

1 DAVID A. LINN
District Attorney
Nicholas M. Fogg SBN 273919
2 Deputy District Attorney
Madera Superior Court Building
3 209 West Yosemite Avenue
Madera, California 93637
4 Telephone: (559) 675-7726
5

D.A. # 5415-14 & 5416-14

6 IN THE SUPERIOR COURT OF CALIFORNIA
7 COUNTY OF MADERA
8

9
10 THE PEOPLE OF THE STATE OF
CALIFORNIA,

11 Plaintiff,

CASE No. MCR050200 & MCR050201

12 v.

PEOPLE'S OPPOSITION
TO DEMURRERS AND MOTIONS TO
DISMISS

13 ERIC DOMINGO FLORES SUNIGA,
DAVID LEE DIXON, TIMOTHY S.
14 TOFAUTE, TEX MCDONALD, SHAWN
FERNANDEZ, JOHN OLIVEIRA, TYRONE
15 MARK TWAIN BISHOP, VERNON KING,
BENJAMIN JAMES RHODES, JIM
16 GLASSCOCK, BRIAN LEC
AUCHENBACH, JOHN DAVID CAYANNE,
17 RONALD JONES, DAVID PAUL
ANDERSON, and MIGUEL RAMOS,
18

Date: April 24, 2015
Time: 9:30 a.m.
Department: 2

19 Defendants.
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I. INTRODUCTION

This prosecution enforces limits on who may employ a police force. The state may. Private citizens may not. An Indian tribe, like the state, may.¹ A faction competing for control of an Indian tribe may not.

The Picayune Rancheria of the Chukchansi Tribe (“the Tribe”) is embroiled in a leadership dispute between competing factions. At the center of this dispute is the Tribe’s casino, the Chukchansi Gold Resort and Casino (“the Casino”). The Casino consists of a casino, hotel, and the offices of the Tribe’s gaming commission. In the fall of 2014, a tribal faction named the Unification Council operated the Casino. A competing faction, named after Defendant McDonald, hired a group of men, declared them to be a tribal police department, and ordered them to expel the Unification Council from the Casino. On October 9, 2014, these men attempted to take over the Casino and assaulted the Casino’s security staff. “This act was illegal in the eyes of any lawful body, and constituted the worst sort of street injustice.” (*California v. Picayune Rancheria of Chukchansi Indians* (E.D.Cal. Oct. 29, 2014, 114-CV-01593-LJO-SAB) 2014 WL 5485940, *5.)

Defendants Tex McDonald and Vernon King are leaders of the McDonald faction. Defendants John Oliveira, David Dixon, Timothy Tofaute, Shawn Fernandez, Benjamin Rhodes, Jim Glasscock, Brian Auchenbach, John Cayanne, Ronald Jones, David Anderson, Tyrone Bishop, Miguel Ramos, and Eric Suniga were members of the group hired by the McDonald faction to seize the Casino. The Defendants are charged, by way of complaint, with various felonies related to the takeover attempt. Federal and state law grants this Court

¹ A tribal police force’s powers, however, are less than those of a state’s police force. Regarding non-Indians, a tribal police force may eject persons disturbing the peace on the reservation and detain persons who violated state law until the arrival of state authorities. (*See Duro v. Reina* (1990) 495 U.S. 676, 697 (superseded by statute on other grounds).)

1 jurisdiction over the charged offenses. The Defendants have filed demurrers and non-
2 statutory motions to dismiss.² These motions claim that the McDonald faction was the
3 Tribe's legitimate government and that the Defendants acted under its lawful authority.

4 At the heart of the Defendants' motions is the question of whether the McDonald
5 faction was the Tribe's legitimate government on October 9, 2014. If the answer is "yes,"
6 the motions to dismiss may succeed.³ If the answer is "no," the motions to dismiss fail. The
7 answer, however, is disputed. Multiple factions claim to be the legitimate tribal government.
8 Furthermore, both the People and the defense agree that this Court lacks the jurisdiction to
9 resolve the Tribe's leadership dispute. (Auchenbach Mot. Dismiss 5; Bishop Mot. Dismiss 6;
10 Oliveira Mot. Dismiss 13-19; *supra* Part V.A.)

12 The decisive issue facing the Court, therefore, is how to treat the Defendants' claim to
13 tribal authority when the Court cannot decide which faction, if any, had that authority. The
14 Defendants argue that the Court should accept their assertion of tribal authority and dismiss
15 the case. This argument would create absurd outcomes, infringe upon tribal sovereignty, and
16 jeopardize public safety.

18 The People, instead, ask the Court to reject any defense based on a claim to tribal
19 authority when control of the tribe is disputed. Such an outcome follows from the Court's
20 jurisdiction over the charged offenses and the allocation of the burden of proof, for a non-
21 statutory motion to dismiss, to the Defendants. Denying competing tribal factions a defense
22 of tribal authority also serves two important policy objectives. First, it promotes public
23

25 ² California courts have sanctioned the use of non-statutory motions to dismiss "to raise a
26 variety of defects." (*Stanton v. Superior Court* (1987) 193 Cal.App.3d 265, 271 (collecting
27 cases).)

28 ³ If the McDonald faction was the legitimate tribal government, the Defendants would still
need to show that their conduct was within the limited powers of a tribal police force.

1 safety by discouraging the use of force to resolve tribal disputes. Second, it prevents the
2 Court from indirectly resolving a tribal leadership dispute by recognizing one side's
3 purported police force.

4 **II. FACTUAL SUMMARY**

5 The following factual summary is drawn from three United States District Court
6 opinions that dealt with litigation stemming from the Tribe's leadership.

7 The Picayune Rancheria of Chukchansi Indians [] is a federally-recognized
8 Indian tribe which operates the Chukchansi Gold Resort and Casino [] in
9 Madera County, California. For more than three years, the Tribe has been
10 embroiled in an internecine dispute over the composition of its governing
11 body (the Tribal Council.)
12 (*Picayune Rancheria of Chukchansi Indians v. U.S. Department of the*
13 *Interior* (N.D.Cal. February 3, 2015, 3:14-cv-04273-RS) slip op. at p.1 (Exhibit 1 in
14 Request for Judicial Notice).)

15 On January 24, 2013, a leadership dispute arose among the duly elected
16 members of the Tribal Council, and various members of the Tribal Council
17 attempted to suspend other members. . . . Three separate factions emerged
18 from the leadership dispute, each claiming to represent the government of the
19 Tribe. . . . The different factions each appointed different tribal councils and
20 attempted to operate as the legitimate government of the Tribe.
21 (*Picayune Rancheria of Chukchansi Indians v. Henriquez* (D.C.Ariz. Dec. 31, 2013,
22 CV-13-01917-PHX-DGC) 2013 WL 6903750, *1 (internal citations omitted)(Exhibit 3 in
23 Request for Judicial Notice).)

24 It is undisputed that an intra-tribal dispute exists between at least three groups
25 within the Tribe, including: the McDonald Faction, the Ayala/Lewis Faction,
26 and a third Faction, led by Morris Reid ("Reid Faction"). Each group claims
27 to be the Tribe's duly constituted leadership and to have the right and power to
28 control the Tribe's gaming activities.
29 (*California v. Picayune Rancheria of Chukchansi Indians* (E.D.Cal. Oct. 29, 2014,
30 114-CV-01593-LJO-SAB) 2014 WL 5485940, *1 (internal citations omitted)(Exhibit 2 in
31 Request for Judicial Notice).)

32 Prior to October 9, 2014, the Ayala/Lewis Faction was in de facto control of
33 the Casino floor and associated business activities. On the evening of October
34 9, 2014, the armed security forces of the Ayala/Lewis Faction and the
35 McDonald Faction were involved in a confrontation. . . . The Madera County
36 Sherriff's Office arrived on scene at approximately 7:20 pm, and secured the
37 Casino and surrounding property.

1 (California v. Picayune Rancheria of Chukchansi Indians, *supra*, 2014 WL 5485940,
2 *3 (internal citations omitted).)

3 **III. PROCEDURAL HISTORY**

4 On October 31, 2014, the Defendants were charged by way of complaint with
5 kidnapping, false imprisonment, assault with a firearm, assault with a deadly weapon, battery
6 causing serious bodily injury, assault with a stun gun, and various firearm enhancements.
7 Two prior convictions for “strike” offenses have also been alleged against Defendant
8 McDonald.

9 On November 5, 2014, Defendants McDonald, King, Bishop, and Ramos were
10 arraigned and entered pleas of not guilty. On November 12, 2014, Defendants Oliveira and
11 Anderson appeared for arraignment, but continued their arraignments until January 5, 2015 to
12 allow for the filing of demurrers and motions to dismiss. Defendants McDonald, Bishop, and
13 Oliveira filed their demurrers and motions to dismiss on December 17, 2014. Defendant
14 Ramos filed his demurrer and motion to dismiss on December 24, 2014.

15 On December 22, 2014, Defendants John Cayanne, David Dixon, Shawn Fernandez,
16 Jim Glasscock, and Timothy Toufate were arraigned. Defendants Brian Auchenbach, Ronald
17 Jones, Benjamin Rhodes, and Eric Suniga were arraigned on January 14, 2015. These
18 Defendants timely filed a demurrer and motion to dismiss on February 11, 2015.

19 **IV. COURT HAS JURISDICTION OVER THE CHARGED** 20 **OFFENSES**

21 **A. Federal and State Law Grants Jurisdiction**

22 Jurisdiction in a criminal case requires jurisdiction over both the person and the
23 subject matter “or, as it is sometimes called, of the offense.”⁴ (*Burns v. Municipal Court*
24 (1961) 195 Cal.App.2d 596, 599.) Subject matter jurisdiction in a criminal case extends to
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28 ⁴ No party has challenged the Court’s personal jurisdiction over the Defendants.

1 “public offense[s] committed” within the state. (Pen. Code, § 777.) Public offenses are
2 defined to include “an act committed . . . in violation of a law forbidding . . . it” for which a
3 person may be punished by incarceration. (Pen. Code, § 15; see *also* *People v. Vasilyan*
4 (2009) 174 Cal.App.4th 443, 449-50 (discussing Pen. Code, § 15).) The superior court, in
5 other words, has subject matter jurisdiction over “any felony offense committed within the
6 state . . .” (*People v. Simon* (2001) 25 Cal.4th 1082, 1097, fn. 8.) Each of the offenses
7 alleged in the complaint is a felony punishable by incarceration and are alleged to have
8 occurred within California. This Court, therefore, has subject matter jurisdiction.

10 Neither the fact that some of the Defendants are Indians⁵ or that the charged offenses
11 occurred on the Tribe’s land diminish the Court’s jurisdiction. Congress, through the
12 passage of Public Law 280 (18 U.S.C. § 1162), has given California jurisdiction over crimes
13 “committed by or against Indians” on Indian Country⁶ “to the same extent that [California]
14 has jurisdiction over offenses committed elsewhere within [California]” (18 U.S.C. §
15 1162(a).) Separate and apart from Public Law 280, California has jurisdiction over crimes
16 committed in Indian Country “between nonIndians [sic], as well as victimless crimes
17 committed by nonIndians [sic].” (*People v. Ramirez* (2007) 148 Cal.App.4th 1464, 1474, fn.
18 9.) In other words, California has the same jurisdiction over criminal acts in Indian Country
19 that it has elsewhere in the state.

22 While Public Law 280 extends the jurisdiction of California’s “criminal/prohibitory”
23 laws into Indian Country, the state’s “civil/regulatory” laws are not similarly extended.
24 (*California v. Cabazon* (1987) 480 U.S. 202, 209.) The civil/criminal distinction has been

26 ⁵ This brief uses the word Indian, instead of Native American, to mirror the language of
27 Public Law 280.

28 ⁶ Indian Country is defined to include all land within “any Indian reservation.” (18 U.S.C. §
1151.) It is undisputed that the Rancheria is Indian Country.

1 criticized as imprecise. (*Doe v. Mann* (9th Cir. 2005) 415 F.3d 1038, 1054.) California's
2 regulation of bingo, for example, is civil/regulatory. (*California v. Cabazon, supra*, 480 U.S.
3 202, 210.) But California's regulation of fireworks is criminal/prohibitory. (*Quechan Indian*
4 *Tribe v. McMullen* (9th Cir. 1993) 984 F.2d 304, 308.) Categorizing the charges in this case,
5 however, poses little difficulty. If anything is criminal/prohibitory, it is the violent offenses
6 with which the Defendants are charged.

7
8 Defendant McDonald argues that Public Law 280 does not extend California's
9 criminal jurisdiction to individuals in Indian Country who commit crimes under the color of
10 law. (McDonald Mot. Dismiss 8.) This argument suffers from three flaws. First, it assumes
11 that Defendant McDonald represented the legitimate tribal government. For reasons
12 discussed later in this brief (see *infra* Parts V, VI), the Court should not recognize such a
13 claim of authority. Second, Public Law 280 contains no exception for offenses committed
14 under the color of law; it merely gives California the same criminal jurisdiction in Indian
15 Country that it has elsewhere in the state. California law does not recognize an exception to
16 its criminal jurisdiction for crimes committed under the color of law. Third, Defendant
17 McDonald's argument relies on the Court of Appeals for the Ninth Circuit's decision in
18 *Bishop Paiute Tribe v. County of Inyo* (9th Cir. 2002) 291 F.3d 549, 556. *Bishop Paiute*
19 *Tribe* addressed a county's civil liability for a search warrant served on a tribe. It did not
20 address criminal jurisdiction over crimes committed under the color of law in Indian
21 Country.

22 **B. Demurrers Identify No Facial Defect In Complaint**

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24 The Defendants have filed demurrers claiming that the Court lacks subject matter
25 jurisdiction. A demurrer is appropriate when "it appears upon the face" of a complaint that a
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1 court lacks jurisdiction. (Pen. Code, § 1004(1).)⁷ Defects not apparent on the complaint's
2 face must be raised through another procedural device. (*People v. McConnell* (1890) 82 Cal.
3 620, 620-21; *People v. Williams* (1979) 97 Cal.App.3d 382, 391.)

4 Because the complaint in this case alleges that the Defendants committed felonies in
5 California, the complaint, on its face, sufficiently alleges subject matter jurisdiction. (See
6 *supra* Part III.A.) Defendant Oliveira claims that the complaint “does not address the
7 looming jurisdictional question at all.” (Oliveira Mot. Dismiss 14.) The complaint need not
8 address potential defenses. (See Pen. Code, § 959 (listing requirements of accusatory
9 pleading).) Defendant Oliveira further claims that the complaint is defective because the
10 “public offense was not committed in this state.” (Oliveira Mot. Dismiss 14.) The complaint,
11 in fact, alleges that the crimes occurred in Madera County.
12

13 **V. COURT LACKS JURISDICTION OVER TRIBAL** 14 **LEADERSHIP DISPUTE**

15 **A. Courts Lacks Jurisdiction to Resolve Tribe's Leadership Dispute**

16 The Court, however, is without jurisdiction to settle the Tribe's leadership dispute.
17 Federal and state cases have held that matters of internal tribal governance are not justiciable.
18 In *In re Sac & Fox Tribe* the Court of Appeals for the Eighth Circuit confronted a lawsuit
19 between two competing tribal factions each claiming to control the tribe. In addition to
20 various justiciable claims related to gaming, one of the factions brought a state law
21 trespassing claim. (*In re Sac & Fox Tribe* (8th Cir. 2003) 340 F.3d 749, 763-64.) The Court
22 of Appeal upheld the dismissal of the trespassing claim, because the court could adjudicate
23 the trespass claim only “to the extent the court could first resolve the intra-tribal dispute.”
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27 ⁷ A demurrer must be filed prior to entry of a plea. (Pen. Code, § 1004.) Defendants
28 McDonald, King, Bishop, and Ramos pleaded not guilty before filing their demurrers. Their
demurrers, therefore, could also be overruled on this basis.

1 (*Id.* at 764.) Federal courts lack “jurisdiction to resolve internal tribal disputes;” jurisdiction
2 to do so “lies with Indian tribes.” (*Id.* at 763.) Subsequent decisions by the Eighth Circuit
3 have further clarified that “election disputes between competing tribal councils [are]
4 nonjusticiable, intratribal matters” (*Sac & Fox Tribe v. Bureau of Indian Affairs* (8th Cir.
5 2006) 439 F.3d 832, 835) and that “tribal governance disputes . . . fall within the exclusive
6 jurisdiction of tribal institutions.” (*Attorney’s Process and Investigations v. Sac & Fox Tribe*
7 (8th Cir. 2010) 609 F.3d 927, 943.)

9 The Ninth Circuit Court of Appeal and California courts have also held that internal
10 tribal disputes are outside their jurisdiction. In *Lewis v. Norton* (9th Cir. 2005) 424 F.3d 959,
11 960, the Ninth Circuit ruled that the district court lacked subject matter jurisdiction over a
12 dispute of tribal membership. (See *also Alto v. Black* (9th Cir. 2013) 738 F.3d 1111, 1123, fn.
13 9 (“The resolution of such disputes involving questions of interpretation of the tribal
14 constitution and tribal law is not within jurisdiction of the district court.”)(internal citations
15 omitted).) Similarly, the California Court of Appeal has upheld dismissal of lawsuits
16 challenging a tribe’s disenrollment of members. (*Lamere v. Superior Court* (2005) 131
17 Cal.App.4th 1059, 1061-63; *Ackerman v. Edwards* (2004) 121 Cal.App.4th 946, 954.)

19 Protection of tribal sovereignty justifies the bar on jurisdiction over intra-tribal
20 disputes. (*Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49, 59, 60.) Tribes are “distinct,
21 independent political communities, retaining their original natural rights in matters of local
22 self-government.” (*Id.* at 55 (internal citations omitted).) Resolving internal disputes in
23 federal or state court “undermine[s] the authority” of the tribe to settle its own disputes. (*Id.*
24 at 59 (internal citations omitted).) Modification of a tribe’s “powers of local self-
25 government” falls within Congress’s “plenary power.” (*Id.* at 56.)

1 Other courts confronting claims arising out of the Tribe's leadership dispute have
2 followed these principles and declined to resolve the dispute. (*California v. Picayune*
3 *Rancheria of Chukchansi Indians* (E.D.Cal. Oct. 29, 2014, 114-CV-01593-LJO-SAB) 2014
4 WL 5485940, *3; *Picayune Rancheria of Chukchansi Indians v. Henriquez* (D.C.Ariz. Dec.
5 31, 2013, CV-13-01917-PHX-DGC) 2013 WL 6903750, *3 (“[f]ederal courts lack
6 jurisdiction to decide intra-tribal disputes”).) Likewise, the Defendants acknowledge that
7 federal and state courts lack the jurisdiction to resolve the Tribe's leadership dispute.⁸
8 (Auchenbach Mot. Dismiss 4-5; Bishop Mot. Dismiss 6; Oliveira Mot. Dismiss 13-19.)
9

10 The Court can resolve Defendants' motions to dismiss only to the extent that it can
11 determine which faction was the legitimate tribal government on October 9, 2014. If the
12 McDonald faction was the legitimate tribal government, the Defendants may claim the
13 protection of tribal authority. If not, those protections are unavailable. The Defendants
14 acknowledge, implicitly and explicit, the centrality of resolving the Tribe's leadership
15 dispute. (Auchenbach Mot. Dismiss 4-5; Bishop Mot. Dismiss 3; McDonald Mot. Dismiss 5;
16 Oliveira Mot. Dismiss 19; Ramos Mot. Dismiss 6.) They appear to invite the Court to
17 resolve the dispute. Accompanying the Defendants' motions were voluminous exhibits
18 purporting to establish that the McDonald faction was the legitimate tribal government.
19 Some of the Defendants have requested an evidentiary hearing. (McDonald Mot. Dismiss 8;
20 Oliveira Mot. Dismiss 1.) The Court should decline the invitation to resolve the Tribe's
21 leadership dispute. Resolution of that dispute exceeds the Court's jurisdiction.
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24 Although the instant case is a criminal case and the Tribe is not a party, the
25 jurisdictional bar applies with equal force. A ruling that the McDonald faction was the
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27 ⁸ Defendant Oliveira is correct to note that a jury would have no more power than the Court
28 to resolve the Tribe's leadership dispute. (Oliveira Mot. Dismiss 19, fn. 11.)

1 legitimate tribal government would practically endorse a McDonald faction tribal police
2 force. Without the threat of state criminal prosecution, the McDonald faction could then use
3 its tribal police to expel the other factions from the Rancheria. Such an outcome is precisely
4 the resolution of an internal tribe dispute that is beyond this Court's jurisdiction.

5 **B. Claim of Sovereign Immunity Does Not Create Jurisdiction to Resolve**
6 **Tribal Leadership Dispute**

7 Defendant McDonald cites to *Great Western Casinos, Inc. v. Morongo Band of*
8 *Mission Indians* (1999) 74 Cal.App.4th 1407, 1418 for the proposition that the Defendants'
9 claim of sovereign immunity requires the Court to engage "in sufficient pretrial factual and
10 legal determinations" to satisfy itself that it has jurisdiction. (McDonald Mot. Dismiss 8.)
11 *Great Western Casinos* does not, however, empower the Court to resolve the Tribe's
12 leadership dispute. *Great Western Casinos* concerned a suit between a legitimate tribal
13 government and the corporation that ran its casino. (*Id.* at 1411.) At issue was whether the
14 tribe had waived its sovereign immunity. (*Id.* at 1420.) Federal and state courts have
15 jurisdiction to determine whether a tribe has waived sovereign immunity. (*Id.* at 1419
16 (collecting cases).) This case, however, presents the antecedent question of whether the
17 Defendants are representatives of a legitimate tribal government. The Court, for the reasons
18 stated earlier in this brief (see *infra* Part V.A), lacks the jurisdiction to make that
19 determination.⁹
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25 ⁹ For the same reason, tribal sovereign immunity does not require dismissal of this action.
26 The Court cannot determine if Defendants were representatives of the legitimate tribal
27 government and, therefore, cannot determine if they are entitled to sovereign immunity.
28 Furthermore, in light of Public Law 280 and *Michigan v. Bay Mills Indian Community* (2014)
134 S.C.T. 2024, 2034-35, it is unclear if Defendants would be entitled to sovereign
immunity even if they were representatives of the legitimate tribal government.

1 **VI. LACK OF JURISDICTION OVER TRIBAL**
2 **LEADERSHIP DISPUTE JUSTIFIES DENIAL OF**
3 **MOTIONS TO DISMISS**

4 Without jurisdiction to resolve the Tribe's leadership dispute, the Court is left with
5 two options. The first is dismissal of the complaint. (See Auchenbach Mot. Dismiss 12;
6 Oliveira Mot. Dismiss 13-20.) But dismissal, as explained below, would create an absurd
7 outcome, infringe on tribal sovereignty, and jeopardize public safety. The second option is
8 denial of the motions to dismiss. Such an outcome flows from the Court's jurisdiction over
9 the charged offenses and the allocation of the burden of proof for their motions to dismiss to
10 the Defendants. Denial of the motions to dismiss also promotes tribal sovereignty and public
11 safety and is consistent with the requirements of due process.

12
13 **A. Allocation of Burden of Proof to Defendants Supports Denial**

14 The Court has jurisdiction over the charged offenses. (See *supra* Part IV.A.) The
15 Defendants, for the reasons discussed below, bear the burden of proof in their motions to
16 dismiss. They cannot prove that they acted under the authority of the legitimate tribal
17 government, because the Court lacks jurisdiction to resolve the Tribe's leadership dispute.
18 When the burden of proof is not met, the motions to dismiss should be denied and the Court's
19 jurisdiction over the charged offenses remains.

20
21 A burden of proof is "the obligation of a party to establish . . . a requisite degree of
22 belief concerning a fact . . ." (Evid. Code, § 115.) If a party cannot satisfy that obligation,
23 "the trier of fact must assume that the fact does not exist." (Cmt. to Evid. Code, § 500.) In
24 other words, the burden of proof defines the state of a case before the burden is carried.
25 Placing the ultimate burden of proof on the People in a criminal case, for example, creates
26 the presumption of innocence.
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1 “[A] party has the burden of proof as to each fact the existence or nonexistence of
2 which is essential to the claim for relief or defense that he is asserting.” (Evid. Code, § 500.)
3 Evidence Code Section 500 states the general rule that “when a party seeks relief the burden
4 is upon him to prove his case. . . .” (*California Employment Commissions v. Malm* (1943) 59
5 Cal.App.2d 322, 324; see also Cmt. to Evid. Code, § 500 (discussing allocation of burden of
6 proof).) Phrased differently, the party seeking to avoid an otherwise applicable rule, in this
7 case subject matter jurisdiction, bears the burden of proof. (See *Miller v. Superior Court*
8 (2002) 101 Cal.App.4th 728, 747 (holding that prosecutor bears burden of proof in
9 establishing exception to two dismissal rule).)

11 The policies underlying the general rule support placing the burden on the Defendants
12 in this case. In allocating the burden of proof courts consider the following factors:

13 [T]he knowledge of the parties concerning the particular fact [to be proved],
14 the availability of the evidence to the parties, the most desirable result in terms
15 of public policy in the absence of proof of the particular fact, and the
16 probability of the existence or non-existence of the fact.
17 (*Miller v. Superior Court, supra*, 101 Cal.App.4th at 746-47 quoting Cmt. to Evid.
18 Code § 500.)

19 As demonstrated by the ample exhibits submitted with their motions, the Defendants
20 have superior knowledge regarding the Tribe’s leadership dispute. (See *County of Orange v.*
21 *Barratt American, Inc.* (2007) 150 Cal.App.4th 420, 438 (finding county had burden of proof
22 to establish reasonableness of county expenditures).) The Defendants also have access to
23 documents that may be beyond the People’s power to obtain. (See *Bishop Paiute Tribe v.*
24 *County of Inyo* (9th Cir. 2002) 291 F.3d 549, 558-60 (holding that state could not serve
25 search warrant on tribe) *overruled on other grounds* by *Inyo County v. Paiute-Shoshone*
26 *Indians* (2003) 538 U.S. 701.) Finally, in the absence of proof of the Defendants’ legitimacy,
27 public policy dictates not providing them the protection of tribal authority. The Defendants
28 used force against others under the color of law. To preserve public safety, persons acting

1 under the color of law should carry the burden of proving that they were authorized to do so.
2 (Cf. CALCRIM No. 2656 (2014 edition)(requiring the People to prove “lawful performance”
3 of duty as element of resisting arrest).)

4 The burden of proof for a non-statutory motion to dismiss on statute of limitations
5 grounds offers a persuasive analogy to this case. A defendant asserting a statute of
6 limitations defense through a pre-trial, non-statutory motion to dismiss bears the burden of
7 proof. (*People v. Lopez* (1997) 52 Cal.App.4th 233, 239.) In *Lopez*, the indictment alleged
8 facts establishing that the prosecution was not barred by the otherwise applicable statute of
9 limitations. (*Id.* at 245.) The defendant brought a non-statutory motion to dismiss claiming
10 that the statute of limitations had indeed run. The statute of limitations in a criminal case is
11 jurisdictional. (*Id.*) The Court of Appeal held that the burden of proving that the statute of
12 limitations had run was allocated to the defendant, because “the defendant is seeking the
13 extraordinary relief of dismissal without trial.” (*Id.* at 251.) Both *Lopez* and this case concern
14 a pre-trial, non-statutory motion to dismiss asserting jurisdictional defects that do not appear
15 on the face of the accusatory instrument. If the burden was appropriately allocated to the
16 defendant in *Lopez*, it equally belongs to the Defendants in this case.

17 Allocating the burden of proof to the Defendants does not violate the due process
18 clause. Although the People carry the ultimate burden of proving guilt beyond a reasonable
19 doubt, a defendant may be required to prove facts that are not elements of the charged
20 offenses. (*Martin v. Ohio* (1987) 480 U.S. 228, 236.) The burden of proof for an affirmative
21 defense in a criminal case, for example, is allocated to the defendant. (*People v. Bolden*
22 (1990) 217 Cal.App.3d 1591, 1600-01.)

23 Assertions of tribal sovereign immunity are not an exception to the general rule
24 allocating the burden of proof. In *Campo Band of Mission Indians v. Superior Court* (2006)
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1 137 Cal.App.4th 175, 183 the Court of Appeal stated that “on a motion asserting sovereign
2 immunity as a basis for dismissing an action for lack of subject matter jurisdiction, the
3 plaintiff bears the burden of proving by a preponderance of the evidence that jurisdiction
4 exists.” *Campo Band of Mission Indians* is distinguishable from this case. That case dealt
5 with whether a tribe had waived sovereign immunity. Because the plaintiffs were asserting a
6 waiver, Evidence Code Section 500 placed the burden of proof with them. In this case, on
7 the other hand, the very question of whether the Defendants are entitled to sovereign
8 immunity is disputed. Thus the burden would fall to the party asserting sovereign immunity,
9 the Defendants.
10

11 **B. Denial Promotes Public Safety and Tribal Sovereignty**

12 Declining to recognize the Defendants as legitimate representatives of the tribal
13 government exposes them to criminal prosecution. The threat of such prosecution enhances
14 public safety. As the facts of this case illustrate, when competing tribal factions clash,
15 violence is inevitable. Such violence endangers the public. The threat of criminal
16 prosecution, however, deters violent behavior. (See *Kennedy v. Louisiana* (2008) 554 U.S.
17 407, 420 (identifying deterrence as one of three principal rationales for criminal
18 punishment).) Congress enacted Public Law 280 precisely to create the deterrence of state
19 criminal prosecution. (*Bryan v. Itasca County* (1976) 426 U.S. 373, 379 (noting that Public
20 Law 280 addresses “the problem of lawlessness on certain Indian reservations”).) Shielding
21 members of a tribal faction from prosecution, on the other hand, would encourage all factions
22 to resort to the type of violent self-help at issue in this case.
23

24 Declining to recognize the Defendants as representatives of the legitimate tribal
25 government also supports tribal sovereignty. Dismissing the complaint would, as a practical
26 matter, resolve the tribal dispute, because the Defendants could continue to act as a tribal
27
28

1 police force. Under the guise of tribal authority, the Defendants could try again to seize the
2 Casino or otherwise expel the other factions from the Rancheria. Such an outcome is
3 inconsistent with allowing the Tribe to resolve its own internal disputes. (See *Santa Clara*
4 *Pueblo v. Martinez, supra*, 436 U.S. 49, 59, 60.)

5 **C. Denial Consistent With Due Process**

6 The Defendants ask the Court to give legal weight to their claim of tribal authority.
7 Due process, however, does not require the Court to recognize every legal defense raised by
8 a defendant. California courts have rejected, as a matter of law, a variety of defenses that
9 would encourage undesirable behavior.¹⁰ In *People v. Martin* (1894) 102 Cal. 558, 563, for
10 example, the California Supreme Court held that a victim's fraudulent acts did not excuse a
11 criminal defendant's fraud. Such a rule would encourage fraud against those who had acted
12 fraudulently. Likewise, in a hazardous waste prosecution, the Court of Appeal rejected a
13 defendant's claim that the financial impossibility of compliance with the law excused his
14 criminal conduct. (*People v. Taylor* (1992) 7 Cal.App.4th 677, 690-91.) The rejected defense
15 would have encouraged under-capitalized firms to work with hazardous waste. Finally, in
16 *People v. Young* (1945) 70 Cal.App.2d 28, 36, the Court of Appeal refused to recognize "the
17 right to avenge a wrong done a female member of one's family." An alternative rule would
18 encourage vigilantism. In this case, Defendants' claim to tribal authority jeopardizes public
19 safety and tribal sovereignty. Rejection of that defense, therefore, is consistent with the due
20 process clause.
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25 ¹⁰ There are numerous other examples. (*People v. Schmies* (1996) 44 Cal.App.4th 38, 46
26 (rejecting contributory negligence as a defense to vehicular manslaughter); *People v. Reyes*
27 (1992) 2 Cal.App.4th 1598, 1604 (rejecting procuring agent defense to narcotics sales);
28 *People v. Wielograf* (1980) 101 Cal.App.3d 488, 494 (returning stolen property no defense to
fraudulent receipt of that property); *People v. Man* (1974) 39 Cal.App.3d Supp. 1, 4
(recognizing that good intentions are not a defense to criminal prosecution).)

1 **D. Granting Motions to Dismiss for Lack of Jurisdiction to Resolve Tribal**
2 **Leadership Dispute is Absurd and Interferes with Tribal Sovereignty**


3 The Defendants ask the Court to accept their assertion that they acted with tribal
4 authority and dismiss the complaint. (Oliveira Mot. Dismiss 13-19.) By this logic a
5 defendant in any kidnapping or assault case could defeat the Court's jurisdiction by claiming
6 to be a tribal police officer. Such an outcome is absurd, because it would allow defendants to
7 avoid prosecution through mere assertion. The Court should not interpret its jurisdiction to
8 allow for that outcome. (*Cf. e.g. Judicial Council of California v. Superior Court* (2014) 229
9 Cal.App.4th 1083, 1100 (noting court should avoid absurd outcomes when interpreting
10 statutes).)

11 **VII. CONCLUSION**

12 For the forgoing reasons, the People respectfully ask the Court to overrule the
13 Defendants' demurrers and deny their motions to dismiss.
14

15 DATED: March 11, 2015

Respectfully Submitted,
DAVID A. LINN
Madera County District Attorney

18 By: 
19 NICHOLAS M. FOGG
20 Deputy District Attorney
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PROOF OF SERVICE

I declare under penalty of perjury that:

1. I am a citizen of the United States and am employed in the County of Madera. I am over the age of eighteen years and not a party to the within action. My business address is 209 West Yosemite Avenue, Madera, California.
2. On the date set forth below, I caused the attached document to wit:

PEOPLE'S OPPOSITION TO DEMURRERS AND MOTIONS TO DISMISS IN CHUKCHANSI CASINO CASE, MCR 050200 & MCR050201

to be served on the parties to this action as follows:

_____ By Mail

I placed a true copy thereof, enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Mail at Madera, California, addressed to the parties as set forth on the below service list. C.C.P. section 1013(a), 2015.5.

___X___ By Facsimile Transmission

A true copy thereof was sent via electronic transmission to the telephone number set forth below on the service list. C.C.P. section 1013(a), 2015.5 and C.R.C. section 2008.

_____ By Personal Service

I personally served a true copy thereof on the parties set forth on the attached service list at 209 West Yosemite Avenue, Madera, California. C.C.P. section 1011, 2015.5.

Executed on March 11, 2015

at Madera, California



Nicholas M. Fogg
Deputy District Attorney

Service List

Mark Coleman – Fax: 559-485-3852
Thomas Johnson – Fax: 916-442-4262
Patrick Hanly – Fax: 916-440-9610
Serita Rios – Fax: 559-224-1806
Ryan Hickey – Fax: 559-674-9631
Bonnie Bitter – Fax: 559-661-1820

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Nicholas M. Fogg
Deputy District Attorney

Service List

Antonio Alvarez – Personal Service