IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

CESAR CABALLERO, Appellant, v. REGINA CUELLER; ALLAN CAMPBELL; PAT CUELLER; BRIAN FONSECA; NICHOLAS H. FONSECA; ANNIE JONES; JESSICA GODSEY OLVERA; JACKY CALANCHINI; DOES 1-20 INCLUSIVE, Respondents.	Court of Appeal Case No. C091774 Trial Court Case No. PC20190492

On Appeal from El Dorado Superior Court
Honorable Hon. Judge Dylan Sullivan

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

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Respondents are the elected and appointed members of the governing body of the Shingle Springs Band of Miwok Indians ("Tribe"), a sovereign tribe the United States unequivocally recognizes,[1] and for which it set aside federal trust land known as the "Shingle Springs Rancheria (Verona Tract)" nearly 100 years ago. Appellant is Cesar Caballero, an individual the Tribe has fought in litigation for over a decade, in the context of two federal suits and now this state court action. In all of these lawsuits, Mr. Caballero has laid claim to the Tribe's land and its treasury, and even its federal recognition, asserting the United States has recognized the wrong group of people as the Tribe because, he asserts, he is a "true Miwok" and the Tribe's citizens are not. Every one of Mr. Caballero's lawsuits, including this one, was properly dismissed on jurisdictional grounds.

In this suit, Appellant claims the Tribe's sovereign status was fraudulently obtained, and that its leaders (Respondents) are imposters (Blackfoot, Tainos and Hawaiians posing as Miwoks), who somehow hoodwinked the federal government into recognizing their Tribe, in place of the "true Miwoks" of which Mr. Caballero counts himself. Respondents' Second Motion to Augment the Record ("SMA") 13, 15, 18, 23, 28-29 (Plaintiff's (Appellant's) Complaint ("Cmplt") ¶¶ 10, 17, 32, 49, 73). Appellant further claims the assets the Tribe controls and possesses — including the federal trust land on which the Tribe built a casino with

[1] *See* 1 Clerk's Transcript ("CT") 174 (Defendants' (Respondents') Request for Judicial Notice in Support of Motion to Quash ("Def.'s RFJN"), Ex. A, 84 Fed. Reg. 1200, 1203 (Feb 1, 2019) (listed among "tribal entities" as the "Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California").)

federal approval and state sanction through a legislatively-ratified Tribal-State Compact — actually belong to him and the "true Miwoks" in his group. SMA 15-16, 21 (Cmplt, ¶¶ 17-18, 21, 41).

This lawsuit is a virtual repeat of what Appellant filed in federal court, without success, a decade ago. 2 CT 420-30, 432-34 (Def.'s RFJN, Exs. P, Q). Having failed to convince the federal court that he can challenge the United States' recognition of the Tribe, and lay legal claim to its benefits (trust land and casino revenues), 2 CT 432-34 (Def.'s RFJN Ex. Q), Mr. Caballero thereafter took his grievance to California state court. This time, however, Mr. Caballero has sued Tribal officials instead of the Tribe, supposedly in their personal capacities. SMA 18 (Cmplt, ¶¶ 31, 33). Appellant claims the individuals he has sued, all of whom were elected to govern the Tribe, somehow injured him under state law by disrupting his "true Miwok" group's relationship with the United States, and "[taking] control of the federal recognition of the 'Shingle Springs Band of Miwok Indians'" (SMA 84, 96 (Cmplt, ¶¶ 84, 96)), and the benefits "only available to members of federally recognized tribes…" SMA 30, 33-34 (Cmplt, ¶¶ 80, 92). *See also id.* 21, 22, 24, 30-31, 33-34 (Cmplt, ¶¶ 41, 49, 54-55, 73, 80-86, 92-96). He claims these Tribal officials, by their service to the Tribe, continue to harm him, by posing as leaders of the "true Miwok tribe," when they are really "fake" Miwoks, and thus allegedly ineligible to govern the entity they were elected to represent.[2] SMA 15, 30-31, 34 (Cmplt, ¶¶ 17, 81, 93).

[2] Although it is irrelevant here, the Tribe makes no secret of its citizenry's mixed ancestry, noting on its website that the Tribe's people are of Miwok or Maidu ("Nisenan") descent. *See* https://www.shinglespringsrancheria.com/history/.

Appellant indicates he sued the Tribe's officials because he cannot sue the Tribe, which he concedes is immune to suit. SMA 18 (Cmplt, ¶ 31). The trial court properly dismissed his complaint on jurisdictional grounds.

Four months after that January 2020 dismissal, Appellant filed another lawsuit, this time in federal court. In this "quiet title action," Appellant laid claim to the Tribe's lands on the same general theory presented to the trial court in this case. *See* Respondents' Request for Judicial Notice ("Respondents' RFJN"), Ex. A (federal lands complaint). Before the Tribe could even intervene, the United States moved to dismiss the case on jurisdictional grounds. The federal court granted the motion, dismissing and entering judgment in November 2020. *Id*., Ex. B. Appellant has appealed.

What Mr. Caballero hopes to gain in these various lawsuits is a mystery. No court has the power to adjudicate his dispute, let alone grant the relief he seeks, which is to provide him and his "true Miwoks" control of the Tribe's federally-recognized status, government, lands and treasury. To award such relief would, according to Mr. Caballero's complaint, require the court to declare that (1) the United States improperly recognized a tribal group consisting of "non-Miwoks" as the "Shingle Springs Band of Miwok Indians"; (2) the alleged imposter Tribe is thus illegally using the Shingle Springs Rancheria to operate a casino; (3) the federal recognition that the Shingle Springs Band possesses, and the trust land that it uses for its benefit, actually belongs to a group consisting of "true Miwoks" to whom Mr. Caballero claims he belongs; and (4) the individual Respondents governing the Tribe must be "ousted," with rights of leadership, governance and membership turned over to Mr. Caballero and his group. SMA 30-35

(Cmplt, ¶¶ 80-98). These issues are simply beyond the judiciary's province to resolve, and the requested relief beyond its power to grant.

Jurisdictional defects aside, Mr. Caballero's race-based theory — that the Tribe's federal recognition turns on the Miwok blood of its citizenry — rests on pure fallacy. Indian tribal governments are political entities, and the federal benefits they enjoy arise out of that political relationship, regardless of whether their people are of a particular ethnicity. Indeed, when the United States set aside lands for homeless Indians in California in the early 1900s, it often did so without regard for tribal affiliation. This may explain why a group of homeless Indians who were assigned an El Dorado County parcel called the "Shingle Springs Rancheria (Verona Tract)" — a group of Indians from Sacramento and Verona and then known as the "Sacramento-Verona Band of Homeless Indians" — possess different native ethnicities, primarily Miwok and Maidu ("Nisenan"). But this reality has no relevance to the Tribe's political relationship with the United States. Nor does Mr. Caballero's own Miwok ancestry matter to whether he is entitled to be recognized, enrolled in the Tribe, govern it, or lay claim to its land and benefits.[3]

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[3] Appellant — "the Governor of the true Miwoks" (SMA 16 (Cmplt, ¶ 21) — may be surprised to learn there are actually 11 federally-recognized tribes in California that claim Miwok (also spelled Mi-Wuk, Me-Wuk, or Miwuk) heritage. Another 8 Miwok tribes are not yet federally recognized, and one is currently petitioning for recognition under the Part 83 process. *See* https://www.bia.gov/as-ia/ofa. As the federal court made clear when dismissing Appellant's first federal suit, his grievance is with the United States, not the Tribe or its people (*see* 2 CT 467, 473-74, 477-79 (Def.'s RFJN, Ex. W, Federal Hearing Transcript at 7:4-7, 13:9-14:9-10, 17:4-19:4); 2 CT 517 (Def.'s RFJN, Ex. AA, at 5:15-23)), and nothing prevents him from seeking federal recognition for his own "tribe" pursuant to established processes. *See generally* 25 C.F.R. part 83; *Agua Caliente Tribe of Cupeno Indians of Pala Reservation v. Sweeney*, 932 F.3d 1207

Not surprisingly, the trial court correctly found that it lacked power to grant Mr. Caballero the relief he seeks, dismissing the complaint with prejudice. This Court should affirm.

II. HISTORICAL AND PROCEDURAL BACKGROUND

Although bedrock law bars Mr. Caballero's claims, it is helpful to place them in historical context, with an understanding of the federal policy related to the creation of Rancherias, and more particularly, how those lands were settled and California tribal groups recognized.

A. The Diaspora of California Tribes And Creation of Rancherias

The federal government's acquisition of lands in the early 1900s for homeless Indians — including those living in Sacramento, Verona and El Dorado County — was intended to provide some recompense for the disastrous history of federal and state relations with Indians in California. 1 CT 179 (Def.'s RFJN, Ex. B, 103 S. Rep. No. 340, at *3 (1994)). The U.S. policy regarding the California tribes has long recognized they differed from the tribes of the eastern states. *See The Indians of California v. United States*, 98 Ct. Cl. 583, 591-592 (1942). In part because of the unique nature of California tribes, but mostly due to the crush of lawless and uncontrolled migration into the state by miners and others, federal Indian policy in California was for many years a well-documented failure. *See id.*, 98 Ct. Cl. at 587, 591-93. While the President's agents negotiated treaties in the 1850s to provide for a "just and equitable settlement with the Indians of California" (1 CT 179 (Def.'s RFJN, Ex. B, 103 S. Rep. No. 340,

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(9th Cir. 2019) (detailing procedural path to recognition and judiciary's role).

at *2)), the Indians complied with their treaty obligations by ceding vast tracts of land, only to discover, some eighty years later, the Senate had refused to ratify them. 1 CT 179 (Def.'s RFJN, Ex. B, at **2-3); 1 CT 64-65, Robert F. Heizer, THE EIGHTEEN UNRATIFIED TREATIES OF 1851-1852 BETWEEN THE CALIFORNIA INDIANS AND THE UNITED STATES GOVERNMENT, pp. 4-5 (1972)). Thereafter, "no further governmental effort was made to negotiate treaties with the Indians of California," and instead, the "limited rights in land as the Indians of California now possess and enjoy were given to them by Acts of Congress, special and general, by purchase and by Executive Orders of the President . . . under the supervision and control of agents and other employees of the Indian Bureau, Department of the Interior." 98 Ct. Cl. at 589.

This policy's implementation is at the heart of the Tribe's recognition by the Department of Interior ("DOI"). The federal government's devastating breach of faith had resulted in the wholesale dispersion of Indians from their ancestral villages to remote sites where they lived in poverty and without federal protection against depredation by settlers, forcing removal from their makeshift homes. As redress, Congress authorized appropriations in the early 1900s to purchase "Rancherias" for "landless California Indians." 1 CT 189 (Def.'s RFJN, Ex. C, Rancheria Act, Pub. L. No. 85-671, 72 Stat. 619 (1958)); 1 CT 390 (Def.'s RFJN, Ex. D, Amendment to Rancheria Act, Pub. L. No. 88-419, 78 Stat. 390 (1964)). These homeless Indians came to occupy the Rancherias, sometimes by formal and informal "assignment" and often without regard to tribal affiliation.[4]

[4] *See* 3 CT 623 (Def.'s RFJN, Ex. II, 85 S. Rep. No. 1874, at 3 (1958)); *see also Kelly v. United States*, 339 F. Supp. 1095, 1100 (E.D. Cal. 1972)

The Shingle Springs Rancheria was purchased with those funds in 1920 (pursuant to the June 21, 1906, and April 30, 1908, Congressional appropriations for the Indians of California, 1 CT 196-199, 257-263; 2 CT 339 (Def.'s RFJN, Exs. E, F, L), and the people of the Sacramento-Verona Band of Homeless Indians (the ancestors of the Tribe's present-day citizenry) were given stewardship over a 160-acre rancheria named after the nearest town, "Shingle Springs." SMA 74-75 (Declaration of Regina Cuellar ("Cuellar Dec."), ¶¶ 4-5); 1 CT 291 (Def.'s RFJN, Ex. H, 44 Fed. Reg. 7235, 7236 (Feb .6, 1979) ("Shingle Springs Rancheria (Verona Tract) of Miwok Indians, California")); *and see* 1 CT 287; 296 (Def.'s RFJN, Exs. G, I). That the DOI did not subject them to some ethnocentric test of "tribalness" or ethnic purity was a reflection of its then treatment of California Indians, and understanding of their communities. A contiguous parcel, consisting of 80 acres and called the El Dorado Tract, was acquired for another group of Indians.[5]

(Rancheria Act had nothing to do with distributing assets to persons of tribal affiliation, but rather, to Indian people using or assigned rancheria); *and see Artichoke Joe's California Grand Casino v. Norton*, 278 F. Supp. 2d 1174, 1176 (E.D. Cal. 2003) (noting rancheria occupied by Indian people of different tribal affiliation).

[5] In an abrupt reversal of federal policy some 50 years later, Congress moved to terminate the trust relationship between the United States and California rancherias and the Indians who lived there. 1 CT 189-91 (Def.'s RFJN, Ex. C, Pub. L. No. 85-671, 72 Stat. 619 (1958)); 1 CT 193-94 (Def.'s RFJN, Ex. D, Amendment to Rancheria Act, Pub. L. No. 88-419, 78 Stat. 390 (1964)). Termination could only occur with the Rancheria Indians' consent, and by the government's adherence to certain procedural and substantive requirements. *Id*. It was this policy's implementation that saw termination of the contiguous El Dorado Tract (which Appellant referenced in the federal lawsuit he filed but omits here). 1 CT 300; 2 CT 304-05 (Def.'s RFJN, Ex. J, Countersuit, ¶¶ 17, 33-35, 40-41). Unlike the Indians assigned the Shingle Springs Rancheria's Verona Tract, the people

B. The Pursuit of Economic Development on the Shingle Springs Rancheria

By 1980, the Sacramento-Verona Band that remained on the Shingle Springs Rancheria (comprised of Miwok and Maidu ("Nisenan") Indians) changed its name to the "Shingle Springs Band of Miwok Indians." 1 CT 296 (Def.'s RFJN, Ex. I, 45 Fed. Reg. 27828, 27830 (April 24, 1980)). For many years, the Shingle Springs Rancheria was effectively landlocked, without public access enabling any economic development, and its people lived in deep poverty, depending on federal subsistence. SMA 80 (Cuellar Dec. ¶ 20). The Tribe thereafter endeavored to solve the access problem, ultimately working with the United States and State of California to construct a single-purpose interchange connecting the reservation to public roadways. After defeating years of litigation challenging the interchange, the Tribe built the needed access road, and opened a gaming facility in December 2008. SMA 80 (Cuellar Dec., ¶ 20).

C. The Federal Court Trademark Litigation Against Cesar Caballero

On the brink of opening its Red Hawk Casino, the Tribe discovered one Cesar Caballero had begun holding himself out as the "Chief" of the "Shingle Springs Band of Miwok Indians," its federally-registered name. SMA 80 (Cuellar Dec., ¶ 20); 2 CT 421 (Def.'s RFJN, Ex. P). Despite the Tribe's requests (SMA 29 (Cmplt, ¶ 70)), he refused to stop, and the Tribe sued him for federal trademark infringement (among other claims) for his fraudulent use of the Tribe's federally-recognized name. SMA 80 (Cuellar Dec., ¶ 20). Mr. Caballero responded with a countersuit, asserting he

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affiliated with the El Dorado Tract voted to terminate in return for the land in fee. *Id.*; SMA 75-77 (Cuellar Dec., ¶¶ 6-10); 2 CT 328-332, 417-418 (Def.'s RFJN, Exs. K-O).

owned the Tribe's name. 1 CT 298-300; 2 CT 302-26 (Def.'s RFJN, Ex. J (Countersuit)). Although couched in different terms, those claims rested on the same essential facts alleged here, namely that:

- The Tribe usurped the name "Shingle Springs Band of Miwoks" for its own purposes (2 CT 308, 311 (Def.'s RFJN, Ex. J, Countersuit, ¶¶ 19, 27); *compare* SMA 13, 15 (Cmplt, ¶¶ 10, 18);

- Respondents and their fellow citizens are neither Miwok nor indigenous to the Shingle Springs area, and have ancestors of different ethnicities (2 CT 308, 311 (Def.'s RFJN, Ex. J, Countersuit, ¶¶ 19, 27 (Maidu and Hawaiian)); *compare* SMA 13, 14 (Cmplt, ¶¶ 10, 13-15, 32, 49 (Hawaiian, Tainos and Blackfoot));

- The Tribe (now through Respondents) duped the United States, the State, the County of El Dorado, and others into believing they "were Miwok Indians indigenous to the Shingle Springs area…", or "true Miwoks," so they could claim the right to use federal land (Shingle Springs Rancheria) upon which they now operate a casino (2 CT 308 (Def.'s RFJN, Ex. J, Countersuit, ¶ 17); *compare* SMA 13, 23, 24 (Cmplt, ¶¶ 10, 49, 55));

- The Tribe (now Respondents) wrongfully removed Mr. Caballero's ancestors from a "distribution plan" of Rancheria assets prepared in connection with the United States' failed efforts to terminate the Verona Tract in the 1960s, and thus, are being denied "Federal Benefits" allegedly stemming from tribal membership (2 CT 313, 315 (Def.'s RFJN, Ex. J, Countersuit, ¶¶ 42, 50); *compare* SMA 34 (Cmplt, ¶ 93)); and

- Mr. Caballero and other descendants of the "indigenous" or "true" Miwoks have been denied a beneficiary interest in Indian land owned by the United States, and held for the Tribe's benefit, and as a result, the revenues from a casino operating on that land. (2 CT 306, 322, 323 (Def.'s

RFJN, Ex. J, Countersuit, ¶¶ 8, 89, 97); *compare* SMA 32, 35, 40 (Cmplt, ¶¶ 88, 98, 115)).

The federal court dismissed Mr. Caballero's counterclaims, with prejudice, in May 2009, finding it lacked jurisdiction on eight distinct grounds. 2 CT 432-34 (Def.'s RFJN, Ex. Q). Among them: The Tribe's sovereign immunity barred the suit, as did the immunity of the United States, which was a necessary and indispensable party to any suit challenging its recognition actions and trust land beneficiaries. The court also found the Tribe's federal recognition was a non-justiciable political question, and that the tribal membership Appellant essentially sought turned on tribal law beyond the province of any court. Finally, the court found the lawsuit was time-barred, as Mr. Caballero had been aware of the Tribe's federal recognition for over 30 years. 2 CT 433 (Def.'s RFJN, Ex. Q). Appellant failed to properly appeal the dismissal.[6]

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[6] The Tribe filed the trademark action that elicited Mr. Caballero's countersuit to protect its valuable name from his misappropriation. The litigation would span a decade, and take a criminal turn when Appellant diverted the Tribe's governmental mail to his own address with a change of address form provided the U.S. Postal Service. After this mail theft (for which Mr. Caballero was convicted and served prison time), the federal court enjoined his fraudulent conduct, finding the Shingle Springs Band was likely to win its trademark suit, and issuing injunctions that Mr. Caballero would repeatedly defy, landing him in jail for contempt. 2 CT 436-88 (Def.'s RFJN, Exs. R-Y). On appeal, the Ninth Circuit reversed the grant of summary judgment for the Tribe, finding it had to show Mr. Caballero used its marks "in commerce" (for profit). At this point, the Tribe moved to dismiss its suit in order to establish its superior trademark rights in a pending but stayed administrative process before the U.S. Trademark Trial and Appeal Board. 2 CT 490-509 (Def.'s RFJN, Ex. Z). The court dismissed the case, despite a motion to intervene by a group apparently affiliated with Mr. Caballero. 2 CT 511-585 (Def.'s RFJN, Ex. AA-CC). For a fuller history of the federal case, the Court is referred to the Tribe's motion to voluntarily dismiss its trademark suit. 2 CT 497-502 (Def.'s RFJN, Ex. Z, at 4-9).

D. Respondents' Motion to Quash/Dismiss, The Trial Court's Ruling And Mr. Caballero's Appeal

The same jurisdictional deficiencies requiring dismissal of Mr. Caballero's federal countersuit infect his state court complaint. Therefore, Respondents raised each of those defenses in support of its motion to quash/dismiss.[7]

The trial court granted the motion, dismissing the complaint with prejudice on several of the grounds presented. 3 CT 770-71 (Super. Ct. Order); SMA 85-106 (Tentative Ruling). Specifically, the trial court rightly found it lacked power to evaluate Appellant's claim that he and the "true Miwoks" were entitled to be enrolled within the Tribe, elected to the Tribal Council, given control of the Tribe's lands and allowed to personally profit from those lands. SMA 94-99 (Tentative Ruling at 14-19.). The court correctly reasoned that such internal tribal matters depended on tribal law and were beyond the jurisdictional reach of the courts. *Id.* Addressing another defense Respondents raised, the trial court concluded the Tribe's sovereign immunity separately barred jurisdiction on the ground that Appellant's complaint did not raise "garden variety torts" for which tribal officials might be personally liable, but rather, challenged Respondents' acts of tribal governance for which they are immune. SMA 99-104 (Tentative Ruling at 19-24.)

Curiously, on appeal, Appellant addresses the sovereign immunity

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[7] The hybrid motion to quash/dismiss is the proper procedural vehicle to challenge a state court's power to hear a case where tribal sovereignty is implicated. *See Brown v. Garcia*, 17 Cal. App. 5th 1198, 1204 (2017), citing *Boisclair v. Superior Court*, 51 Cal. 3d 1140, 1144 n.1 (1990).

aspect of the trial court's ruling (Appellant's Br. 39-50), but not any of the other bases upon which the trial court rested its dismissal. Instead, rather than addressing the court's finding that it lacked power to hear challenges to tribal membership, election, and governance decisions, Appellant appears to challenge a ruling the trial court did not make, arguing the court possesses jurisdiction over "this non-quiet title action" and striving to distinguish *Boisclair*, 51 Cal. 3d 1140. *See* Appellant's Br. 50-54; *see also id.* at 36-37 (stating issues on appeal).

Putting aside what appears to be Appellant's waiver of argument as to a material and dispositive aspect of the trial court's ruling, Respondents respectfully submit that all of the bases presented in their motion to quash/dismiss support affirmance here. Each is addressed below.

III. STANDARD OF REVIEW

Where jurisdiction is challenged on the basis of tribal sovereignty, the court should look beyond the allegations, and engage in sufficient pretrial factual and legal determinations to "satisfy itself of its authority to hear the case" *Brown*, 17 Cal. App. 5th at 1204, quoting *Great Western Casinos, Inc. v. Morongo Band of Mission Indians* 74 Cal. App. 4th 1407, 1418 (1999). "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 [] *de novo* review." *Brown*, 17 Cal. App. 5th at 1203 (citations omitted). Even where a trial court makes factual determinations as to conflicting extrinsic evidence, those determinations are reviewed for substantial evidence." *Id.* The appellate court also independently evaluates "the trial court's

conclusions as to the legal significance of the facts." *Id.*, citation omitted. The trial court's decision can be affirmed on any correct theory. *Id.*, citing *J.B. Aguerre, Inc. v. American Guarantee & Liability Ins. Co.*, 59 Cal. App. 4th 6, 15-16 (1997).

IV. ARGUMENT

The trial court's dismissal is properly affirmed on each of the grounds set forth below.

A. 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.

The very premise of Appellant's case against Respondents is that the United States has recognized the wrong group of people as the Shingle Springs Band of Miwok Indians. More specifically, Appellant claims the United States intended to recognize, and set aside lands for, a group of "true Miwoks," not the non-Miwok group that has used the Shingle Springs Rancheria with federal sanction for decades. SMA 13 (Cmplt, ¶10). Inexplicably, the trial court allowed Appellant to sidestep this jurisdictional problem by accepting his bare assertion that he did not challenge the Tribe's recognition. SMA 94 (Tentative Ruling at 14). But the reality is Appellant's complaint put the matter at issue, and indeed drives his theory that Respondents wrongfully denied the "true Miwoks" rights to land and profits. Appellant's Br. 12, 42. Such judicial inquiries are simply impermissible.

Over a century ago, the U.S. Supreme Court underscored the

absence of judicial power over political acts of the United States, and confirmed that such acts included which tribal groups the United States chose to recognize as sovereign:

> It is the rule of this Court to follow the action of the executive and other political departments of the government, whose more special duty it is to determine such affairs. *If by them certain Indians are recognized as a tribe, this court must do the same*.

United States v. Holliday, 70 U.S. 407, 419 (1865) (emphasis added). That venerable principle lives today, reflected in an unbroken line of cases. *See Baker v. Carr*, 369 U.S. 186, 215-16 (1962) (noting "the status of Indian tribes" are among those questions considered political in nature, and non-justiciable); *James v. Dep't of Health & Human Services*, 824 F.2d 1132, 1137 (D.C. Cir. 1987) ("If the Executive Branch determines that a tribe of Indians is recognized, that decision must be respected by the Judicial Branch."). Thus, "[i]n the absence of explicit governing statutes or regulations," the courts "will not intrude on the traditionally executive or legislative prerogative of recognizing a tribe's existence." *Price v. State of Hawaii*, 764 F.2d 623, 628 (9th Cir. 1985) (citations omitted).) Indeed, "[n]o congressional or executive determination of tribal status has been overturned by the courts." Felix Cohen, COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, § 3.02 (2019).[8]

[8] The prevalence of the political question doctrine within Indian affairs stems, in part, from the constitutional and historical placement of such matters in the exclusive domain of the legislative and executive branches. *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 343 (1998) ("Congress possesses plenary power over Indian affairs, including the power to modify or eliminate tribal rights."); U.S. CONST. art. I, § 8, cl. 3. In turn, Congress has delegated management and regulation of Indian affairs to the Executive Branch. 25 U.S.C. §§ 2, 9; 43 U.S.C § 1457; *Zarr v. Barlow*,

According to Mr. Caballero's complaint, Respondents disrupted his group's relationship with the United States by taking "control of the federal recognition", and as a consequence, denying Appellant's group the benefits that come "as a direct result of that federal recognition," including control of the Tribe's sovereign land and, of course, gaming rights. SMA 30, 33-34 (Cmplt, ¶¶ 80, 92). However, no court can question which groups the United States should recognize, let alone, whether Appellant's "true Miwoks" should possess that status over Respondents' group, with the associated right to benefit from the sovereign land held in federal trust. This, however, is the crux of Mr. Caballero's case. While he has tried to plead and argue around the problem (SMA 19 (Cmplt, ¶¶ 34-35); Appellant Br. 7, 43), the relief Appellant seeks cannot be granted without a court deciding that (1) the "true Miwoks" should have been recognized as the tribal entity entitled to use Shingle Springs Rancheria; in place of, 2) Respondents' group, the recognized sovereign government for which the United States holds the Rancheria in trust. *See* 1 CT 174 (Def.'s RFJN, Ex. A, 84 Fed. Reg. 1200, 1203 (Feb 1, 2019) (recognizing "Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California")); SMA 74-75 (Cuellar Dec., ¶¶ 1-4).

While the trial court declined to embrace this jurisdictional defense, SMA 94 (Tentative Ruling at 14), it remains an independent basis

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800 F.2d 1484, 1489 (9th Cir. 1986); *Cherokee Nation of Oklahoma v. Babbitt*, 117 F.3d 1489, 1503 (D.C. Cir. 1997); *United Shawnee Indians v. United States*, 253 F.3d 543, 550-51 (10th Cir. 2001). Courts grant deference to such decisions based upon this broad congressional power. *Western Shoshone Business Council v. Babbitt*, 1 F.3d 1052, 1057 (10th Cir. 1993).

supporting affirmance. Appellant takes issue with whom the United States recognizes, and for whom it provided land and benefits — to wit, the Shingle Springs Band of Miwok Indians *as constituted*. Appellant could only secure the relief he seeks by proving his "true Miwok" group was the intended beneficiary of the United States' recognition, and thus entitled to the benefits inuring from that recognition. SMA 30, 33-34 (Cmplt, ¶¶ 80, 92). These are quintessential political questions, which, as separately confirmed in Appellants' two (now dismissed) federal lawsuits, are beyond the jurisdictional reach of any court.

B. The Trial Court Properly Concluded It Lacked Power To Delve Into Matters Involving Tribal Membership, Leadership And Rights to Tribal Benefits.

Hardly a model of clarity, Appellant's complaint appears to not only challenge the alleged "non-Miwok" group's recognition and concomitant right to control and use the Shingle Springs Rancheria. Appellant *also* appears to claim Appellant's "true Miwoks" are the true members of the Shingle Springs Band of Miwok Indians, entitled to govern, and to share in its profits. SMA 15, 30-31, 34, 40 (Cmplt, ¶¶ 17, 81, 93, 115). This theory would require the court to invade other impermissible territory — namely, who is eligible to be enrolled in a tribe, who is qualified to govern, and who may use its Indian trust land and collect benefits. The trial court agreed and dismissed on this basis as well. While Appellant's Opening Brief references this portion of the trial court's ruling, and even quotes from it, Appellant's Br. 36, 39, Appellant makes no argument as to why the trial court erred. *Id*., at 39-40. Nonetheless, Respondents address it here, as it constitutes an additional basis for dismissal.

Appellant claims only he and the "true Miwoks" may belong to the tribal entity for which the Shingle Springs Rancheria (Verona Tract) was set aside in 1920, and only those Miwoks may govern it. SMA 15, 16 (Cmplt, ¶¶ 17, 21). His complaint literally asked the trial court to compel Respondents to take a "DNA test to prove once and for all whether or not they have Miwok blood," SMA 14 (Cmplt, ¶ 16), or to "step aside and allow only Miwok-blooded tribespeople to control the tribal council." SMA 42 (Cmplt, Prayer, ¶ 4(a)). The position is absurd, and in any event, contrary to the Tribe's law governing membership, which instead requires descendancy from persons on the United States' 1916 Census Roll for the Sacramento-Verona Band of Homeless Indians (as further clarified with reference to a 2016 base roll tied to the 1916 census). *See* SMA 75-76, 79 (Cuellar Dec., ¶¶ 6, 17); 2 CT 589 (Def.'s RFJN, Ex. DD). While some of the Tribe's members are, in fact, Miwok, nothing in the Tribe's law deems "Miwoks" *per se* eligible to enroll. *Id*. Of course, no court may adjudicate internal matters involving tribal membership and governance anyway, let alone claims that require the construction and application of Tribal law.[9]

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[9] Appellant cites his "BIA ID Card" (or "Certificate Degree of Indian Blood" (CDIB)) as proof of his membership rights (SMA 16, 19-21 (Cmplt, ¶¶ 21, 39-41)), mistakenly conflating federal Indian status with tribal membership. *See United States v. Bruce*, 394 F. 3d 1215, 1222, 1225 n.6 (9th Cir. 2005) (federal Indian status distinct from tribal membership, noting "unenrolled Indians are eligible for a wide range of federal benefits"); *and see Davis v. United States*, 199 F. Supp. 2d 1164, 1174 (W.D. Okla. 2002) ("When determining whether an individual CDIB applicant is entitled to receive a CDIB [card], the BIA does not rely upon whether the applicant is a member of an Indian tribe. There are persons of Indian blood who are not enrolled members of an Indian tribe."). Appellant's CDIB matters not to his right to be within the Tribe (or any tribe), which is an issue governed by tribal law. SMA 78-80 (Cuellar Dec., ¶¶ 16-19).

As the U.S. Supreme Court determined over thirty years ago, the judiciary may not interfere in matters involving tribal membership because "[e]ach tribe has the right to define its own membership for tribal purposes." *Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 72 n.32 (1978). Indeed, "the authority to determine questions of [a tribe's] own membership" is one of a sovereign tribe's "most basic powers." *Bruce*, 394 F.3d at 1225. On the basis of these broad principles of tribal sovereignty, a litany of state and federal courts have consistently declined invitations to interfere in membership disputes under the guise of state or federal law. *Lamere v. Superior Court,* 131 Cal. App. 4th 1059, 1061 (2005) ("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" (citations omitted)); *Lewis v. Norton*, 424 F.3d 959, 960 (9th Cir. 2005) (dispute over tribal benefits "cannot survive the double jurisdictional whammy" of sovereign immunity and lack of jurisdiction to intervene in tribal membership disputes); *Smith v. Babbitt*, 100 F. 3d 556, 559 (8th Cir. 1996), *cert. denied*, 522 U.S. 807 (1997) ("there is perhaps no greater intrusion upon tribal sovereignty" than judicial interference in membership disputes. Citations omitted).

Corollary to the power to determine their own membership, Indian tribes are sovereign political entities with the exclusive authority to develop their own laws and govern their own internal affairs. *Williams v. Lee*, 358 U.S. 217, 223 (1959). Thus, courts also cannot grant relief for civil claims predicated on the violation of tribal laws. *Boe v. Fort Belknap Indian Community of Fort Belknap Reservation*, 642 F. 2d 276, 276-77 (9th Cir. 1981). Rather, Indian tribes' "inherent and exclusive power over matters of internal tribal governance" deprive courts of jurisdiction to entertain claims

requiring them to interpret and apply tribal law. *Timbisha Shoshone Tribe v. Kennedy*, 687 F. Supp. 2d 1171, 1184-85 (E.D. Cal. 2009); *Boe*, 642 F. 2d at 276-78; *In re Sac & Fox Tribe of the Miss. in Iowa / Meskwaki Casino Litig.*, 340 F. 3d 749, 763-64 (8th Cir. 2003); *Runs After v. United States of America*, 766 F. 2d 347, 352 (8th Cir. 1985) (a claim that would "necessarily require the district court to interpret the tribal constitution and tribal law . . . is not within the jurisdiction of the district court").

Like membership issues, a "challenge to the authenticity of the current tribal government" — as Appellant puts it in his pleading (SMA 26 (Cmplt, ¶ 64)) — is another internal tribal matter no court may resolve. Appellant tries to save his case by invoking state torts to allege the Tribe's "governing board" caused him harm under state law, because, he says, they acted outside the course and scope of their duties as Tribal officials (apparently because they are allegedly non-Miwok). SMA 18, 19, 23 (Cmplt, ¶¶ 31, 33, 49). Bare allegations aside, the effort fails because Appellant's claims "necessarily require the [] court to interpret the tribal constitution and tribal law." *Runs After*, 766 F. 2d at 352. Specifically, the trial court would have to resolve whether Appellant qualifies for membership, and whether Respondents, the Tribe's governing body, were properly elected. SMA 18, 19, 23, 24, 26 (Cmplt, ¶¶ 32, 34, 49, 55, 64). Such Tribal law issues are wholly beyond any court's reach, and invoking state tort law cannot create jurisdiction where it fails to exist. *See Brown*, 17 Cal. App. 5th at 1207 (no jurisdiction to adjudicate state law claim arising out of tribal membership dispute); *Timbisha Shoshone*, 687 F. Supp. 2d at 1184, 1192 (no jurisdiction to grant relief in membership and leadership dispute on various state law theories); *In re Sac & Fox*, 340 F.3d

at 763-64 (no jurisdiction to hear state law trespass claim in tribal leadership dispute).

C. Dismissal Is Also Properly Affirmed On Jurisdictional Grounds Because Appellant's Case Rests On A Claimed Interest In Indian Lands.

Notably, the very first paragraph of Appellant's complaint doomed his case jurisdictionally. Appellant admits the land in which he claims an interest, and from which he seeks "profit share" (SMA 40 (Cmplt, ¶ 115)), is Indian land—"specially deeded by the United States through two acts of Congress to the Miwok tribe." SMA 11 (Cmplt, ¶ 1). This single admission compelled dismissal: No state court is empowered to adjudicate disputes involving Indian land. *See Boisclair*, 51 Cal. 3d at 1153 (noting exclusive federal authority over Indian trust land, and holding that federal law "precludes states from asserting jurisdiction over *disputes* concerning Indian land…" (emphasis in original).)

Curiously, the trial court allowed Appellant to sidestep this rule of law, by accepting his argument during briefing that he "does not claim any kind of land ownership or right to title and the land is properly in the name of the Miwok nation called the Shingle Springs Band of Miwok Indians." SMA 93 (Tentative Ruling at 13). But the essence of Appellant's claims is that the "true Miwoks" were denied "a beneficial interest in the 240-acre Shingle Springs tract of land and the resulting … profits and revenues." SMA 31-32, 35 (Cmplt, ¶¶ 86, 98). By their own allegations, they sought "full remedies" (SMA 40 (Cmplt, ¶ 115)), including possession and control of the rancheria (SMA 34 (Cmplt, ¶ 93)), and a "profit share from the [Tribe's] substantial business operations" SMA 40 (Cmplt, ¶ 115).

Respondents respectfully submit the trial court construed the law too narrowly. As the California Supreme Court made clear in *Boisclair*, federal statutory law explicitly deprives state courts of jurisdiction "to adjudicate … the ownership or *right to possession of [Indian] property or any interest therein*." *Boisclair*, 51 Cal. 3d at 1153-54 (emphasis added), quoting 28 U.S.C. § 1360(b). The heart of Appellant's case is that his "true Miwok" group is entitled to not merely possess the Shingle Springs Rancheria, but to exercise "sovereign power and control" over it. SMA 15 (Cmplt, ¶ 17). In other words, Appellant claims both the "right to possession of [Indian] property," and to "an interest therein." 28 U.S.C. § 1360(b). *See also* Appellant's Br. 44-45 (Appellant seeks "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 [sic] for their loss in being deprived of the use of those lands.").

Fundamentally, no court has the power to decide whether Respondents *wrongfully denied* Appellant's "true Miwok" group "sovereign power and control over the rancheria" (SMA 15 (Cmplt, ¶ 17)), thereby "usurp[ing] the benefits of lands specially given to Miwok people." *Id*., SMA, 39 (Cmplt, ¶ 109); *see also* SMA 30-32, 33-35 (Cmplt, ¶¶ 80-86, 92-98). Indeed, such denial could *only* be "fraudulent" and "unjustified" if Appellant's group had a legal or beneficial "interest" in the rancheria. SMA 31, 34, 35 (Cmplt, ¶¶ 84, 85, 96, 98). This case falls squarely within the jurisdictional prohibition outlined in *Boisclair*, because it concerns rights to possess and profit from Indian lands. The trial court's dismissal is properly affirmed on this basis as well.

D. 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.

The Tribe's sovereign immunity stands as a separate, impenetrable bar to Appellant's suit, and the trial court properly dismissed on this basis. As " 'distinct, independent political communities" with sovereign powers that have never been extinguished, "Indian tribes have long been recognized as possessing the common law immunity from suit traditionally enjoyed by sovereign powers." *Santa Clara Pueblo*, 436 U.S. at 55, 58. Tribal immunity, like all aspects of tribal sovereignty, "is subject to the superior and plenary control of Congress," *id.* at 58, and so "an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity." *Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998). Because preserving tribal resources and autonomy are matters of vital importance, tribal immunity is "broad," *Boisclair*, 51 Cal. 3d at 1157, extending to governmental and commercial activities on or off the tribe's reservation. *Kiowa*, 523 U.S. at 760. In addition, because tribes necessarily act through their officials, tribal immunity extends to tribal officials in their governance. *Cook v. Avi Casino Enterprises, Inc.*, 548 F. 3d 718, 727 (9th Cir. 2008); *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F. 2d 1269, 1271 (9th Cir. 1991); *Lineen v. Gila River Indian Community*, 276 F. 3d 489, 492 (9th Cir. 2002). Not surprisingly, this basic right cannot be defeated with a "mere pleading device," by simply naming individual tribal officials in place of the tribe itself. *Cook*, 548 F. 3d at 727; *Dawavendewa v. Salt River Project Agric. Improvement & Power Dist.*, 276 F. 3d 1150, 1161 (9th Cir. 2002); *Snow v. Quinault Indian Nation*, 709 F. 2d 1319, 1322 (9th

Cir. 1983), *cert. denied*, 467 U.S. 1214 (1984); *and see Pistor v. Garcia*, 791 F. 3d 1104, 1113 (9th Cir. 2015) ("In any suit against tribal officers, we must be sensitive to whether 'the judgment sought would expend itself on the public treasury or domain, or interfere with the public administration or if the effect of the judgment would be to restraint the [sovereign] from acting, or to compel it to act.'", quoting *Maxwell v. County of San Diego*, 708 F. 3d 1075, 1087-88 (9th Cir. 2013).).

Applying these principles to Appellant's suit compelled dismissal. Mr. Caballero claims injury from Respondents' "taking control of the governing board," and "acting as governing body of the Tribe." SMA 37, 39 (Cmplt, ¶¶ 105, 108, 109). *See also id.* 15, 24, 30-31, 34 (Cmplt, ¶¶ 17, 55, 81, 93). As the "governing body of the Tribe," Respondents supposedly interfered with Mr. Caballero's claimed right for his "true Miwok" group to be federally recognized, "to have sovereign power and control over the Rancheria," and to receive a share of the Tribe's gaming profits. SMA 15, 21, 23, 39, 40, 42 (Cmplt, ¶¶ 17, 41, 49, 109, 115; *and see* Cmplt Prayer, ¶ 4). Irrespective of whether the elected Tribal Council are "true Miwoks," the acts about which Mr. Caballero complains are all quintessential acts of governance. At bottom, Appellant sued the Tribal *government* for its *governance*, and the Tribe's immunity bars it.

Directly on point is *Brown v. Garcia*, a tribal membership dispute in which the plaintiffs sued tribal council members for alleged defamation, and argued the officials were not immune, as they were sued individually for state law torts. *Brown*, 17 Cal. App. 5th at 1205. The court disagreed, holding that "garden variety torts," *id.* at 1206, may not be used to challenge acts of Tribal governance: "Despite plaintiff's careful pleading, their action sought to hold defendants liable for their legislative functions

and is thus 'in reality an official capacity suit' properly subject to sovereign immunity." *Id*. at 1207, quoting *Maxwell*, 708 F.3d at 1089. As in *Brown v. Garcia*, entertaining this suit "would require the court to adjudicate the propriety of the manner in which tribal officials carried out an inherently tribal function"— engaging with the United States as the Tribe's government, and in Appellant's words, exercising "sovereign power and control over the Rancheria." SMA 15, 34 (Cmplt, ¶¶ 17, 93). Here, irrespective of whether Mr. Caballero agrees with Respondents' eligibility to govern, or the result and effect of their governance, these are official acts for which they are immune to suit.

Tellingly, Appellant ignores *Brown v. Garcia* in his sovereign immunity discussion, even though he devotes more than half of his argument to this jurisdictional defense, and even though the trial court specifically relied on it. *Compare* Appellant's Br. 9-19 (detailing complaint's factual allegations bearing on sovereign immunity); and 39-50 (addressing sovereign immunity defense); *with* SMA 101-05 (Tentative Ruling at 21-25); 3 CT 770-71 (Super. Ct. Order). Instead, Appellant cites a case the trial court found to be inapposite, *Lewis v. Clarke*, 581 U.S. __, 137 S.Ct. 1285 (2017), to argue tribal employees can be sued for their "ultra vires" actions. Appellant's Br. 42. Appellant suggests the outcome should turn on his complaint's bare allegations, as he contends Respondents acted outside their authority, and he prayed for damages against them personally, not the Tribe. *See* Appellant's Br. 36-37, 40-41, 43, 45-49 (arguing court erred by not following *Lewis v. Clarke*, and applying "ultra vires exception"). That is not the law. As the U.S. Supreme Court held in *Lewis v. Clarke*, and as California courts have likewise held, in assessing

whether a tribe's immunity bars a suit against its officials, "courts may not simply rely on the characterization of the parties in the complaint, but rather must determine in the first instance whether the remedy sought is truly against the sovereign." *Lewis*, 137 S.Ct. at 1291; *see also Brown*, 17 Cal. App. 5th at 1204.[10]

Moreover, as the trial court also found, the *Lewis v. Clarke* case did not control the outcome here, as it involved a tragic car accident caused by a tribal employee's negligence on an off-reservation highway – what the court concluded was a "garden variety tort" not implicating Tribal sovereignty. *See Lewis*, 137 S.Ct. at 1290. The conduct at issue here is hardly equivalent, challenging Respondents' official acts of governance. *See Brown*, 17 Cal. App. 5th at 1206 ("[t]he wrongs alleged in [*Lewis* and similar] cases were garden variety torts with no relationship to tribal governance and administration."). Also inapposite are Appellant's other immunity cases, where alleged war crimes in Nazi Germany and Abu Ghraib were found to fall outside the scope of defendants' employment and not subject to federal immunity. *See* Appellant's Br. 45-47, *citing Al Shimar v. CACI Premier Technology, Inc.*, 840 F.3d 147, 157 (4th Cir. 2016) and *Alperin v. Vatican Bank*, 410 F.3d 532 (9th Cir. 2005).

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[10] Appellant also fails to appreciate the significance of the court clerk's default entry, suggesting his complaint's bare allegations must be accepted as dispositively true given the clerk's default entry. *See* Appellant's Br. 20-21. However, as the trial court properly found, and as Respondents made clear in their Objections to the Entry of Default (Respondents' First Motion to Augment the Record, Exhibit A at 5:4-8), the court clerk's powers emanate from the court's own powers. And because the court lacked jurisdiction over Appellant's complaint, the clerk's entry of default was a nullity. SMA 106 (Tentative Ruling at 26) (hearing on entry of default judgment is "moot").

In the end, Appellant's own complaint confirms this to be a suit against duly elected Tribal officials for their acts of governance.[11] Appellant complains of Respondents' engagement with other governments (SMA 11, 30, 33-34 (Cmplt, ¶¶ 2, 80, 92)), their control of the reservation (SMA 15 30-31, 34, 39 (Cmplt, ¶¶ 17, 81, 93, 109)), and their disposition of tribal resources. SMA 15, 30-31, 34 (Cmplt, ¶¶ 17 80, 81,93 98). Rightly or wrongly taken, these are acts that can *only* be taken by *the sovereign*, through its officials' acts of governance. In short, dismissal is properly affirmed.

E. 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.

Finally, while the trial court declined to reach the final bases supporting the Tribe's jurisdictional motion, they also support affirmance. As shown below, even assuming Appellant's complaint was not an official capacity suit in disguise (cloaking Respondents in immunity), the sovereign immunity of both the Tribe and the United States *separately* applied to

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[11] *See* SMA 24, 30-31, 34, 36, 39 (Cmplt, ¶¶ 55, 81, 93, 105, 108, 109) (claiming injury from Respondents as the "current governing body of the Miwok tribe" and the "tribal governing council," whose "conduct in taking control of the governing council board of a Miwok tribe" is allegedly illegal); SMA 15, 24, 34, 39, 40 (Cmplt, ¶¶ 17, 55, 93, 109, 115) (as the "governing body of the Miwok tribe," Respondents have interfered with Appellant's claimed right to be federally recognized, "to have sovereign power and control over the Rancheria," and to receive a share of the Tribe's gaming profits); *see also* 3 CT 657 (Pl. (Appellant) Opp. to Motion to Quash/Dismiss, at 12:16-19 and Cmplt Prayer, ¶ 4 (stating that Defendants (Respondents) should be forced to "step aside and allow only Miwok-blooded tribespeople to control the tribal council"); *and see* Appellant's Br. 6-7, 42-43, 53.

deprive the trial court of jurisdiction. That is because both the Tribe and United States are necessary and indispensable parties, and neither can be joined by virtue of their respective immunities. These are *two distinct* jurisdictional defenses but each compelled the same result — dismissal. Cal. Civ. Proc. § 389.[12]

As the federal court already ruled under Section 389's corollary rule (Fed. R. Civ. Proc. 19), the United States possesses a distinct and essential interest in any challenge to its recognition actions. *See* 2 CT 433 (Def.'s RFJN, Ex. Q, U.S. Dist. Ct. E.D. Cal. Order 2:22-27). That interest extends to Appellant's claimed right to use and control the Shingle Springs Rancheria (SMA 30-31, 34, 39, 40 (Cmplt, ¶¶ 81, 93, 109, 115)), Indian lands the United States holds in trust for the Tribe. SMA 75, 76, 101-03 (Cuellar Dec., ¶¶ 4, 7, 21-23). Indeed, the Ninth Circuit has adopted a *per se* rule requiring dismissal of suits relating to interests in Indian lands where the United States is absent. *See Imperial Granite*, 940 F.2d at 1272 n.4 ("[t]he United States is an indispensable party to any suit brought to establish an interest in Indian trust land," requiring dismissal.). That is because proceeding without the United States "might interfere with its obligation to protect Indian lands against alienation." *Carlson v. Tulalip*

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[12] Under Section 389, a party must be joined as "necessary," where, in its absence: (1) complete relief cannot be accorded, or (2) the claimed interest is such that the disposition may (i) practically impair or impede an ability to protect that interest or (ii) leave the named parties subject to a substantial risk of inconsistent obligations. If either criteria is met, "the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable." *People ex rel. Lungren v. Cmty. Redevelopment Agency*, 56 Cal. App. 4th 868, 874 (1997).

Tribes, 510 F.2d 1337, 1339 (9th Cir. 1975); *see also Minnesota v. United States*, 305 U.S. 382, 388 (1939) ("as trustee for the Indians," the United States is "necessarily interested in the outcome" of any suit challenging Indian lands rights).[13]

Here, the Shingle Springs Rancheria is held in federal trust for the Tribe's benefit. SMA 75-77, 78-79, 82 (Cuellar Dec., ¶¶ 4, 7, 9, 16, 25). The United States acknowledges — and has for decades acknowledged — that the Rancheria is Indian land held for *this* Tribe, whose people emanated from Verona and Sacramento. *Id.*; 1 CT 287 (Def.'s RFJN Ex. G); 2 CT 365, 359-415 (Def.'s RFJN Ex. N); 2 CT 587 (Def.'s RFJN Ex. DD); 3 CT 618-20 (Def.'s RFJN Ex. HH). The Tribe sought and secured federal approvals to develop the land for the benefit of its government and people. SMA 80-83 (Cuellar Dec., ¶¶ 21-24, 26); 3 CT 607-616 (Def.'s RFJN, Ex. GG). To the extent Appellant wants the United States to now hold the Rancheria for the benefit of a different tribal group — his *unrecognized* group of "true Miwoks" (SMA 15 (Cmplt, ¶ 17)) — the United States' joinder would be required. And because its sovereign immunity prevents such joinder, the suit is properly dismissed on this basis as well.

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[13] The bar on adjudicating rights in Indian trust land is broad, reaching a variety of claims that touch property rights in Indian land. *Alaska v. Babbitt*, 75 F. 3d 449, 451-52 (9th Cir. 1996) (dismissing suit claiming a right-of-way through Indian land). The principle even bars suits alleging the United States has erroneously characterized certain property as Indian lands. *See Wildman v. United States*, 827 F.2d 1306, 1309 (9th Cir. 1987) (Because Indian trust land "is the essential base of tribal culture, development, and society . . . [a]s trustee, the United States properly acts with the jealousy of a fiduciary to protect this base."); 28 U.S.C. § 2409a(a).

The same analysis extends to the Tribe, possessing an undeniable interest in its federally-recognized status, its sovereign membership and election decisions, and of course, the use of its land and profits. The Tribe also possesses an interest in protecting its sovereign immunity from incursion, as Appellant tried to effect here, by suing Tribal leaders for their governance. *Shermoen v. United States*, 982 F.2d 1312, 1317, 1318 (9th Cir. 1992) ("absent" tribes "have an interest in preserving their own sovereign immunity and concomitant right not have [their] legal duties judicially determined without [their] consent").

Appellant tried to mask his lawsuit as a "garden variety" tort suit, but the "restitution" he seeks represents membership benefits the Tribe alone controls, not individual officials. *See Imperial Granite*, 940 F.2d at 1271 (votes by governing officials to take certain action "is the official action of the band"). Mr. Caballero makes no secret about what this case is all about — the Tribal treasury, as he wants Respondents ousted so he can exercise "sovereign power and control over the rancheria" and collect a "profit share from the substantial business operations at the Rancheria." SMA 15, 40 (Cmplt, ¶¶ 17, 115). Distilled, Appellant seeks injunctive relief that would "require affirmative action by the sovereign and disposition of unquestionably sovereign property," representing an "intolerable burden on [the Tribe's] governmental functions." *Shermoen*, 982 F. 3d at 1320 (citations and quotation marks omitted).

In the end, under any fair reading of the record and the law, the Tribe is both necessary and indispensable, as Appellant not only challenges its federal status as constituted, but claims its government, land and assets for himself. The suit could not be allowed to proceed "in equity and good conscience." Cal. Civ. Proc. § 389. Dismissal was the only proper course,

and federal cases are in accord. *Quileute Indian Tribe v. Babbitt*, 18 F. 3d 1456, 1459 (9th Cir. 1994) (dismissing action for failure to join tribe as an indispensable party where "complete relief would implicate the [tribe's] governing status"); *see also Kennedy v. United States DOI*, 282 F.R.D. 588, 595 (E.D. Cal. 2012) (finding absent tribe had a legally protected interest in preventing court from "delv[ing] into the merits of tribal leadership and membership disputes, disputes the Tribe, not this Court, should be permitted to resolve").

V. CONCLUSION

It would be difficult to imagine a set of claims that go more to the heart of the Tribe's sovereign existence, and that directly implicate core interests of *both* the Tribe *and* the United States, than those presented here. At bottom, Appellant asks this Court to overturn the election of a federally-recognized government, oust those leaders from the Tribe's sovereign territory, and proceed to insert itself in a tribal election process governed by tribal law, and effectively re-write that law to restrict all leaders to "true blooded Miwoks." To grant Appellant his requested reversal — so he can pursue damages for allegedly denied Tribal benefits and injunctive relief delivering control over the Shingle Springs Rancheria and its government — this Court would have to conclude it can judicially strip the Tribe of its recognition, its government, its land and its treasury. No court has that power, as even a cursory reading of the law reveals. Nor does any court have the power to turn over sovereign lands from one group to another, let alone, penalize an elected Tribal government for governing. This is what Appellant seeks. Affirming the trial court's dismissal without leave to amend is the only proper course.

DATED: April 2, 2021

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CERTIFICATION OF COMPLIANCE

I, Paula M. Yost, counsel of record for Respondents, certify that pursuant to Rule 8.204(c)(1) of the California Rules of Court, the enclosed brief is produced using 13-point Roman type including footnotes and contains 9,102 words, which is less than the total words permitted by the rules of court. In computing this word count, I have relied on the word count of the computer program used to prepare this brief.

PROOF OF SERVICE

I, Sara A. Dutschke, hereby declare:

I am a resident of the City of Oakland, County of Alameda, California and a member of the bar of this court. I am over the age of eighteen years and not a party to this action. My business address is Kaplan Kirsch & Rockwell LLP, 595 Pacific Ave, Fl 4, San Francisco, CA 94133-4685.

On April 2, 2021, I caused to be served the following document via the Court's TrueFiling Electronic system, described as:

> RESPONSIVE BRIEF OF REGINA CUELLER; ALLAN CAMPBELL; PAT CUELLER; BRIAN FONSECA; NICHOLAS H. FONSECA; ANNIE JONES; JESSICA GODSEY OLVERA; and JACKY CALANCHINI

on the interested parties in this action, as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 2, 2021, at Oakland, California.

Sara A. Dutschke