

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) SANTA YNEZ BAND OF MISSION INDIANS	DEFENDANTS UNITED STATES OF AMERICA
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) SEE ATTACHMENT	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="border: none;">Citizen of This State</td> <td style="border: none; text-align: center;">PTF <input type="checkbox"/> 1</td> <td style="border: none; text-align: center;">DEF <input type="checkbox"/> 1</td> <td style="border: none;">Incorporated or Principal Place of Business in this State</td> <td style="border: none; text-align: center;">PTF <input type="checkbox"/> 4</td> <td style="border: none; text-align: center;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td style="border: none;">Citizen of Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 2</td> <td style="border: none;">Incorporated and Principal Place of Business in Another State</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td style="border: none;">Citizen or Subject of a Foreign Country</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 3</td> <td style="border: none;">Foreign Nation</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> <td style="border: none; text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify):
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT: \$** 0

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 26 U.S.C. 7422(A); SUIT FOR REFUND OF FEDERAL INCOME TAX ERRONEOUSLY COLLECTED.

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input checked="" type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events, or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District, California County outside of this District, State if other than California, or Foreign Country, in which **EACH** named plaintiff resides
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District, State, if other than California; or Foreign Country
SANTA BARBARA	

(b) List the County in this District, California County outside of this District, State if other than California, or Foreign Country, in which **EACH** named defendant resides
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c)

County in this District:*	California County outside of this District, State, if other than California, or Foreign Country

(c) List the County in this District, California County outside of this District, State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District, State, if other than California; or Foreign Country
SANTA BARBARA	

*** Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties**

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date Nov. 17, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended, plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

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16 Attorneys for Plaintiff
17 Santa Ynez Band of Mission Indians

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA

20 SANTA YNEZ BAND OF MISSION
21 INDIANS, a federally recognized
22 Indian Tribe,

23 Plaintiff,

24 v.

25 UNITED STATES OF AMERICA,
26 Defendant.

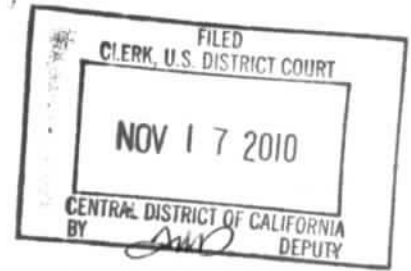
27 Case No.

28 **CV10-8831** VBF (SHX)

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

NATURE OF THE CASE

1. This is an action brought pursuant to 26 U.S.C. § 7422(a) by the Santa Ynez Band of Mission Indians, a federally recognized Indian tribe (hereafter "Santa Ynez" or the "Tribe"), seeking to compel the United States of America, acting through the Internal Revenue Service (hereafter "IRS"), to accept and act upon a claim for refund of approximately \$3.8 million in federal withholding taxes filed by Santa Ynez but rejected as untimely by the IRS.



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THE "INFORMAL CLAIM" RULE

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2 8. As initially described by the Supreme Court in 1941, the Court had
3 often held that a notice fairly advising the Commissioner
4 of the nature of the taxpayer's claim, which the
5 Commissioner could reject because it is too general or
6 because it does not comply with formal requirements of
7 the statute and regulations, will nevertheless be treated as a
8 claim, where formal defects and lack of specificity have
9 been remedied by amendment filed after the lapse of the
10 statutory period.

11 United States v. Kales, 314 U.S. 186, 194, 62 S. Ct. 214, 86 L. Ed. 132 (1941).
12 More recently, in Commissioner of Internal Revenue v. Lundy, 516 U.S. 235, 250,
13 116 S. Ct. 647, 133 L. Ed. 2d 611 (1990), the Court noted that "even a claim [for
14 refund of taxes] that does not comply with federal regulations might suffice to toll
15 the limitations period under the Tax Code," citing Kales.

16 9. The Ninth Circuit has similarly recognized and applied the "informal
17 claim" rule for decades, beginning with United States v. Pierotti, 154 F.2d 758,
18 761 (9th Cir. 1946). And just four year ago, in Commissioner of Internal Revenue
19 v. Ewing, 439 F.3d 1009 (9th Cir. 2006), the Ninth Circuit described the "informal
20 claim" rule, and more recent cases that have applied it, as follows:

21 The doctrine addresses whether an informal claim for a
22 refund should stop the running of the statute of limitations
23 for a refund claim. First Sec. Bank, N.A. v.
24 Commissioner, 592 F.2d 1046, 1049 (9th Cir. 1979). It is
25 concerned with claims that are "deficient merely in one or
26 two of the technical requirements imposed by the
27 Treasury regulation [26 C.F.R. § 301.6402-2(b)(1)]."
28 BCS Fin. Corp. v. United States, 118 F.3d 522, 524 (7th

1 Cir. 1997); see also Kaffenberger v. United States, 314
2 F.3d 944, 954 (8th Cir. 2003) (citing Kales and stating that
3 “the Supreme Court has endorsed informal claims filed
4 within the statutory period that have technical
5 deficiencies, as long as a valid refund claim is
6 subsequently made after the period has run”).

7 Id. at 1015.

8 10. In Stevens v. United States, 2006 U.S. Dist. LEXIS 45611 (N.D. Cal.
9 2006), the District Court outlined the test for application of the rule as follows:

10 An informal claim is adequate if it: 1) was filed within the
11 statutory period; 2) put the IRS on notice that taxpayer
12 believes an erroneous tax has been assessed; 3) describes
13 the tax and year with sufficient particularity to allow the
14 IRS to undertake an investigation; and 4) while an
15 informal claim may include oral communications, it must
16 have a written component. Finally, any such informal
17 claim must have been followed by a formal claim which
18 remedied any defects in the informal claim.

19 Id. at *17 (internal citations and quotations omitted). After applying that test, the
20 court subsequently upheld the taxpayer’s right to a refund under the “informal
21 claim” rule, holding that “the delayed filing of the formal refund claim is precisely
22 the sort of harmless non-compliance the informal claim doctrine is intended to
23 excuse.” Stevens v. United States, 2007 U.S. Dist. LEXIS 65049 (N.D. Cal. 2007)
24 at *13.

25 FACTUAL ALLEGATIONS

26 11. During 2003 and 2004, Santa Ynez made “per capita” payments to its
27 members from revenues derived from gaming activities. Federal law, at 25 U.S.C.
28 § 2710(b)(3)(D), makes such payments subject to federal income taxation and

1 26 U.S.C. § 3402(r) make such payments subject to federal withholding
2 requirements.

3 12. During 2003 and 2004, Santa Ynez failed to withhold, or under-
4 withheld, federal taxes on payments made to some tribal members.

5 13. The IRS later conducted an audit of Santa Ynez for those years and
6 assessed taxes, interest and penalties against the Tribe for 2003 and 2004.

7 14. On or about May 5, 2006, Santa Ynez paid the IRS \$1,041,745.11 for
8 tax year 2003 and \$2,891,865.76 for tax year 2004 in full satisfaction of all
9 amounts ostensibly owed under the audit.

10 15. Upon information and belief, the IRS received and credited the
11 Tribe's tax payments on or about May 10, 2006.

12 16. Subsequent to making its May, 2006 tax payments to the IRS, the
13 Tribe determined that all, or virtually all, of the tribal members whose taxes had
14 not been withheld, or had been underwithheld, had reported and fully paid their
15 federal income taxes for years 2003 and 2004. As a result, the Tribe overpaid its
16 withholding tax obligation for years 2003 and 2004.

17 17. Title 26, U.S.C. § 3402(d) permits the Tribe, in those circumstances,
18 to claim a refund for the unwithheld or underwithheld taxes (but not penalties or
19 interest) that the Tribe paid to the IRS on behalf of its members as a result of the
20 audit, but which the members subsequently paid themselves.

21 18. Under 26 U.S.C. § 6511(a), a claim for refund of such taxes must be
22 filed "within 2 years from the time the tax was paid."

23 19. Upon information and belief, the IRS has determined that the statute
24 of limitations for the Tribe's claim for refund in this case expired on May 10,
25 2008; two years after the IRS credited the Tribe's payment made on or about May
26 5, 2006.

27 20. On or about January 22, 2008, and well before the running of the
28 statute of limitations (as calculated by the IRS), Santa Ynez filed a claim for refund

1 with the IRS for the taxes previously paid by the Tribe for 2003 and 2004, but for
2 which it was entitled to a refund under 26 U.S.C. § 3402(d) (hereafter the “January
3 22nd Claim”). That claim consisted of a cover letter, Form 4670 (“Request For
4 Relief From Payment of Income Tax Withholding”), a total of ninety Forms 4669
5 (“Statement of Payments Received”) executed by individual tribal members
6 attesting to their payment of federal income taxes for 2003 and 2004; worksheets
7 documenting the amount of refund claimed; copies of the IRS audit report and
8 other related documents. Copies of only the cover letter and Form 4670 from the
9 January 22nd Claim are attached hereto as Exhibit A.

10 21. The January 22nd Claim plainly identified the taxpayer, the type of tax
11 at issue, the tax years in question and the basis of the claim for refund.

12 22. The January 22nd Claim was sufficiently particular to allow the IRS to
13 undertake an investigation of the claim. Beginning on April 23, 2008, and
14 continuing through September 17, 2008, the IRS sent the Tribe three letters
15 regarding the January 22nd Claim, either asking for additional time to process the
16 claim or requesting additional information.

17 23. In response to the IRS’ request, on or about October 1 2008, Santa
18 Ynez sent an additional package of original claims documents to the IRS (the
19 “October 1st Supplement”). Copies of only the cover letter and Form 4670 from
20 the October 1st Supplement are attached hereto as Exhibit B.

21 24. Between October, 2008 and May, 2009, the IRS and the Tribe
22 continued to communicate, by letter and by telephone, about the status of the
23 Tribe’s claim for refund, without any resolution.

24 25. In June, 2009, the Tribe contacted the Taxpayer Advocate Service of
25 the IRS to seek assistance in getting its claim for refund processed. Mr. Dan
26 Klugman of the Taxpayer Advocate Service office in Los Angeles, California was
27 thereupon assigned to the Santa Ynez matter.

28

1 cured by the subsequent filing of the October 1st Supplement and the 843 Forms, as
2 requested by the IRS.

3 33. The January 22nd Claim, the October 1st Supplement and the 843
4 Forms, taken together, constitute a valid and effective formal claim for refund that
5 meets all of the applicable statutory and regulatory requirements for such a claim.

6 34. Santa Ynez is entitled to a declaratory judgment that under the
7 “informal claim” rule, its claim for refund of taxes was timely filed and that the
8 decision of the IRS to reject that claim as untimely is unlawful and improper.

9 B. SECOND CLAIM

10 35. Santa Ynez realleges, as set forth fully herein, each and every
11 allegation contained in the preceding paragraphs.

12 36. Title 26, U.S.C. § 7422(a) authorizes a taxpayer to sue the United
13 States for refund of any internal revenue tax erroneously or wrongfully assessed or
14 collected, provided that prior to filing the suit, he taxpayer has filed a claim for
15 refund with the IRS.

16 37. Santa Ynez timely filed a claim for refund in connection with the
17 withholding taxes it paid on behalf of tribal members for years 2003 and 2004
18 prior to the filing of this action.

19 38. The IRS has unlawfully and improperly refused to accept, consider
20 and act upon the Tribe’s claim.

21 39. Under 26 U.S.C. §§ 3402(d), 7422(a) and other applicable federal
22 law, Santa Ynez is entitled to an order from this Court directing the IRS to accept,
23 consider and act upon the Tribe’s claim for refund.

24 PRAYER FOR RELIEF

25 40. Plaintiff Santa Ynez respectfully requests that this Court enter
26 judgment:
27
28

1 (a) declaring that under the “informal claim” rule, the Tribe’s claim
2 for refund of taxes was timely filed and that the decision of the IRS to reject that
3 claim as untimely was erroneous and unlawful;

4 (b) ordering and directing the IRS to accept, consider and act upon
5 the Tribe’s timely filed claim for refund;

6 (c) awarding the Tribe its costs of suit;

7 (d) awarding the Tribe its reasonable attorneys fees to the extent
8 provided by law; and

9 (e) awarding the Tribe such other relief as the Court deems just and
10 proper.

11 DATED this 17 day of November, 2010.

12 **JENKINS & HOGIN, LLP**

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19 **& FRIEDLANDER, P.A.**

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