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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. MCV062850

Dept: 4  
Judge: Hon. Michael J. Jurkovich

**Notice of Motion and Motion for  
Leave to File First Amended  
Complaint; Memorandum of Points  
and Authorities in Support Thereof**

DATE: September 24, 2013  
TIME: 8:30 am  
CTRM: 4  
JUDGE: Hon. Michael J. Jurkovich

Complaint filed: March 27, 2013

21 TO ALL COUNSEL OF RECORD AND PROPOSED INTERVENOR-DEFENDANT  
22 NORTH FORK RANCHERIA OF MONO INDIANS:

23 PLEASE TAKE NOTICE that on September 24, 2013, at 8:30 am or as soon thereafter as  
24 the matter may be heard in Department 4 of the above-captioned court, Plaintiffs Stand Up for  
25 California!, and Barbara Leach will, and hereby do, move for an order granting them leave to file  
26 a First Amended Complaint, a copy of which is attached as Exhibit A to the concurrently filed  
27 Declaration of Sean M. Sherlock. The effect of the amendment will be to add additional causes of  
28

1 action challenging the constitutionality of the recently passed Assembly Bill 277 (“AB 277”), as  
2 well as the compact between the State of California and the North Fork Rancheria of Mono  
3 Indians (“compact”). This amendment will also add new defendants to this action. Exhibit B  
4 attached to the Declaration of Sean M. Sherlock illustrates the differences between plaintiffs’  
5 pending complaint and the proposed First Amended Complaint.

6 This motion is made under to California Code of Civil Procedure section 473(a)(1), and is  
7 made on the following grounds:

8 1. Leave to amend the complaint is in furtherance of justice in that AB 277 ratifies  
9 the compact, which allows class III off-reservation gambling to occur at same location that is the  
10 subject of plaintiffs’ current complaint. Moreover, AB 277 was only recently signed into law on  
11 July 3, 2013, and does not take effect until January 1, 2014. *See* Cal. Const. art. IV, § 8(c).

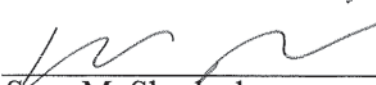
12 2. Shortly after the passage of AB 277, plaintiffs made clear their intention to  
13 challenge the constitutionality of AB 277 and the compact to defendant and this Court.

14 3. Plaintiffs do not seek to harass, delay or otherwise prejudice any party to the  
15 action. The amended complaint will work no prejudice against the Governor as the amendment  
16 does not modify plaintiffs’ first and second causes of action related to the Governor’s  
17 concurrence, and does not alter the Court’s schedule for briefing and ruling on the Governor’s  
18 pending demurer.

19 This motion is based on this Notice of Motion and Motion, the accompanying  
20 Memorandum of Points and Authorities, the concurrently filed Declaration of Sean M. Sherlock,  
21 the pleadings and papers on file in this action, and on such other and further argument and  
22 evidence as the Court may properly receive.

23 Dated: August 21, 2013

SNELL & WILMER L.L.P.

24  
25 By:   
26 Sean M. Sherlock  
27 Harsh P. Parikh  
28 Brian A. Daluiso  
Attorneys for Plaintiffs  
STAND UP FOR CALIFORNIA! and  
BARBARA LEACH

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 This action arises from the Governor's unlawful approval of California's first ever off-  
5 reservation casino, four miles from the heart of Madera, California. During pendency of this  
6 litigation, the California legislature passed Assembly Bill 277 ("AB 277"), titled "Tribal gaming:  
7 compact ratification." AB 277 purports to ratify the tribal-state gaming compact between the  
8 State of California and the North Fork Rancheria of Mono Indians ("North Fork Rancheria Tribe"  
9 or "Tribe"). Plaintiffs now move this Court to grant leave to file their First Amended Complaint  
10 that challenges the constitutionality of AB 277 and the compact.

11 This motion should be granted because:

12 1. Leave to amend the complaint is in furtherance of justice in that AB 277 ratifies  
13 the Compact, which allows class III off-reservation gambling to occur at same location that is the  
14 subject of plaintiffs' current complaint. Moreover, AB 277 was only recently signed into law on  
15 July 3, 2013, and does not take effect until January 1, 2014. *See* Cal. Const. art. IV, § 8(c).

16 2. Shortly after the passage of AB 277, plaintiffs made clear their intention to  
17 challenge the constitutionality of AB 277 and the Compact to defendant and this Court.

18 3. Plaintiffs do not seek to harass, delay or otherwise prejudice any party to the  
19 action. The amended complaint will work no prejudice against the Governor as the amendment  
20 does not modify plaintiffs' first and second causes of action related to the Governor's  
21 concurrence, and does not alter the Court's schedule for briefing and ruling on the Governor's  
22 pending demurer.

23 **II.**

24 **STATEMENT OF FACTS**

25 On March 27, 2013, plaintiffs Stand Up for California! et al. filed this action challenging  
26 the August 31, 2012, action by defendant Edmund G. Brown Jr., Governor of the State of  
27 California concurring in the decision of the Secretary of the U.S. Department of the Interior (the  
28 "Secretary") to approve the application of the Tribe to have land 305.49-acre parcel of land in



1 Madera County (the “Madera Site”) taken into federal trust for the purpose of developing a large  
2 off-reservation casino. In their current complaint, plaintiffs seek a declaratory judgment that the  
3 Governor lacked authority to concur under California law that allows off-reservation gambling at  
4 the Madera Site. Plaintiffs also seek a writ of mandate compelling the Governor to set aside the  
5 concurrence.

6 On May 23, 2013, the Governor demurred. On July 16, 2013, the Court held a hearing on  
7 the demurrer. At the hearing, the Court set a schedule for the parties to submit supplemental  
8 briefing on the effect (if any) of AB 277 on the Governor’s demurer, and set a final hearing on the  
9 demurer for October 25.

10 Plaintiffs’ proposed First Amended Complaint adds two causes of action for declaratory  
11 relief and writ of mandate on the basis that AB 277 and the compact are unconstitutional. In  
12 doing so, the First Amended Complaint adds several state-defendants and agencies that are  
13 implicated by AB 277’s compact ratification, including the State of California, Kamala Harris as  
14 the Attorney General of California, California Gaming Control Commission and the Bureau of  
15 Gambling Control. The First Amended Complaint also makes clarification to the factual  
16 background and includes some pertinent information on Section 19(f) of Article IV of the  
17 California Constitution.

18 The First Amended Complaint makes no changes to the plaintiffs’ first two causes of  
19 action against the Governor. Exhibit B attached to the Declaration of Sean M. Sherlock illustrates  
20 the differences between plaintiffs’ pending complaint and the proposed First Amended  
21 Complaint.

22 On July 9, 2013, parties participated in a telephonic meet and confer for submitting a Case  
23 Management Statement. [Sherlock Decl., ¶ 4.] During that telephonic conference, plaintiffs’  
24 counsel informed the defendant’s counsel of their intention to file an amended complaint.  
25 [Sherlock Decl., ¶ 4.] Plaintiffs’ July 10, 2013, Case Management Statement that was served to  
26 the defendant also stated that “[p]laintiffs intend to seek leave to amend the Complaint to allege  
27 that AB 277 is unconstitutional and to include additional causes of action for declaratory relief  
28 and writ of mandate.” [Sherlock Decl., ¶ 5, Exhibit (“Ex.”) C, at ¶ 15.]

1 At the July 16, 2013 hearing, plaintiffs' counsel notified the Court of plaintiffs' intention  
2 to amend the complaint. [Sherlock Decl., ¶ 6.]

3 On August 2, 2013, plaintiffs' counsel sent the Governor's counsel the proposed First  
4 Amended Complaint, and asked defendant's counsel whether they would stipulate to its filing.  
5 [Sherlock Decl., ¶ 7, Ex. D.] On August 19, 2013, defendant's counsel responded that the  
6 Governor will not agree to a stipulation for filing plaintiffs' First Amended Complaint. [Sherlock  
7 Decl., ¶ 7, Ex. D.]

8 III.

9 **THE COURT SHOULD GRANT PLAINTIFFS LEAVE TO FILE AN**  
10 **AMENDED COMPLAINT**

11 The court may grant leave to amend a pleading at any time. "The court may, in  
12 furtherance of justice, and on such terms as may be proper, allow a party to amend any  
13 pleading..." Cal. Civ. Proc. § 473(a)(1). California has a "policy of great liberality in permitting  
14 amendments to pleadings at any stage of the proceeding." *Berman v. Bromberg* (1997) 56 Cal.  
15 App. 4th 936, 945. This liberality extends from the fundamental principle encouraging courts to  
16 resolve all disputes on their merits and in the same action. *Dieckmann v. Superior Court* (1985)  
17 175 Cal. App. 3d 345, 352. "If the motion to amend is timely made and granting the motion will  
18 not prejudice the opposing party, it is error to refuse permission to amend and where refusal also  
19 results in a party being deprived of the right to assert a meritorious cause of action or a  
20 meritorious defense, it is not only error but an abuse of discretion." *Morgan v. Superior Court*  
21 (1959) 172 Cal. App. 2d 527, 530.

22 California law is thus clear that "it is an abuse of discretion to deny leave to amend where  
23 the opposing party was not misled or prejudiced by the amendment." *Kittredge Sports Co. v.*  
24 *Superior Court* (1989) 213 Cal.App.3d 1045, 1048. Furthermore, "it is irrelevant that new legal  
25 theories are introduced as long as the proposed amendments relate to the same general set of  
26 facts." *Id.* at p. 1048 (citations omitted); *Atkinson v. Elk Corp.* (2003) 109 Cal.App.4th 739, 761  
27 (denial of amendment, where no prejudice was shown, was an abuse of discretion); *Higgins v.*  
28 *Del Faro* (1981) 123 Cal.App.3d 558, 564 (where no prejudice is shown to the adverse party, the

1 liberal rule of allowance prevails).

2 Plaintiffs propose their First Amended Complaint to include challenges to the  
3 constitutionality of AB 277. The claims added in the First Amended Complaint are related to the  
4 pending claims, in that they all effect whether particular actions taken by the State and its officials  
5 to permit the off-reservation Madera casino are proper. Plaintiffs have been diligent in their  
6 request to this Court. AB 277 was only recently signed into law on July 3, 2013, and does not  
7 take effect until January 1, 2014. *See* Cal. Const. art. IV, § 8(c).

8 Moreover, the proposed First Amended Complaint in no way prejudices or surprises the  
9 defendant. Plaintiffs made their intentions to challenge the constitutionality of AB 277 clear to  
10 defendant and this Court shortly after its passage, including in their Case Management Statement  
11 and at the July 16 hearing. The First Amended Complaint does not modify the first and second  
12 causes of action from plaintiffs' current complaint that relate to the Governor's concurrence, and  
13 should not alter the Court's schedule for briefing and ruling on the Governor's pending demurer.  
14 Accordingly, plaintiffs' request for leave to file their First Amended Complaint should be  
15 granted.

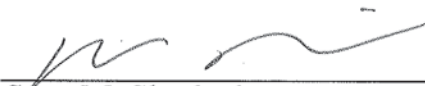
16 IV.

17 CONCLUSION

18 For the foregoing reasons, leave to file the First Amended Complaint is in furtherance of  
19 justice and should be granted.

20  
21 Dated: August 21, 2013

SNELL & WILMER L.L.P.

22  
23  
24 By:   
25 Sean M. Sherlock  
26 Harsh P. Parikh  
27 Brian A. Daluiso  
28 Attorneys for Plaintiffs  
STAND UP FOR CALIFORNIA! and  
BARBARA LEACH

17799043



1 *Stand Up for California!, etc, et al. vs. Edmund G. Brown, Jr., etc., et al.*  
2 *Madera Superior Court, Case No. MCV062850*

3 **PROOF OF SERVICE**

4 I am employed in the County of Orange, State of California. I am over the age of  
5 18 and not a party to the within action; my business address is 600 Anton Boulevard,  
Suite 1400, Costa Mesa, CA 92626-7689.

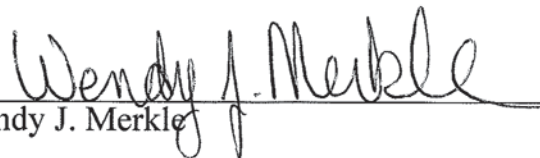
6 On August 21, 2013, I served, in the manner indicated below, the foregoing  
7 document described as **Notice of Motion and Motion for Leave to File First Amended**  
8 **Complaint; Memorandum of Points and Authorities in Support Thereof** on the  
interested parties in this action by placing true copies thereof, enclosed in sealed  
envelopes, at Costa Mesa, addressed as follows:

9 *See the attached Service List*

- 10
- 11  BY REGULAR MAIL: I caused such envelopes to be deposited in the United  
12 States mail at Costa Mesa, California, with postage thereon fully prepaid. I am  
13 readily familiar with the firm's practice of collection and processing  
14 correspondence for mailing. It is deposited with the United States Postal Service  
each day and that practice was followed in the ordinary course of business for  
the service herein attested to (C.C.P. § 1013(a)).
- 15  BY FACSIMILE: (C.C.P. § 1013(e)(f)).
- 16  BY ELECTRONIC MAIL: My office caused such document(s) to be delivered  
17 electronically to the email address(es) on the attached service list.
- 18  BY OVERNIGHT DELIVERY: I caused such envelope to be delivered by air  
19 courier, with next day service, to the offices of the addressees.  
(C.C.P. § 1013(c)(d)).
- 20  BY PERSONAL SERVICE: I caused such envelopes to be delivered by hand to  
21 the offices of the addressees. (C.C.P. § 1011(a)(b)).

22 I declare under penalty of perjury under the laws of the State of California that the  
above is true and correct.

23 Executed on August 21, 2013, at Costa Mesa, California.

24  
25   
26 Wendy J. Merkle  
27  
28

1 **SERVICE LIST**  
2 *Stand Up for California!, etc, al. vs. Edmund G. Brown, Jr., etc., et al.*  
3 *Madera Superior Court, Case No. MCV062850*

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