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IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

BLUE LAKE RANCHERIA, et al., Plaintiffs, **v.** **MARTY MORGENSTERN, et al.,** Defendants.	Case No. 2:11-CV-01124-JAM-JFM **NOTICE OF APPEAL**

Notice is here given that State of California, Employment Development Department, Marty Morgenstern, Pam Harris, Jack Budmark, Talbott Smith, Kathy Dunne, and Sarah Reece, Defendants in the above named case, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order granting the motion by Plaintiffs Blue Lake Rancheria, Blue Lake Economic Development Corporation, and Mainstay Business Solutions for preliminary injunction

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entered in this action on the 11th day of August, 2011. A copy of the order appealed from is attached as Exhibit 1.

Dated: August 25, 2011

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
WILLIAM L. CARTER
Supervising Deputy Attorney General

/s/ Jill Bowers

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Exhibit 1
Order Granting Plaintiffs' Motion for a Preliminary Injunction

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BLUE LAKE RANCHERIA, a federally-recognized Indian Tribe; BLUE LAKE RANCHERIA ECONOMIC DEVELOPMENT CORPORATION, a federally-chartered tribal corporation; and MAINSTAY BUSINESS SOLUTIONS, a federally-authorized division of Blue Lake Rancheria Economic Development Corporation,

Plaintiffs,

v.

MARTY MORGENSTERN, individually and in his official capacity as Secretary of the California Labor and Workforce Development Agency; PAM HARRIS, individually and in her official capacity as Chief Deputy Director of the Employment Development Department of the State of California ("EDD"); JACK BUDMARK, individually and in his official capacity as a Deputy Director of the Tax Brach of the EDD; TALBOTT SMITH, individually and in his official capacity as a Deputy Director of the Unemployment Branch of the EDD; KATHY DUNNE, individually and in her official capacity as a Senior Tax Compliance

Case No. 2:11-CV-1124 JAM-JFM

ORDER GRANTING PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Representative of the EDD; SARAH REECE, individually and in her capacity as an Authorized Representative of the EDD; THE STATE OF CALIFORNIA; THE EMPLOYMENT DEVELOPMENT DEPARTMENT, a department of the State of California; and DOES 1-50, inclusive,

Defendants.

This matter is before the Court on Plaintiffs Blue Lake Rancheria ("the Tribe"), Blue Lake Rancheria Economic Development Corporation ("EdCo"), and Mainstay Business Solutions' ("Mainstay") (collectively "Plaintiffs") Motion for a Preliminary Injunction (Doc. #20). Defendants Marty Morgenstern ("Morgenstern"), Pam Harris ("Harris"), Jack Budmark ("Budmark"), Talbott Smith ("Smith"), Kathy Dunne ("Dunne") and Sarah Reece ("Reece") (collectively "Defendants") oppose the motion (Doc. #25). The Court held a hearing on the motion on June 29, 2011. At the close of the hearing, the Court took the matter under submission, and ordered supplemental briefing on specific issues raised at the hearing. Further supplemental briefing was ordered to address issues raised for the first time in the supplemental briefs. Having reviewed the supplemental briefing, and based on the moving papers and oral argument, the Court GRANTS the motion for a preliminary injunction.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs seek to enjoin Defendants from their enforcement of state unemployment insurance taxes. Defendants seek to collect approximately $19,285,572.67 in state unemployment insurance contributions that Defendants assert are owed by Mainstay.

Plaintiffs do not dispute that some amount of money is owed, but argue that Defendants' collection activities violate tribal sovereign immunity and unlawfully encumber tribal land and tribal assets. Plaintiffs filed a Complaint (Doc. #1) for declaratory and injunctive relief, and now move for a preliminary injunction. The suit is brought under 28 U.S.C. § 1362, which provides that "district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band . . . wherein the matter in controversy arises under the Constitution, laws or treaties of the United States." Agua Caliente Band of Cauhuilla Indians v. Hardin et al., 223 F.3d 1041, 1046 FN 5 (9th Cir. 2000) (internal citations omitted). Section 1362 does not, however, waive state sovereign immunity. Id.

The motion for a preliminary injunction names only the state officials as Defendants. The Complaint seeks a declaration that Defendants are violating Plaintiffs' tribal sovereign immunity and unlawfully encumbering tribal assets and land, both on and off the reservation. The Complaint also seeks an injunction enjoining Defendants from continuing to levy liens on Tribal assets and property, and requiring Defendants to cancel any existing liens and return any funds seized in response to the existing liens.

Plaintiffs' suit concerns the collection of unemployment insurance contribution payments, pursuant to the Federal Unemployment Tax Act, 26 U.S.C. § 3301 et seq. ("FUTA"). FUTA is a joint federal-state program for unemployment insurance. FUTA was amended in 2001 to require states to allow Indian tribes to elect to be a reimbursable employer. A reimbursable employer reimburses the State for all benefits paid to former employees. (Cal. Unempl.

Ins. Code 803(b).) Mainstay elected to be a reimbursable employer under FUTA, and held this designation from 2003 to 2010. Mainstay ceased making full contribution payments as required and is now alleged to owe $19,285,572.67, prompting Defendants to begin the collection activities at issue in this motion for a preliminary injunction.

II. OPINION

A. Legal Standard

The purpose of a preliminary injunction as provided by Federal Rules of Civil Procedure 65 is to preserve the relative position of the parties until a full trial on the merits can be conducted. Gilman v. Davis, 2010 WL 519808 at *6 (E.D. Cal. Feb. 4, 2010). Plaintiffs seeking a preliminary injunction must establish that they are (1) likely to succeed on the merits, (2) that they are likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in their favor, and (4) that an injunction is in the public interest. Am. Trucking Ass'ns v. City of Los Angeles, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting Winter v. Natural Res. Def. Counsel, Inc., 129 S.Ct. 365, 375-76 (2008). The Ninth Circuit recently clarified that District Courts must also apply a "serious questions" version of the sliding scale test for preliminary injunctions. Alliance for the Wild Rockies v. Cotrell, 632 F.3d 1127, 1131-35 (9th Cir. 2011). The Supreme Court in Winter, *supra*, did not explicitly discuss the continuing validity of the Ninth Circuit's sliding scale approach, in which the elements of the preliminary injunction test are balanced, so that a stronger showing of one element may offset a

weaker showing of another. Cotrell, at 1131. Accordingly, under Cotrell, this Court must apply the four part test from Winter, and also apply the serious questions test formulated as "a preliminary injunction is appropriate when a plaintiff demonstrates that serious questions going to the merits were raised and the balance of hardships tips sharply in plaintiff's favor." Cotrell, at 1134-35.

"What constitutes irreparable harm does not readily lend itself to precise definition . . . Perhaps most generally, irreparable harm is injury that cannot be adequately remedied by the imposition of money damages." Inspection Management Systems, Inc. v. Open Door Inspections, Inc., 2009 WL 805813, *4 (E.D. Cal. March 26, 2009) (citing Prairie Band of Potawatomi Indians v. Pierce, 253 F.3d 1233 (10th Cir. 2001)). Irreparable harm has been found when the state's conduct interferes with tribal self-government, since such harm is not easily subject to valuation. Prairie Band, 253 F.3d at 1250-51. Losses in revenue and the related effects on tribal services caused by state enforcement actions may constitute irreparable harm. Seneca-Cayuga Tribe of Okla v. State of Oklahoma, 874 F.2d 709, 716 (10th Cir. 1989).

Pursuant to Federal Rules of Civil Procedure 65(d), every order granting an injunction must: (a) state the reasons why it issued; (b) state its terms specifically; and (c) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required. Additionally, the court may issue a preliminary injunction only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been

wrongfully enjoined. Fed. R. Civ. P. 65(c). However, if a defendant has not demonstrated a risk of monetary loss from issuance of a preliminary injunction, the Court does not need to require bond. See, e.g., Thalheimer v. City of San Diego, 706 F.Supp.2d 1065, 1087 (S.D. Cal. 2010); aff'd by Thalheimer v. City of San Diego, 2011 WLL 2400779 (9th Cir. 2011). Rule 65(c) vests the Court with discretion as to the amount of security required, if any. Barahoma-Gomez v. Reno, 167 F.3d 1228, 1237 (9th Cir. 1999) (affirming district court's waiver of bond in the absence of defendant's showing of cost).

B. Preliminary Injunction Motion

At oral argument and in the motion papers, Plaintiffs argue that a preliminary injunction should be issued, because they are likely to succeed on the merits of the Complaint, they face irreparable injury in the absence of a preliminary injunction, the balance of equities tips in their favor, and a preliminary injunction is in the public interest. Plaintiffs also argue that no bond should be required, contending that Defendants fail to demonstrate that any harm will be caused by the preliminary injunction.

Plaintiffs argue that they are likely to succeed on the merits of the Complaint because tribal sovereign immunity bars Defendants from engaging in their current collection activities. EdCo is a federally chartered Indian corporation, and Mainstay is a division of EdCo. Thus both are arms of the tribe, and also have immunity. While Defendants can declare that Plaintiffs owe an outstanding tax, Plaintiffs contend that Defendants are barred from enforcing the tax by levying tax liens. Plaintiffs assert that Congress did

not abrogate tribal immunity when it enacted or amended FUTA, nor have Plaintiffs waived tribal sovereign immunity.

Plaintiffs argue that they have been, and continue to be, irreparably injured because Mainstay has already been forced to cease operations due to the liens. Mainstay has been unable to pay its approximately 150 employees. The Tribe alleges that the collection activities are violating its sovereign immunity and preventing the tribe from carrying out its businesses, which then prevents it from being able to provide for tribe members. Collection activities began on April 7, 2011 and Defendants have filed notices of state tax liens against Plaintiffs in thirteen California counties and with the Secretary of State. Defendants have also subpoenaed Plaintiffs' banks for records and levied on at least one of Plaintiffs' banks.

Plaintiffs argue the balance of harm tips in their favor. Plaintiffs contend that loss of sovereignty cannot be undone. Further, tax liens and levies have already shut down Mainstay and will affect Plaintiffs' ability to obtain credit and conduct business, resulting in the inability to provide basis tribal services. In contrast, Plaintiffs contend that prohibiting Defendants from collection activities during the course of suit will not cause any significant harm to Defendants. Plaintiffs also argue that a preliminary injunction is in the public interest because the proper determination of tribal sovereign immunity is an important public issue.

Defendants raise a number of arguments in support of their opposition to the motion for a preliminary injunction. Additionally, Defendants assert that should the Court grant the

motion for a preliminary injunction, the Court should impose a bond in the full amount of outstanding tax contributions.

Defendants first argue that Plaintiffs cannot bring suit against the State because of 11th Amendment immunity. However, because the preliminary injunction motion is only brought against state officials, it is not barred by 11th Amendment immunity. The Eleventh Amendment grants states sovereign immunity from suit. See, e.g., Agua Caliente , 223 F.3d at 1045. "Since the Supreme Court's decision in Ex parte Young, 209 U.S. 123 (1908), Courts have recognized an exception to the Eleventh Amendment bar for suits for prospective declaratory and injunctive relief against state officers, sued in their official capacities, to enjoin an alleged ongoing violation of federal law." Id.

In Idaho v. Coeur d'Alene Tribe of Idaho, 521 U.S. 261 (1997), a tribe's claim to submerged lands located within the boundaries of the Coeur d'Alene Reservation was not found to be within the Ex parte Young exception. Agua Caliente, 223 F.3d at 1046 (citing Coeur d' Alene, 521 U.S. at 282. The tribe in Couer D'Alene brought land title claims and sought declaratory and injunctive relief establishing its exclusive right to use and enjoy the submerged lands and prohibiting defendants from regulating the lands. The Supreme Court determined that Young did not apply because of the unique nature of the tribe's claims, which the Court determined were the functional equivalent of a quiet title action that would have divested the state of substantially all regulatory power over the land at issue. Agua Caliente , 223 F.3d at 1046, citing Coeur d'Alene, 498 U.S. 505.

However, in Agua Caliente, an Indian tribe challenged the

state's application of California's sales tax on purchases made by non-Indians at a hotel located on a reservation as a violation of federal law prohibiting state taxation of value generating activities on reservation land. The Ninth Circuit held that this case was distinguishable from Couer d'Alene, and that the Ex parte Young doctrine applied.

The Agua Caliente Court held that action was properly characterized as a suit for declaratory relief against state officers to enjoin an ongoing violation of federal law, rather than a suit against the state itself, thus it came under the Ex parte Young exception to Eleventh Amendment immunity, even though the tribe had a an available remedy under state law. The Court stated that "[the fact that]there existed an alternate forum in state court in which the Tribe *could* raise its claims neither divested the district court of jurisdiction nor removed the case from the Young exception for Eleventh Amendment purposes." Agua Caliente, 223 F.3d at 1049 (emphasis in original). The Court noted that the Supreme Court's decision in Coeur d'Alene supported this conclusion, as Justice Kennedy stated in the principal opinion that even if there is a prompt and effective remedy in a state forum, a second instance in which Ex parte Young may serve an important interest is when the case calls for the interpretation of federal law. Id. Accordingly, the Court finds that 11th Amendment immunity is not a bar to Plaintiffs' motion for a preliminary injunction.

Defendants next contend that either Congress abrogated tribal sovereign immunity when it required the states to permit tribes to participate in the FUTA program as reimbursable employers, and/or

the tribe waived its sovereign immunity when it elected to participate in FUTA as a reimbursable employer. Defendants continued to assert these arguments throughout the papers, oral argument and supplemental briefing, however, the Court is not persuaded by Defendants' assertion that either Congress or Plaintiffs clearly waived tribal sovereign immunity.

Federally recognized Indian tribes are immune from suit by any entity, including state governmental agencies, absent a clear waiver by the tribe or congressional abrogation. Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla., 498 U.S. 505, 509 (1991) (citing Santa Clara Pueblo v. Martinez, 436 U.S. 49, 58 (1978). Waiver cannot be implied or imputed, it must be unequivocally expressed. Santa Clara Pueblo, 436 U.S. at 58. Tribal sovereign immunity is a matter of federal law, and cannot be diminished by the States. Kiowa Tribe of Okla. v. Mfg. Technologies, Inc., 523 U.S. 751, 756 (1998).

"There is a difference between the right to demand compliance with state laws and the means available to enforce them." Kiowa, 523 U.S. at 755; see also Okla. Tax Comm'n, 498 U.S. at 514 (noting that while sovereign immunity bars the State from pursing the most efficient remedy, adequate alternatives, such as lobbying Congress for legislation, exist). Even where a federal law is applicable to tribes, sovereign immunity is not abrogated unless Congress included express terms permitting suit against tribes. Basset v. Mashantucket Pequot Tribe, 204 F.3d 343, 357 (2d Cir. 2000) (federal copyright act applies to tribes but does not abrogate tribal sovereign immunity); Fla. Paraplegic, Ass'n, Inc. v. Miccosukee Tribe of Fla., 166 F.3d 1126, 1131-32 (11th Cir. 1999)

(Americans With Disabilities Act applies to tribes but tribal sovereign immunity bars action again tribe to enforce the act).

Further, tribal sovereign immunity also extends to entities that are arms of the tribe. Allen v. Gold Country Casino, 464 F.3d 1044, 1046 (9th Cir. 2006). When an Indian tribe establishes an entity to conduct business activities, that entity is immune if it funds as an arm of the tribe. Id. Further, "like foreign sovereign immunity, tribal immunity is a matter of federal law." Kiowa, at 523 U.S. 759.

Though Defendants assert that Congress clearly abrogated tribal sovereign immunity when it amended FUTA to require states to permit Indian tribes to participate in state reimbursable programs, this argument fails. The 2001 FUTA Amendments at issue state that,

> The State law shall provide that a governmental entity, included an Indian tribe, or any other organization (or group of governmental entities or other organizations) which, but for the requirements of this paragraph, would be liable for contributions with respect to service to which paragraph (1) applies may elect, for such minimum period and at such time as may be provided by State law, to pay (in lieu of such contributions) into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to such service. The State law may provide safeguards to ensure that governmental entities or other organizations so electing will make the payments required under such elections.

26 U.S.C. § 3309(a)(2). The statute goes on to state that states may take "reasonable measures" to ensure that Indian tribes electing the reimbursable program pay their unemployment insurance tax, such as requiring a tribe to post a payment bond. 26 U.S.C. § 3309(d). However, the 2001 Amendments do not clearly or unequivocally state that tribal sovereign immunity is abrogated. Because abrogation of tribal sovereign immunity must be express and

may not be implied, the Court does not find that the 2001 FUTA Amendments expressly abrogate tribal immunity. Likewise, nothing in the forms completed by Plaintiffs in order to elect to participate as a reimbursable employer contains an express waiver of tribal sovereign immunity.

Defendants next argue that the suit is barred by the Tax Injunction Act. The Tax Injunction Act, 28 U.S.C. § 1341 states that "the district courts shall not enjoin, suspend or restrain the assessment, levy, or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." However, the Tax Injunction Act's jurisdictional bar does not apply to Indian tribes bringing suit under 28 U.S.C. § 1362. Agua Caliente, 223 F.3d at FN 5 (citing Moe v. Confederated Tribes of the Colville Indian Reservation, 425 US 463, 472-474 (1976)). California v. Grace Brethren Church, 457 U.S. 393 (1982), the case relied on by Defendants to argue that the Tax Injunction Act bars this Court's jurisdiction is inapplicable, as it was not a suit brought by an Indian tribe under 28 U.S.C. § 1362. Thus, this Court does not find that its jurisdiction over Plaintiffs' suit is barred by the Tax Injunction Act.

As first raised in oral argument and further addressed in the supplemental briefing, Defendants assert that the 2001 FUTA Amendments unconstitutionally violate the 10th Amendment, by commandeering the state process to carry out a federal program. Defendants maintain that conditioning receipt of federal unemployment program funds on allowing Indian tribes to participate as reimbursable employers is unconstitutionally coercive.

FUTA has been subject to 10th Amendment challenges in the

past, and the courts have consistently found that it does not violate the 10th Amendment. See, e.g., Steward Machine Co. v. Davis, 301 U.S. 548, 585-90 (1937); State of New Hampshire Dep't of Employment Security v. Marshall, 616 F.2d 240, 243 (1st Cir. 1980). Additionally, courts have routinely rejected challenges to the conditioning of federal funds under the coercion theory. See, e.g., California v. United States, 104 F.3d 1086, 1092 (9th Cir. 1997); Nevada v. Skinner, 884 F.2d 445, 448 (9th Cir. 1989); Kansas v. United States, 214 F.3d 1196, 1201-02 (10th Cir. 2000); Doe v. Nebraska, 345 F.3d 593, 599-600 (8th Cir. 2003).

Defendants assert that if this Court construes the 2001 FUTA Amendments as requiring the state to allow Indian tribes to participate as reimbursable employers, without giving the state a remedy to collect delinquent contributions from the tribes, this will render FUTA constitutionally suspect and distinguish this case from other cases in which FUTA has withstood 10th Amendment challenges. This argument is without merit.

The State could have chosen not to accept the federal funding, or it could have chosen, consistent with FUTA to take "reasonable measures" to ensure repayment by the Indian tribes, such as requiring tribes to post a payment bond. Further, the state could have chosen to expressly require a tribe to waive sovereign immunity upon electing to become a reimbursable employer. It chose not to take any of these measures, and instead complains that it is now left without a viable remedy for collection of delinquent contributions.

In Defendants' supplemental Reply brief (Doc. #37), they raised for the first time the argument that the Court should

abstain from deciding the preliminary injunction motion pursuant to the doctrine of Younger v. Harris. To promote comity between the federal court and state court, the federal court must abstain from deciding a case to avoid interference with pending state court proceedings. Younger v. Harris, 401 U.S. 37, 44-45 (1971).

The federal court should abstain pursuant to the Younger doctrine if 1) there are ongoing state judicial proceedings; 2) the proceedings implicate important state interests; and 3) the state court proceedings provide adequate opportunity to raise the federal claims. Gartrell Const. Inc. v. Aubry, 940 F.2d 437, 441 (9th Cir. 1991) (citing Middlesex County Ethics Committee v. Garden State Bar Ass'n, 457 U.S. 423 (1982). The Ninth Circuit also requires a fourth element for abstention: that the federal court action would enjoin, or have the practical effect of enjoining, the ongoing state court proceedings. AmerisourceBergen Corp. v. Roden, 495 F.3d 1143, 1149 (9th Cir. 2007).

Defendants state that "ongoing administrative procedures" require this Court to abstain under the Younger v. Harris doctrine. However, as Plaintiffs' note in the supplemental Sur Reply (Doc. #39), Defendants do not identify the administrative procedures to which they refer, nor do they offer analysis of the required factors under the Younger doctrine. Plaintiffs argue that there are no ongoing state administrative procedures that would be enjoined by the preliminary injunction motion. In the absence of information about, and analysis of, any alleged ongoing administrative procedures, the Court does not find that it should abstain from deciding the preliminary injunction pursuant to the Younger abstention doctrine.

Lastly, Defendants ask the Court to impose a bond in the full amount of the debt ($19,285,572.67), arguing that the State is injured by these funds being unavailable. Plaintiffs maintain that requiring a bond is discretionary and Defendants fail to show that any harm will be caused by the issuance of a preliminary injunction. Defendants argue that Plaintiffs should be required to post a bond in the full amount of the debt, because these funds are needed for the administration of the State's unemployment insurance program.

While Plaintiffs contend that no bond should be required because the issuance of the preliminary injunction itself will not cause the State harm, they submit that if the Court was inclined to require a bond, the Court could require bond in the amount that Defendants have actually collected from the issuance of the liens. The parties agree that to date, Defendants have collected $493,277.34. Plaintiffs' motion for a preliminary injunction seeks to have any money collected by Defendants returned, but concedes that return of these funds could constitute harm to Defendants, and thus the collected funds could serve as an appropriate bond.

Following oral argument and extensive briefing, the Court finds that Plaintiffs have met the requirements for granting of their motion for a preliminary injunction. Plaintiffs have shown likelihood of success on the merits, irreparable injury, that the balance of hardships tips in their favor, and that an injunction is in the public interest.

Further, based on oral argument and the supplemental briefing, this Court finds that requiring a bond is appropriate. Rather than require the Defendants to return to Plaintiffs the amount

Defendants have collected thus far, the Court will instead order that this amount be deposited with the Court, constituting Plaintiffs' bond.

III. ORDER

It is hereby ordered that Plaintiffs' motion for a preliminary injunction is GRANTED. It is further ordered that state official defendants Marty Morgenstern, Pam Harris, Jack Budmark, Talbott Smith, Kathy Dunne, and Sarah Reece, including any of their officers, subordinates, agents an employees, and all persons acting under, for or in concert with them, (collectively "state official defendants") are enjoined and shall refrain, absent further order from this Court, from undertaking any further efforts to collect from plaintiffs Blue Lake Rancheria, Blue Lake Rancheria Economic Development Corporation and Mainstay Business Solutions (collectively "Plaintiffs") any unemployment contributions, including without limitation (a) issuing any levies on Plaintiffs' assets, (b) placing any liens on Plaintiffs' assets and (c) issuing any subpoenas to third parties seeking information concerning Plaintiffs' assets.

It is further ordered that state official defendants shall, within fourteen (14) days from the date of this order, (1) withdraw and release any liens or levies placed on Plaintiffs' assets, including without limitation the liens recorded in any Counties in California and the levies issued to Bank of America and any other financial institution.

It is further ordered that, to satisfy the bond required of Plaintiffs, the funds already collected by state official

defendants pursuant to the issuance of the aforementioned liens and levies, in the amount of $493,277.34, shall not be returned to Plaintiffs and shall instead be deposited with the Clerk of the Court within fourteen (14) days of the date of this order. Defendants should deposit the cash with the Clerk of the Court, who will deposit the funds in an interest bearing account.

IT IS SO ORDERED.

Dated: August 11, 2011

JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Case Name: **Blue Lake Rancheria v. Morgenstern** No. **2:11-CV-01124-JAM-JFM**

I hereby certify that on August 25, 2011, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

NOTICE OF APPEAL

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 25, 2011, at Sacramento, California.

Michele Warburton	*/s/ Michele Warburton*
Declarant	Signature

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