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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILTON MIWOK RANCHERIA, *et al.*, *Plaintiffs*, vs. KENNETH L. SALAZAR, *et al.*, *Defendants*, COUNTY OF SACRAMENTO, CALIFORNIA and CITY OF ELK GROVE, CALIFORNIA, *Proposed Intervenors.*	Case No. C-07-02681-JF-PVT **OPPOSITION TO PLAINTIFFS' & DEFENDANTS' JOINT MOTION TO POSTPONE BRIEFING & HEARING ON COUNTY & CITY'S MOTION TO RE-OPEN CASE/VACATE JUDGMENT** HEARING DATE: Sept. 18, 2009 HEARING TIME: 9:00 a.m. JUDGE: Hon. Jeremy Fogel COURTROOM: 3

ME-WUK INDIAN COMMUNITY OF THE WILTON RANCHERIA, *et al.*, *Plaintiffs*, vs. KENNETH L. SALAZAR, *et al*,, *Defendants*, COUNTY OF SACRAMENTO, CALIFORNIA and CITY OF ELK GROVE, CALIFORNIA, *Proposed Intervenors*	Case No. C-07-05706 (JF)

The County of Sacramento and the City of Elk Grove oppose the joint motion of Plaintiffs and Defendants to bifurcate the hearing and briefing schedules on the local governments' jointly-filed motions to intervene in these cases and to vacate the judgments, and to delay the hearing on the motion to vacate.

As discussed in more detail in the County and City's moving papers, this suit stems from the efforts of Plaintiffs to be recognized by the federal government as an Indian tribe, to have the United States take lands into trust on their behalf, and to have those lands adjudged eligible for casino-gaming under the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq*.

The lands in question are located within Sacramento County and are adjacent to lands owned by the City of Elk Grove for environmental mitigation purposes. If the requested relief is granted, the County and City will be deprived of their jurisdictional, taxing, and regulatory authority over the parcels in question. Moreover, they will be faced with the prospect of significant environmental and economic consequences from a large commercial development, such as a Las Vegas-style casino.

In light of the foregoing, the County and City should have been included in

this suit as necessary parties, yet as also discussed in the two motions on file, the County and City were given no notice whatsoever of these actions, formally or informally, until after the settlement was entered into and approved. Now, the tribe(s) and the United States are proceeding ahead to implement the Settlement, and the County and City are stuck playing catch-up. The parties' joint motion further threatens to compromise the ability of the City and County to protect their interests.

I. A DELAY IN HEARING THE MOTION TO VACATE THREATENS THE COUNTY'S AND CITY'S INTERESTS.

The tribes and the United States have moved forward with implementing the Settlement's terms, even knowing that the County and City planned to seek intervention to challenge the Settlement and to vacate the judgments. On August 4, 2009, the County and City filed and served their motions to intervene and vacate the judgment. Nevertheless, a week later the United States went ahead and published a list of "recognized" tribes that are eligible to receive services from the Bureau of Indian Affairs, which included Plaintiffs. *See* Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs, 74 Fed. Reg. 40,218 (Aug. 11, 2009). The County and City are concerned that, absent prompt hearing on the motion to vacate, the possibility exists that the Settlement will be implemented before the County and City have a chance to challenge the Settlement and defend their rights.

This is particularly significant because, as discussed at length in the motion to intervene, numerous courts have held that that Quiet Title Act, 28 U.S.C. § 2409a, entirely precludes a plaintiff's suit to the extent it seeks to nullify an Indian trust acquisition. *See, e.g., Carlson v. Tulalip Tribes of Washington*, 510 F.2d 1337, 1339 (9th Cir. 1975). Consequently, any challenge to taking land into trust should be made *before* the lands are taken into trust, a step that may well be imminent in this case. If that were so, delaying the motion to vacate would further

risk denying the County and City's one chance to contest the Settlement and protect their interests.

The County and City are not unreasonable about the request for bifurcation. When counsel for the Wilton Miwok Rancheria contacted the County and City regarding whether they would stipulate to bifurcation, the County and City responded that they would do so, if the existing parties would agree to a stay of the execution of the judgment under Federal Rule of Civil Procedure 62(b). *See* Weckenmann Declaration (Dkt. #s 69 & 42), ¶ 5. *Indeed, if the United States were to agree that no lands would be taken into trust until such time as the motion to intervene and subsequent motion to vacate were ruled on, the County and City would not oppose bifurcating the two motions, even now.* Such an agreement would allow the two motions to be heard with less urgency while still protecting the already-threatened interests of the County and City.

Yet the existing parties declined the County and City's offer. In light of these facts, delaying the motion to vacate threatens to make the difficult situation in which the County and City find themselves (due to a complete lack of appropriate notice that these cases were pending), a virtually impossible position.

II. DENIAL OF INTERVENTION WOULD NOT RENDER THE MOTION TO VACATE THE JUDGMENTS MOOT.

One of the bases on which the County and City seek to have the judgments vacated is that this court lacks subject matter jurisdiction over the plaintiffs' claims because the statute of limitations, which is jurisdictional, ran on those claims decades ago. Fed. R. Civ. Proc. 60(b)(4) (district court to vacate a judgment if "the judgment is void."); *United States v. Berke*, 170 F.3d 882, 883 (9th Cir. 1999) (a judgment is void, for purposes of Rule 60(b)(4), if "the court that considered it *lacked jurisdiction*, either *as to the subject matter of the dispute* or over the parties to be bound, or acted in a manner inconsistent with due process of law." (emphasis added)). Contrary to the claims of Plaintiffs and Defendants, this is a contention

that would not be moot, even in the unlikely even that intervention were denied to the County and the City:

- First, it is black letter law that parties cannot confer subject matter jurisdiction on a federal court by consent, and that federal "district courts have an 'independent obligation to address [subject-matter jurisdiction] *sua sponte*.'" *Grupo Dataflux v. Atlas Global Group, L.P.*, 541 U.S. 567, 593 (2004) (quoting *United States v. So. Cal. Edison Co.*, 300 F. Supp. 2d 964, 972 (E.D. Cal. 2004) (bracketed language added by Supreme Court).[1]
- Second, where a judgment is entered without proper jurisdiction, it is void, and a "District Court ha[s] a nondiscretionary duty to grant relief" from the judgment under Rule 60(b)(4). *Thos. P. Gonzalez Corp. v. Consejo Nacional De Produccion De Costa Rica*, 614 F.2d 1247, 1256 (9th Cir. 1980).[2]
- Third, the Ninth Circuit has held that a district court's lack of jurisdiction can be raised by a non-party. *Citibank Int'l v. Collier-Traino, Inc.*, 809 F.2d 1438, 1440 (9th Cir. 1987).[3]
- And finally, the Ninth Circuit has held that a court has the power under Rule 60(b) to vacate a judgment *sua sponte* if it determines that the judgment was improperly entered. *Kingvision Pay-Per-View, Ltd.*

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[1] *See also Andrus v. Charlestone Stone Products Co.*, 436 U.S. 604, 607 n.6 (1978); *Williams v. United Airlines, Inc.*, 500 F.3d 1019, 1021 (9th Cir. 2007) (considering district court's subject matter jurisdiction *sua sponte* and upholding dismissal of action based on lack of jurisdiction, even though parties did not challenge jurisdiction and district court dismissed on the merits); *John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 128 S. Ct. 750, 753 (2008) (affirming lower court's sua sponte dismissal for lack of subject matter jurisdiction where jurisdictional statute of limitations had expired).

[2] *See also Bank One, Tex., N.A. v. Taylor*, 970 F.2d 16, 33-34 (5th Cir. 1992) (district court abused its discretion in refusing to grant relief to post-judgment intervenor where subject matter jurisdiction challenged by FRCP 60(b) motion).

[3] *See also Canadian St. Regis Band of Mohawk Indians v. New York*, 388 F. Supp. 2d 25, 36 (N.D.N.Y. 2005).

v. Lake Alice Bar, 168 F.3d 347, 351-52 (9th Cir. 1999).

In combination, these cases clearly stand for the proposition that a district court has a duty to consider its subject matter jurisdiction sua sponte,[4] and has a further duty to vacate a judgment entered without subject matter jurisdiction,[5] *sua sponte*,[6] even if the issue is not raised by a party to the action.[7]

Instructive on this point is *Simer v. Rios*, 661 F.2d 655, 660 (7th Cir. 1981), *cert. denied*, 456 U.S. 917 (1982). In *Simer*, the district court denied a post-judgment motion to intervene, but still vacated the settlement in the case *sua sponte* based in part on defects identified in proposed intervenors' motion to vacate under Rule 60(b). The district court concluded, in part, that the settlement was void under Rule 60(b)(4). The Seventh Circuit affirmed, and the United States Supreme Court denied certiorari.

III. THERE IS AMPLE AUTHORITY FOR HEARING A POST-JUDGMENT INTERVENTION MOTION CONCURRENTLY WITH A MOTION TO VACATE.

Finally, there are numerous examples in the case law of courts hearing and deciding a post-judgment motion to intervene concurrently with a motion to vacate under Rule 60(b). *See, e.g., PG&E v. Lynch*, 216 F. Supp. 2d 1016, 1024 & 1051 (N.D. Cal. 2002) (simultaneous rulings on concurrently-filed motions to intervene and to dismiss); *Utica Mut. Ins. Co. v. Hamilton Supply Co.*, 2007 U.S. Dist. LEXIS 84370 (N.D. Cal. Nov. 5, 2007) (granting motions to intervene and to set aside default judgment simultaneously); *Mercier v. City of La Crosse*, 305 F. Supp. 2d 999, 1002-03 (W.D. Wisc. 2004) (granting motions to intervene and to vacate judgment by same order), *rev'd on other grounds*,395 F.3d 693 (7th Cir. 2005).

Battle v. Liberty National Life Ins., 770 F. Supp. 1499, 1513 n.40 (N.D. Ala. 1991), *aff'd* 974 F.2d 1279 (11th Cir. 1992), is instructive on this point. In that case,

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[4] *Grupo Dataflux*, 541 U.S. at 593.
[5] *Thos. P. Gonzalez Corp.*, 614 F.2d at 1256.
[6] *Kingvision Pay-Per-View*, 168 F.3d at 351-52.
[7] *Citibank Int'l*, 809 F.2d at 1440; *Williams*, 500 F.3d at 1021.

the existing parties contended that a Rule 60(b) motion should be denied on the ground that it was not made by a party. The Court rejected that contention because *that same day* the movant was granted leave to intervene. *Id.* at 1513.

Roeder v. Islamic Republic of Iran, 195 F. Supp. 2d 140 (D.D.C. 2002), *aff'd*, 333 F.3d 228 (D.C. Cir. 2003), is also instructive. In that case the district court entered a default judgment against the government of Iran. The United States moved to intervene post-judgment and simultaneously filed a motion to vacate the default judgment under FRCP 60(b)(4), and dismiss the case, contending the court lacked subject matter jurisdiction due to Iran's sovereign immunity. The district court ruled on the motions simultaneously, granting United States's post-judgment motions.

IV. CONCLUSION.

For the foregoing reasons, the Plaintiffs' and Defendants' motion to bifurcate the briefing and hearing schedules on the County and City's motions to intervene and vacate the judgments, and to delay resolution of the motion to vacate, should be denied.

Dated: August 14, 2009

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