate.

II.
CONCLUSION

Non-Miwoks claiming Miwok sovereignty over lands expressly designated for Miwoks, and who exclude true Miwoks *en masse* are acting outside the law; outside the stated legislative intentions [two public laws], outside the land title documents given and issued by the US BIA; outside of the descriptions by the BIA given to the US House of Representatives; outside the similar description given to the California State Senate; collectively adds up to *ultra vires* action run amuck. It is time for the judicial branch to step in where the executive branch [the US BIA] and legislative branch will not. This is a land theft that cries out for proper justice.

Based on the foregoing, this Court should reverse the judgment of dismissal issued by the Trial Court and should remand this matter with instructions to the Trial Court to consider the *ultra vires* nature of Respondents' conduct, on the merits, or such other remand instructions as the court deems appropriate. The Trial Court should be ordered to proceed with the default damage prove-up hearing.

Respectfully Submitted,

_//s// Herman Franck, Esq.____ Date: May 24, 2021
HERMAN FRANCK, ESQ.
Attorney for Appellant
Cesar Caballero

CERTIFICATE OF COMPLIANCE WITH RULE 8.204

I, Herman Franck, Esq., certify that according to the computer's word count program, this brief has 5,349 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: May 24, 2021
HERMAN FRANCK, ESQ. (SB#123476)

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 E-serve or first-class mail postage prepaid, the following documents:

1. Appellant's Reply Brief
2. Compendium of Federal Authority in Support of Reply Brief
3. Renewed Request for Judicial Notice or to Permit Further Evidence on Appeal

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

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Civil Division
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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 May 24, 2021.

//s// Elizabeth Betowski
_____
Elizabeth Betowski