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STAND UP FOR CALIFORNIA! and
8 BARBARA LEACH

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MADERA

12 STAND UP FOR CALIFORNIA!, a
13 California non-profit public benefit
14 corporation; BARBARA LEACH, an
individual,

15 Plaintiffs,

16 v.

17 EDMUND G. BROWN JR., in his official
18 capacity as Governor of the State of
California; and DOES 1-50 inclusive,

19 Defendants.

Case No.

**COMPLAINT FOR
DECLARATORY RELIEF AND
PETITION FOR WRIT OF
MANDATE**

20
21 **INTRODUCTION**

22 1. This action challenges the August 31, 2012, action by defendant Edmund G.
23 Brown Jr., Governor of the State of California (the "Governor"), concurring in the
24 decision of the Secretary of the U.S. Department of the Interior (the "Secretary") to
25 approve the application of a group of individuals who identify themselves as the North
26 Fork Rancheria of Mono Indians ("North Fork Tribe" or "Tribe") to have land taken into
27 federal trust for the purpose of developing a large off-reservation casino on a 305.49-acre
28 parcel of land in Madera County (the "Madera Site"). Plaintiffs file this action to vacate,

1 set aside, and invalidate the Governor’s concurrence on the grounds that the Governor
2 lacked authority to take the action, and violated the separation of powers clause of the
3 California Constitution. Plaintiffs seek a writ of mandate and declaratory judgment
4 vacating, setting aside, and invalidating the Governor’s concurrence, and directing him
5 not to send the compact he negotiated with the North Fork Tribe to the California State
6 Legislature for ratification.

7 **PARTIES**

8 2. Plaintiff Stand Up For California! is a non-profit 501(c)(4) corporation
9 organized under the laws of the State of California. Stand Up For California! is a
10 community watchdog group that focuses on gambling issues affecting California citizens,
11 including tribal gaming, card clubs, horse racing, satellite wagering, charitable gaming,
12 and the state lottery. Stand Up For California! has supporters throughout the State of
13 California and in the County of Madera, including the Madera Ministerial Association
14 which, either themselves or through their members, live, do business, and own property in
15 the County of Madera and within five miles of the Madera Site. If the proposed project at
16 the Madera Site is allowed, Stand Up For California! and its supporters will personally
17 suffer environmental, aesthetic, and economic harm. In addition, Stand Up For
18 California!’s supporters will personally suffer injury by the increased risk of gambling,
19 alcohol, and other personal addictions in their community, the financial strain on local
20 government budgets by increasing demand for social services, and job losses in existing
21 Madera businesses.

22 3. Plaintiff Barbara Leach (“Leach”) is a resident of the County of Madera.
23 She lives with her family in a home approximately seven miles from the Madera Site, and
24 owns rental property within the City of Madera. She is employed as a children’s pastor,
25 responsible for children’s religious education at the Valley West Christian Center, in the
26 City of Madera. Leach has long opposed the proposed development at the Madera Site
27 and made a trip to the Governor’s office personally to deliver to the Governor letters of
28 opposition to the proposed casino. If the proposed project at the Madera Site is allowed,

1 Leach will suffer direct harm as a result of the negative impacts associated with the
2 construction and operation of a mega-casino at the Madera Site.

3 4. Defendant Edmund G. Brown Jr. is Governor of the State of California. He
4 is sued in his official capacity only.

5 **JURISDICTION AND VENUE**

6 5. This Court has jurisdiction over this action pursuant to its general subject
7 matter jurisdiction. This Court also has jurisdiction over this action under Sections 1060
8 and 1085 of the California Code of Civil Procedure.

9 6. Venue is proper in this Court under Section 393(b) of the California Code of
10 Civil Procedure, because the cause, or some part of the cause, arose, and the injuries and
11 unlawful acts alleged herein have occurred and continue to occur, in the County of
12 Madera. The Governor's concurrence allowed the Secretary to take the Madera Site into
13 trust for the purpose of developing a class III gaming facility in violation of California
14 law, and transfers sovereignty and jurisdiction over the Madera Site from the State of
15 California and the County of Madera to the North Fork Tribe.

16 7. Plaintiffs have no plain, speedy, or adequate remedy in the ordinary course
17 of law unless this Court grants the relief sought herein to vacate, set aside, and invalidate
18 the Governor's concurrence. In the absence of this requested remedy, the siting,
19 construction, and operation of the proposed project at the Madera Site will occur in
20 violation of California law.

21 **BACKGROUND**

22 8. On March 1, 2005, the North Fork Tribe submitted an application to the
23 U.S. Department of the Interior ("DOI") and the Bureau of Indian Affairs ("BIA") to have
24 the Madera Site taken into trust for the purposes of conducting class III gaming.

25 9. The North Fork Tribe intends to develop, construct, and operate a large class
26 III gaming casino-resort on the 305.49-acre Madera Site adjacent to State Route 99 in
27 Madera County, approximately 40 miles from the North Fork Tribe's existing 80-acre
28 Rancheria. The Madera Site lies on the northern boundary of the City of Madera, about

1 four miles from the city center, and in close proximity to residential neighborhoods. The
2 proposed casino will include an 83,065 square-foot main gambling hall, up to 2,500 Las
3 Vegas-style slot machines, table games, and bingo. The site also will include a 200-room
4 hotel, and 4,500 parking spaces.

5 10. The Indian Gaming Regulatory Act of 1988, 25 U.S.C. § 2701 *et seq.* (the
6 “IGRA”), prohibits gambling on lands taken into trust for Indians after 1988, except under
7 limited exceptions. In this case, the Secretary relied on an exception referred to as the
8 “Secretarial determination” or two-part determination, under which the Secretary must
9 find: (1) it would be in the best interest of the tribe to establish gaming on such land, and
10 (2) the establishment of gaming on such land would not be detrimental to the surrounding
11 community. 25 U.S.C. § 2179(b)(1)(A). In addition, the Governor of the state in which
12 the land is located must “concur” with the Secretary’s two-part determination. If the
13 Governor fails to concur, gaming is not permissible and, if the application also involves a
14 trust request, the land cannot be transferred into federal trust.

15 11. Nothing in the IGRA grants the Governor any authority beyond that which
16 he has under state law.

17 12. Class III gaming on tribal land can be authorized under IGRA only if the
18 state has authorized such gaming. The California Constitution generally prohibits class III
19 gaming. Under Article IV, section 19(e), “[t]he Legislature has no power to authorize,
20 and shall prohibit, casinos of the type currently operating in Nevada and New Jersey.”
21 Section 19(f), however, provides a *limited* exception, authorizing class III gaming on
22 tribal lands where the State and tribe have entered into a compact, as required by the
23 IGRA.

24 13. By letter dated September 1, 2011, Larry Echo Hawk, then Assistant
25 Secretary for Indian Affairs, informed the Governor that he had made a favorable two-part
26 determination under the IGRA on behalf of the Secretary, and requested that the Governor
27 approve, by his concurrence, the siting and development of the proposed casino at the
28 Madera Site.

1 14. On August 31, 2012, the Governor issued his concurrence with the
2 Secretary’s two-part determination, stating “While I am reluctant to allow the expansion
3 of gaming on land currently ineligible for it, I concur in your determination. . . .” When
4 the Governor issued his concurrence, he also announced that he had already negotiated a
5 class III tribal-state gaming compact with the Tribe, which he intended to submit to the
6 California Legislature for ratification.

7 15. The Governor did not identify the source of his authority to concur in the
8 Secretary’s determination or to seek ratification of his concurrence by the California
9 Legislature.

10 **FIRST CAUSE OF ACTION**

11 **Violation of California Constitution**

12 16. Plaintiffs re-allege and incorporate by reference all allegations contained in
13 paragraphs 1 through 15 above, as if fully set forth herein.

14 17. The Governor’s powers are derived from the State Constitution and statutes
15 enacted by the Legislature, and the Governor can act only where authorized by the
16 Constitution or by statute.

17 18. Under the article V, section 1 of the California Constitution, “[t]he Supreme
18 executive power of this state is vested in the Governor,” whose job is to “see that the law
19 is faithfully executed.” In regard to class III gaming for Indian Tribes, Article IV, section
20 19(f) states, “the Governor is authorized to negotiate and conclude *compacts*, subject to
21 ratification by the Legislature.” (emphasis added). Section 19(f) does not authorize the
22 Governor to concur in any findings or determination made by the Secretary under the
23 IGRA.

24 19. The California Constitution vests legislative, executive, and judicial powers
25 separately and prohibits the Governor from usurping or improperly interfering with the
26 essential operations of either the legislature or the judiciary. “Persons charged with the
27 exercise of one power may not exercise either of the others except as permitted by the
28 Constitution.” Cal. Const., art. III, § 3.

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2. That the Court issue a writ of mandate ordering the Governor to set aside his August 31, 2012, concurrence, and ordering the Governor not to submit the compact to the Legislature for ratification.

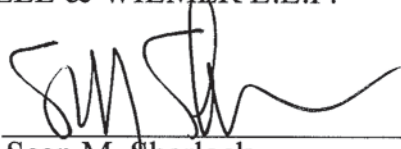
3. That the Court enter judgment, as well as all appropriate provisional remedies, granting temporary, preliminary, and permanent injunctive relief precluding the Governor from taking any action in furtherance of his invalid concurrence, including without limitation presenting the compact to the Legislature for ratification.

4. That the Court enter judgment awarding plaintiffs their costs of suit, including reasonable attorneys' fees.

5. That the Court grant such other and further relief as it deems just and proper.

Dated: March 27, 2013

SNELL & WILMER L.L.P.

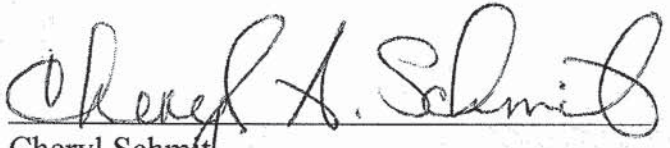
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VERIFICATION

I, Cheryl Schmit, am the Director of Stand Up for California!, the plaintiff in this proceeding. I have read the foregoing COMPLAINT FOR DECLARATORY RELIEF AND PETITION FOR WRIT OF MANDATE, and am informed and believe that the matters therein are true, and on that ground I allege that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on March 27, 2013, at Pennryn, California.


Cheryl Schmit
Director, Stand Up for California!