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MAY 21 2007

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE

10 Attorneys for Plaintiffs,
11 WILTON MIWOK RANCHERIA,
12 ITS MEMBERS; and DOROTHY ANDREWS

13 **IN THE UNITED STATES DISTRICT COURT**

14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

15 WILTON MIWOK RANCHERIA, a formerly
16 federally recognized Indian Tribe, ITS
17 MEMBERS and DOROTHY ANDREWS,

Case No. **07 02681** PVT

18 Plaintiffs,

19 **DECLARATION OF JOHN NYHAN IN
20 SUPPORT OF PLAINTIFFS'
21 ADMINISTRATIVE MOTION TO
22 CONSIDER WHETHER CASES SHOULD
23 BE RELATED**

24 v.

25 DIRK KEMPTHORNE, Secretary of the
26 Department of the Interior; CARL J. ARTMAN,
27 Assistant Secretary for Indian Affairs of the
28 United States Department of Interior; the
UNITED STATES DEPARTMENT OF THE
INTERIOR; MICHAEL O. LEAVITT, Secretary
of the United States Department of Health and
Human Services; the UNITED STATES
DEPARTMENT OF HEALTH AND HUMAN
SERVICES,

Defendants.

I, JOHN NYHAN, declare as follows:

1. I am a member of the Bar of this Court and Of Counsel with the law firm of Fredericks & Peebles LLP, and one of the counsel representing the Plaintiffs in this action and submit this Declaration in support of Plaintiff's Administrative Motion to Consider Whether Cases Should be Related. I am informed of and believe the following, and if called upon I could and would competently testify as follows:

///

1 2. The Wilton Miwok Rancheria was established in 1934 and purportedly terminated in
2 1964 pursuant to the California Rancheria Act of 1958 (72 Stat. 619). 29 F.R. 13147. Following
3 termination, the United States distributed tribal landholdings to the adult members of the Wilton
4 Miwok Rancheria. *See* Plan of Distribution approved August 18, 1958 (a true and correct copy of the
5 Plan is attached hereto as Exhibit A).

6 3. Plaintiffs representing a class of distributees of the formerly federally recognized
7 California Indian Tribes filed a Complaint for damages against the United States, its Department of the
8 Interior and Department Officers and specific State of California County Tax Assessors, citing various
9 federal statutes and common law causes of action in this Court captioned *Tillie Hardwick, et al. v.*
10 *United States* (C-79-1710-SW) (N.D. Calif.) (hereinafter referred to as "*Hardwick*"). The lawsuit
11 sought to undo the illegal termination of the Tribes pursuant to the California Rancheria Act, Public
12 Law 85-671 of 1958, by restoration of the Tribes' federal status and restoration of their former
13 Rancherias. Two subsequent amendments to the *Hardwick* Complaint were filed. The First Amended
14 Complaint was filed in 1982, permitting the inclusion of additional counties as defendants and the
15 Second Amended Complaint was filed in 1986, permitting certain newly reconstituted tribes to
16 intervene in that action.

17 4. On February 28, 1980, the distributees of the Wilton Miwok Rancheria were certified as
18 members of the plaintiff class in *Hardwick*. The class consisted of all persons who received assets of
19 the named rancherias pursuant to distribution plans prepared under the California Rancheria Act of
20 1958 or the Amended Rancheria Act of 1964, as well as their heirs and legatees, and all Indian
21 successors in interest to the real property distributed under the Rancheria Act. *See* Order Re: Class
22 Certification (Feb. 28, 1980), *Hardwick* (a true and correct copy of the Order is attached hereto as
23 Exhibit B).

24 5. A stipulated judgment that among other things, restored the status of certain members of
25 the plaintiff class as Indians under the laws of the United States, was entered in 1983. *See* Order
26 Approving Entry of Final Judgment in Action (Dec. 27, 1983), *Hardwick* (a true and correct copy of
27 the Order is attached hereto as Exhibit C).

28

1 6. Prior to entry of the stipulated judgment in *Hardwick*, the members of twelve
 2 rancherías, including the Wilton Miwok Rancheria, were dismissed from the plaintiff class. The
 3 Wilton Rancheria plaintiffs were dismissed on the erroneous premise that “[n]o class member currently
 4 owns property within the original rancheria boundaries.” The Certificate of Counsel Re Hearing on
 5 Approval of Settlement of Class Actions (Nov. 16, 1983), *Hardwick*, page 9 (a true and correct copy of
 6 which is attached hereto as Exhibit D), states:

7 Class members from twelve (12)¹ of the remaining seventeen rancherías
 8 represented in this action would be dismissed from this action without prejudice to their
 9 right to refile another action or other actions on their behalf. No class member from
 10 these rancherías currently owns real property within the original rancheria boundaries.
 11 The property was either sold to non-Indians when the rancheria was terminated and the
 12 proceeds of these sales distributed to rancheria members in lieu of deeds to individual
 13 parcels of property or all of the property originally distributed was subsequently sold to
 14 non-Indians.

15 In either case the federal defendants are unwilling to re-assume responsibility for
 16 any of these rancherías without a final judicial determination of their obligation to do so.
 17 Plaintiffs attorneys do not concede that the sale of rancheria property precludes
 18 distributees from obtaining judicial relief for wrongful termination (in some cases these
 19 class members may have the most significant damages claims). However, plaintiffs
 20 believe that these rancherías do present unique considerations and that it does not make
 21 sense to delay relief for those rancherías upon which class members still reside, while
 22 the parties litigate these other issues. Accordingly, plaintiffs attorneys believe that it
 23 serves the interests of the entire class to sever these claims from those of the seventeen
 24 rancherías and to dismiss those claims from this action without prejudice.

25 ^{fn1} Alexander Valley would have been the thirteenth rancheria in this category but
 26 by oversight was omitted from the stipulation for entry of judgment and notice of
 27 settlement to the class. The parties propose to file a supplemental stipulation after the
 28 Court approves the current one and to obtain approval after notice to class members
 from Alexander Valley.

1 7. It was mistakenly believed that at termination, the tribal members of these rancherías
 2 had either sold the rancheria property to non-Indians or distributed it to rancheria members who
 3 subsequently sold it to non-Indians. See Stipulation for Entry of Judgment (July 19, 1983), *Hardwick*,
 4 ¶ 14 (a true and correct copy of this Stipulation is attached hereto as Exhibit E). In any event, it was
 5 erroneously believed that the dismissed members of the plaintiff class no longer owned any of the
 6 property that made up the former rancherías. See Exhibit D, p. 9.

1 8. In 1983, the remaining Plaintiffs and Defendant the United States reached a stipulated
2 settlement in the *Hardwick* case. Paragraph 4 of the settlement states:

3 "The Secretary of the Interior shall recognize the Indian Tribes, Bands, Communities, or
4 groups of the seventeen rancherias listed in paragraph 1 as *Indian entities with the*
5 *same status as they possessed prior to distribution of the assets of these rancherias*
6 *under the California Rancheria Act*, and said Tribes, Bands, Communities and groups
7 shall be included on the Bureau of Indian Affairs' Federal Register List of recognized
8 tribal entities pursuant to 25 CFR, section 83.6(b). Said Tribes, Bands, Communities or
9 groups of Indians shall be relieved from the application of the California Rancheria Act
10 and shall be deemed entitled to any of the benefits or services provided or performed by
11 the United States for Indian Tribes, Bands, Communities, or groups because of their
12 status as Indian Tribes, Bands Communities or groups." (Emphasis Added.)

13 Paragraph 12 of the Stipulation for Entry of Judgment states that the United States District Court for
14 the Northern District of California shall retain jurisdiction over the *Hardwick* case. Exhibit E, p. 6.

15 9. Paragraph 14 of the Stipulated Judgment provides:

16 "Except as hereafter specifically provided in paragraphs 15-19, the claims asserted in
17 this action by or on behalf of any persons who received any of the assets of the . . .
18 Wilton, . . . Rancherias are dismissed without prejudice to their being refilled in another
19 action and defendants shall not assert any laches defense to any such subsequent action
20 they could not have asserted prior to the date this action was filed." (*Id.*)

21 10. In 1987, the County of Madera, one of the defendants in *Hardwick*, reached a settlement
22 with representatives of the Picayune Rancheria of the Chukchansi Indians resolving disputes between
23 those parties, referred to as the 1987 Stipulated Judgment. That Stipulated Judgment provided that this
24 Court would retain jurisdiction of the case.

25 11. On January 29, 2004, the County of Madera filed a motion in this Court captioned in the
26 *Hardwick* case to enforce the 1987 Stipulated Judgment against the Picayune Rancheria of the
27 Chukchansi Indians. (Hereinafter referred to as the Madera County Action) (*Tillie Hardwick v. United*
28 *States of America*, U.S.D.C. Northern District of California No. C-79-1710-JF.) This action was
assigned to the Honorable Jeremy Fogel. In its motion, the County alleged that the Picayune Rancheria
of the Chukchansi Indians refused to comply with the 1987 Stipulated Judgment for the placement of
fee lands into trust with the United States and, in the absence of the lands' placement into trust, were
required to and had not paid *ad valorem* taxes as provided for in the 1987 Stipulated Judgment. After

1 due consideration, Judge Fogel dismissed these claims by order dated May 24, 2004, (entitled "Not for
2 Citation") noting :

3 "There is no question that the Court has continuing jurisdiction to resolve disputes
4 arising from the stipulated judgments. The 1983 Stipulated Judgment expressly retained
5 jurisdiction for "a period of two years from entry of judgment or for such longer time as
6 may be shown to be necessary on a duly noticed motion by any party."


(a true and correct copy of the Court's Order, is attached hereto as Exhibit F.)

7 12. In December of 2006, the Picayune Rancheria of the Chukchansi Indians filed an action
8 captioned in the *Hardwick* case to enforce the 1987 *Hardwick* Stipulated Judgment before Judge Fogel.
9 In denying the motion, Judge Fogel directed the Tribe to file a separate declaratory relief action and
10 relate it to the *Hardwick* actions if the Tribe requested relief in the future. (A true and correct copy of
11 this ruling filed on December 7, 2006, is attached hereto as Exhibit G.)

12 13. The Picayune Rancheria of the Chukchansi Indians filed a Declaratory Relief Action
13 against the County of Madera later in December of 2006 (hereinafter the PRCI action) and, in
14 accordance with Judge Fogel's earlier directive, also filed an Administrative Motion to consider
15 whether that case should be related to the *Hardwick* case. Judge Fogel granted that Motion by Order
16 (entitled "Not for Citation") filed on December 14, 2006 (a true and correct copy of this Order is
17 attached hereto as Exhibit H.) After the Court considered extensive briefs, heard arguments on
18 January 28, 2007, and issued an order calling for additional briefing, the PRCI case was settled by
19 Stipulation and Order entered on March 2, 2007. This order confirms this Court's retention of
20 jurisdiction over matters relating to the *Hardwick* litigation. (A true and correct copy of this Order is
21 attached hereto as Exhibit I.)

22 I declare under penalty of perjury under the laws of the United States of America that the
23 foregoing is true and correct.

24 Executed this 21st day of May 2007, in Sacramento, California.

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27 _____
28 John Nyhan

Exhibits to Declaration of John Nyhan

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- A: A Plan for Distribution of the Assets of the Wilton Rancheria, approved August 18, 1958.
- B: Order Re: Class Certification filed Feb. 28, 1980 in *Tillie Hardwick v. United States of America* U.S.D.C. Northern District of California No. C-79-1710-JF.
- C: Order Approving Entry of Final Judgment in Action filed Dec. 27, 1983 in *Tillie Hardwick v. United States of America* U.S.D.C. Northern District of California No. C-79-1710-JF.
- D: Certificate of Counsel Re: Hearing on Approval of Settlement of Class Actions, filed Nov. 17, 1983 in *Tillie Hardwick v. United States of America* U.S.D.C. Northern District of California No. C-79-1710-JF.
- E: Stipulation for Entry of Judgment filed July 19, 1983 in *Tillie Hardwick v. United States of America* U.S.D.C. Northern District of California No. C-79-1710-JF.
- F: Order Denying the Madera County Defendants' Motion for Enforcement of Judgment filed May 20, 2004 in *Tillie Hardwick v. United States of America* U.S.D.C. Northern District of California No. C-79-1710-JF.
- G: Order Denying the Tribe's Motion for Enforcement of Judgment filed Dec. 7, 2006 in *Tillie Hardwick v. United States of America* U.S.D.C. Northern District of California No. C-79-1710-JF
- H: Order Relating Case filed Dec. 14, 2006 in *The Picayune Rancheria of the Chukchansi Indians v. County of Madera* U.S.D.C. Northern District of California No. C-06-7613 RMW (PVT)
- I: Stipulation re Settlement and Request for Continuing Jurisdiction, for Enforcement of Settlement Agreement; Order filed March 2, 2007 in *The Picayune Rancheria of the Chukchansi Indians v. County of Madera* U.S.D.C. Northern District of California No. C-06-7613 JF (PVT)