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WILTON MIWOK RANCHERIA, a formerly
7 Federally-recognized Indian tribe and
ITS MEMBERS; and DOROTHY ANDREWS

8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 WILTON MIWOK RANCHERIA, a formerly
federally recognized Indian Tribe, ITS
12 MEMBERS and DOROTHY ANDREWS,

13 Plaintiffs,

14 v.

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

20 Defendants.
21

ADD

ORIGINAL FILED

MAY 21 2007

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

E-FILING

Case No. 007 02681 PVT

PLAINTIFFS' ADMINISTRATIVE
MOTION TO CONSIDER WHETHER
CASES SHOULD BE RELATED

22
23 In accordance with Civil L.R. 3-12, and 7-11, Plaintiffs Wilton Miwok Rancheria, et al., submit
24 this Administrative Motion To Consider Whether Cases Should Be Related.

25 I. **This Action Is Related to Another Action, Tillie Hardwick, Pending in This Court.**

26 This action is related to an action which is pending in this District before the Honorable District
27 Judge Jeremy Fogel, entitled *Tillie Hardwick, et al. v. United States of America, et al.*, No. C 79-1710
28

1 JF (PVT) (Complaint filed July 10, 1979) ("*Hardwick v. United States*"), as defined in Civil L.R. 3-
2 12(a), in that:

- 3 (1) Both actions concern substantially the same parties, property, transaction or
4 event; and
- 5 (2) It appears likely that there will be an unduly burdensome duplication of labor
6 and expense or conflicting results if the cases are conducted before different
7 Judges.

8 **A. Both Actions Involve Substantially the Same Parties.**

9 **1. Plaintiffs.**

10 In the current action, Plaintiff Wilton Miwok Rancheria ("Tribe"), a formerly federally
11 recognized Indian Tribe, seeks to be restored as a federally recognized Indian tribe. The Tribe was
12 unlawfully terminated under the California Rancheria Act of 1958 (72 Stat. 619). 29 F.R. 13147
13 (Sept. 5, 1964). Following termination, the United States distributed tribal landholdings to the adult
14 members of the Tribe. See Declaration of John Nyhan, filed concurrently herewith ("Nyhan Dec.") at
15 ¶ 2 and Exhibit A attached thereto. In 1979, the tribal members of the Wilton Miwok Rancheria joined
16 with the members of other California tribal groups adversely affected by the California Rancheria Act
17 to commence a class action lawsuit known as *Hardwick, et al. v. United States* (C-79-1710-SW) (N.D.
18 Calif.) (hereinafter referred to as "*Hardwick*"). On February 28, 1980, the distributees of the Tribe
19 were certified as members of the plaintiff class in *Hardwick*. See Order Re: Class Certification (Feb.
20 28, 1980), (Nyhan Dec. at ¶¶ 3 - 4 and Exhibit B attached thereto).

21 The plaintiff class in *Hardwick* consisted of all persons who received assets of the named
22 rancherias pursuant to distribution plans prepared under the California Rancheria Act of 1958 or the
23 Amended Rancheria Act of 1964. In addition to the distributees, their heirs and legatees and all Indian
24 successors in interest to the real property distributed under the Rancheria Act were also parties to the
25 litigation. A stipulated judgment that, among other things, restored the status of certain members of the
26 plaintiff class as Indians under the laws of the United States was finally entered in 1983. See Order
27 Approving Entry of Final Judgment in Action (Dec. 27, 1983), *Hardwick* (Nyhan Dec. at ¶ 5 and
28 Exhibit C attached thereto). The judgment dismissed from the plaintiff class members of twelve
rancherias, including the Wilton Miwok Rancheria, on the erroneous premise that "[n]o class member

1 from these rancherias currently owns property within the original rancheria boundaries.” See Nyhan
 2 Dec. ¶ 6 and Certificate of Counsel Re Hearing on Approval of Settlement of Class Actions (Nov. 16,
 3 1983), page 9 (Nyhan Dec., Exhibit D). It was mistakenly believed that at termination, the tribal
 4 members of these rancherias had either sold the rancheria property to non-Indians or distributed it to
 5 rancheria members who subsequently sold it to non-Indians. See Stipulation for Entry of Judgment
 6 (July 19, 1983), ¶ 14 (Nyhan Dec., Exhibit E). However, at the time these claims were dismissed,
 7 several members of the Tribe, including Plaintiff Dorothy Andrews, owned property located within the
 8 boundaries of the Wilton Rancheria continuously from the time Rancheria assets were distributed in
 9 1964. See Declaration of Dorothy Andrews filed concurrently herewith, ¶¶ 14-18.

10 2. Defendants.

11 The Defendants in this action include the United States Department of the Interior, a named
 12 party in *Hardwick*, and several of its current employees, and the United States Department of Health
 13 and Human Services and its Secretary, to whom certain duties formerly entrusted to the Department of
 14 the Interior were transferred.

15 B. Both Actions Involve Substantially the Same Property.

16 Members of Plaintiff Tribe and Plaintiff Dorothy Andrews presently own lands that are the
 17 subject of the current action, and were among the landowner- plaintiffs certified as members of the
 18 Plaintiff Class in *Hardwick*. (Andrews Dec. ¶ 15). Members of Plaintiff Wilton Miwok Rancheria
 19 continue to own 50% of the land which comprised its formerly federally recognized Indian reservation.
 20 (Andrews Dec. ¶ 18). In the current action, the Tribe will establish that since the Distribution of its
 21 land in 1961 and throughout the *Hardwick* litigation, its members continued to own and occupy land
 22 within the boundaries of the Wilton Rancheria and that it is entitled to be restored as a federally
 23 recognized Tribe, as 17 other tribes were recognized and restored in *Hardwick*. (See Stipulation for
 24 Entry of Judgment, Exhibit E to Nyhan Dec. and Andrews Dec. at ¶¶ 15, 18 and Exhibit A thereto.)

26 C. Both Actions Involve Substantially the Same Transaction or Event.

27 In the current action, Plaintiffs seek substantially the same relief sought through the Complaint
 28 in *Hardwick*, declaratory and injunctive relief against the United States’ Secretary of the Interior to

1 restore Plaintiffs as a federally recognized Indian Tribe.

2 **D. The Two Cases Should be Related to Avoid Unduly Burdensome Duplication Of**
 3 **Labor And Expense.**

4 The Honorable Judge Jeremy Fogel has presided over recent litigation which he has determined
 5 is related to the *Hardwick* case. In the first matter, captioned in the *Hardwick* case, the County of
 6 Madera, one of the defendants in *Hardwick*, attempted to enforce terms of a Stipulated Judgment
 7 entered in *Hardwick* in 1987 involving claims asserted by the Picayune Rancheria of the Chukchansi
 8 Indians. (Nyhan Dec. ¶ 11). The Court is requested to take judicial notice of its order denying the
 9 County of Madera's Motion For Enforcement of Judgment Order (entitled "Not for Citation") filed on
 10 May 20, 2004, (Nyhan Dec., Exhibit F) and the statement in that order that "There is no question that
 11 the Court has continuing jurisdiction to resolve disputes arising from the stipulated judgments. The
 12 1983 Stipulated Judgment expressly retained jurisdiction for "a period of two years from entry of
 13 judgment or for such longer time as may be shown to be necessary on a duly noticed motion by any
 14 party." (Nyhan Dec. ¶ 11; Exhibit F at pp. 4-5)

15 In a separate action filed in 2006, the Picayune Rancheria of the Chukchansi Indians,
 16 (hereinafter "PRCI") attempted to file a motion to enforce the *Hardwick* judgment. Judge Fogel denied
 17 that motion and directed the plaintiff in that case to file a separate action for declaratory relief and
 18 relate it to *Hardwick*. (Nyhan Dec. ¶12 and Exhibit G). In *The Picayune Rancheria of Chukchansi*
 19 *Indians v. County of Madera, et al.* Case No.C-06-7613 RMV (PVT) (hereinafter the "PRCI action")
 20 Judge Fogel determined that the PRCI action was related to the earlier-filed *Hardwick* case, No. C-79-
 21 1710 (JF). The Court is requested to take judicial notice of another order (also titled "Not for
 22 Citation") in which Judge Fogel ruled that the PRCI action be related to the earlier-filed *Hardwick* case
 23 and re-assigned to Judge Fogel. (Nyhan Dec. ¶ 13; Exhibit H). The PRCI action was concluded by
 24 Order Approving the Stipulation re: Settlement and Request for Continuing Jurisdiction for
 25 Enforcement of Settlement Agreement, filed on March 2, 2007. (Nyhan Dec. ¶ 13; Exhibit H).

26 Since 2004, Judge Fogel has expended substantial time and effort familiarizing himself with the
 27 facts involved in and the purposes of the *Hardwick* litigation and the judgments entered therein.
 28

1 The claims of Plaintiffs in this case center around the identical indicia of entitlement to be recognized
2 and restored as a federally recognized Indian tribe litigated by plaintiffs in *Hardwick*. The
3 determination of Plaintiffs' claims in the present action cannot be rendered without extensive
4 consideration of matters litigated in *Hardwick* spanning the past 28 years. Judge Fogel has become
5 knowledgeable about the voluminous record accumulated in the several years in which he has presided
6 over the Madera County action and the PRCI action. It would be unduly burdensome on the Court and
7 the parties to present the Plaintiffs' claims in this case to any District Court Judge other than Judge
8 Fogel, when Judge Fogel has already reviewed of all of the jurisdictional factors involved in Plaintiffs'
9 present action and has intensively reviewed the Court's records in the *Hardwick* litigation.

10 **II. CONCLUSION**

11 This Court should determine the instant case to be related to *Hardwick* because (i) both actions
12 concern substantially the same parties, property and events and (ii) there will be an unduly burdensome
13 duplication of labor and expense or conflicting results if the cases are conducted before different
14 Judges.

15 Dated: May 21, 2007

Respectfully submitted,

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