



## ORDINANCE NO. 12-02

### AN ORDINANCE OF THE BUSINESS COUNCIL OF THE BLUE LAKE RANCHERIA GRANTING TO THE TRIBAL COURT THE AUTHORITY TO ADJUDICATE MATTERS INVOLVING SMALL CLAIMS.

The Business Council of the Blue Lake Rancheria does hereby ordain as follows:

Section 1. Findings and Declaration. The Business Council for the Blue Lake Rancheria ("Tribe") finds and declares that:

1. Under Section 1.030 of the Tribal Court Ordinance, the Tribal Court has jurisdiction over all matters in law or equity which the Business Council expressly authorizes by ordinance.
2. There does not at present exist a means by which matters involving small claims of Tribal members can be conveniently adjudicated in the Tribal Court on the Blue Lake Rancheria ("Reservation").
3. The granting to the Tribal Court of the authority to adjudicate matters involving small claims is necessary to maintain peace and order on the Reservation and to quickly resolve disputes that arise on the Reservation between the Tribe and Indians and non-Indians; between Indians and between Indians and non-Indians.
4. The adoption of this Ordinance is in the best interests of the members of the Tribe and its Tribe because the quick resolution of disputes that arise on the Reservation maintains law, order and peace among all persons who live, work and visit the Reservation.

Section 2. Adoption of a New Chapter 9 of Title 11 of the Blue Lake Tribal Code entitled : "Small Claims Court". A new Chapter 9 entitled "Small Claims Court" is hereby added to Title 11 of the Tribe's Tribal Code and shall provide as follows:

#### Chapter 9

#### SMALL CLAIMS COURT ORDINANCE

Section:

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|----------|------------------------------------|
| 11.9.010 | Definitions                        |
| 11.9.020 | Requirement for a Claim            |
| 11.9.030 | Time Limit on Actions              |
| 11.9.040 | Statement of what can be recovered |
| 11.9.050 | Filing a Claim; Content and Form   |
| 11.9.060 | Notice; Content; Service           |
| 11.9.070 | Defendant's Rights and Liabilities |
| 11.9.080 | Counterclaims                      |
| 11.9.090 | Hearing                            |
| 11.9.100 | No Attorneys                       |
| 11.9.110 | Time Extension                     |

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| 11.9.120 | Default                                     |
| 11.9.130 | Final Judgment as Final Decree              |
| 11.9.140 | Action/Petition to Set Aside Final Judgment |
| 11.9.150 | Applicable Law                              |
| 11.9.160 | Brochure Describing Proceedings             |
| 11.9.170 | Fees  |
| 11.9.180 | Sovereign Immunity                          |
| 11.9.190 | Fiscal Office Authority                     |

11.9.010 Definitions. For the purpose of this Ordinance, the following words and phrases shall have the following meanings:

- A. "Court Clerk" or "Clerk" shall mean the Clerk of the Tribal Court.
- B. "Judge" or "Tribal Judge" shall mean any Judge of the Tribal Court.
- C. "Reservation" shall mean all lands within the exterior boundaries of the Blue Lake Rancheria and any land held in trust for the Tribe or its members by the United States.
- D. "Small Claims" shall mean claims of Ten Thousand Dollars (\$10,000) or less.
- E. "Tribal Court" or "Court" shall mean the Tribal Court of the Blue Lake Rancheria.
- F. "Business Council" or "Council" shall mean the Business Council of the Blue Lake Rancheria.
- G. "Tribe" shall mean the Blue Lake Rancheria of California, a federally recognized Indian Tribe.
- F. "Plaintiff" shall mean the entity or person or persons filing the claim.
- H. "Defendant" shall mean the person or persons against whom the Plaintiff has filed suit.

11.9.020 Requirement for a Claim. A claim may be filed with the Tribal Court only when the following conditions are met:

- A. The claim is for the recovery of money and/or specific personal property, or performance of a contract;
- B. The total amount of the claim, including goods or services, is Ten Thousand Dollars (\$10,000) or less;
- C. One party must be the Tribe or a Tribal member or a resident of the Reservation, unless the person(s) consent to the jurisdiction of the Tribal Court as provided herein. Any plaintiff who is not a Tribal member or a resident must waive in writing their right to contest the Tribal Court's jurisdiction.
- D. The possession of personal property must be or injury must have occurred on the Reservation, or, for a contract claim, the contract must have been executed or required that it be performed on the Reservation.

E. A good faith effort was made to collect the claim. As used herein the term "good faith" shall be determined de novo by the Tribal Court judge in the judges solo discretion based on the particular facts and circumstances of each case.

F. The plaintiff has read the Small Claims Brochure.

11.9.030 Time Limit on Actions. No claim may be filed more than one (1) year after the date that the plaintiff knew or should have known of the damage or injury that the claim is based on.

11.9.040 Statement of What Can Be Recovered.

A. The plaintiff may only receive one of the following, after a final judgment has been entered:

- (i) Money for the value of the claim;
- (ii) The objects in controversy and the value of any loss/damage to the objects;
- (iii) Work to be performed under a contract in dispute, and
- (iv) In kind payment, either in goods or services.

B. Interest can also be recovered on the value of the claim.

C. Attorneys fees will not be recoverable unless provided for in the contract that is the subject of the claim or authorized by a separate ordinance.

11.9.050 Filing a Claim; Content and Form. A case shall begin upon filing with the Court Clerk a verified claim in the form that the Court has prescribed. The plaintiff shall sign the claim and verify under oath that as of the date of its filing each requirement in Section 1.020 has been met. The claim shall contain the name and mailing address of the plaintiff and of the defendant, followed by a simple statement of the claim. This statement shall include the amount of the claim and the date the actions allegedly occurred. With the claim the plaintiff shall include their affidavit stating that they meet all of the requirements in Section 1.020 of this Ordinance and the date that the damage or injury upon which the claim is based occurred.

11.9.060 Notice; Content; Service. Upon the filing of a claim, the Court Clerk shall issue a notice in the form prescribed by the Court, directed at the defendant, and shall contain a copy of the claim. The Court shall serve the notice and claim upon the defendant by certified mail at the defendant's last known address. The envelope shall be marked "Deliver to Addressee Only" and "Return Receipt Requested," and the date on the return slip will serve as the date upon which the notice and claim were served on the defendant. If the defendant refuses to sign the certified mail receipt, the plaintiff will have to have the defendant personally served in accordance with the Court's Rules of Pleading, Practice ad Procedure.

11.9.070 Defendant's Rights and Liabilities. Within twenty-one (21) days after the defendant was served with the notice and the claim, the defendant must either admit or deny the claim on the form approved by the Court for that purpose, by filing an admission or denial with the Court.

A. If the defendant admits the claim, the defendant may settle by paying the plaintiff the amount of the filing fees and service expenses paid by the plaintiff, plus:

(i) Paying the amount of the claim and mailing or providing proof of such payment to the Court;

(ii) Delivering the property in dispute to the plaintiff and, if applicable, an amount of money equalling the value of the loss or damage to the property, and mailing or providing proof of delivery to the Court; or

(iii) Completing performance of the promised service(s) and mailing or providing proof of performance to the Court.

B. If the defendant denies the claim the matter may be settled by:

(i) Filing a written request, in the form prescribed by the Court, demanding a hearing in the Tribal Court; or

(ii) Filing a counterclaim along with a demand for a hearing.

11.9.080 Counterclaims. A defendant may make a counterclaim, on any claim that the defendant may have against the plaintiff and that arises out of the same transaction or occurrence that is the subject matter of the claim filed by the plaintiff. The counterclaim must be filed with the Tribal Court Clerk on a form approved by the Court for that purpose within twenty-one (21) days after receiving the claim filed by the plaintiff. The Court Clerk will then serve the plaintiff with the counterclaim by certified mail at the plaintiff's last known address. The defendant is limited to recovery of money, goods, or services, as set forth in Section 1.040.

11.9.090 Hearing. If a defendant demands a hearing, the Court Clerk shall mail to the parties notice of the hearing. In the notice of the hearing, the Court Clerk shall instruct the parties that they need to bring witnesses, documents, and other evidence pertinent to the controversy. If a counterclaim was filed by the defendant, the notice of hearing shall be accompanied by such counterclaim. No formal pleading other than the claim shall be necessary. The hearing will be informal. Only the parties, their witnesses and spokespersons, who appear at no charge, and immediate family members of a party will be allowed to address the court.

11.9.100 No Attorneys. Notwithstanding any provisions of Tribal law to the contrary, attorneys are not permitted to represent or advise a party in a small claims court case.

11.9.110 Time Extension. If one of the two parties wishes to extend the time, in order to make formal appearances to the Court, the party must file a written request with the Court. The requested extension can be no longer than thirty (30) days. The Court may only grant one extension per party.

11.9.120 Default. If the defendant fails to pay the claim, demand a hearing, or show up for the hearing, upon written request from the plaintiff, the Clerk shall enter a judgment against the defendant for the relief claimed, plus the amount of the small claims filing fees and service expenses paid by the plaintiff. If the plaintiff fails to show up for the hearing, upon written request from the defendant, the Clerk shall dismiss the case, or if a counterclaim has been filed, enter a judgment for the amount of the counterclaim, plus fees and service expenses paid by the defendant. A default judgment may not be entered for failure to appear at the hearing through no fault of the party who failed to appear.

11.9.130 Final Judgment as Final Decree. When entered, the final judgment shall



document a final decree of the rights and obligations of both parties regarding the claims and counterclaims made by the plaintiff and the defendant. The judgment will remain valid for seven years, unless extended by subsequent order of the Tribal Court, upon good cause shown.

11.9.140 Action/Petition to Set Aside Final Judgment.

A. A final judgment entered shall not influence nor bar the rights of either party to petition the Court to set aside or amend the final judgment for fraud, duress, accident, mistake, or other grounds recognized as reasonable under Tribal law.

B. The Court may retain jurisdiction of a case for one (1) year following the entry of final judgment in all matters.

11.9.150 Applicable Law. The Court, in resolving claims under this Ordinance, will use the substantive law of the State of California unless that law conflicts with the law of the Tribe. In the event of conflict, Tribal law will govern.

11.9.160 Brochure Describing Proceedings; Content, Form and Distribution. The Court shall develop and print a brochure describing the requirements, nature and effect of the proceedings. The brochure shall be distributed by the Court and shall state in clear English the following:

A. A short summary of the provisions and procedures established by this Ordinance.

B. A statement in boldface type that with the entry of a final judgment all rights and obligations of both parties, including property and monetary gains, will be permanently ended without right of appeal, except that either person may petition the Court to set aside the final judgment for fraud, duress, accident, mistake, or other grounds recognized under Tribal law.

C. A list of the items or services that a party can receive if the Judge rules in favor of that party.

11.9.170 Fees. The Court shall collect a fee from the plaintiff for filing a claim, a fee from the defendant if a counterclaim is filed, and also from the defendant a fee for requesting a hearing with the Tribal Court. This fee will cover the cost of the Court's time, the distribution of the brochure, and other costs the Court may incur in processing the case. The amount of the fees shall be set by the Judge and approved by a resolution of the Business Council.

11.9.180 Sovereign Immunity. This Ordinance shall not waive the sovereign immunity of the Tribe, except as to counterclaims against the Tribe when the Tribe is a plaintiff in a case brought under this Ordinance and then only as a set-off against any amount determined by the Court to be due to the Tribe.

11.9.190 Fiscal Office Authority. This Ordinance shall not be construed to reduce the authority of the Tribe's Fiscal Office to deduct sums owed to the Tribe from paychecks and other payments.

CERTIFICATION

The foregoing Ordinance was adopted at a regular meeting of the Blue Lake Rancheria Business Council held on 4 day of October, by the following vote:

AYES: 5  
NOES:  
ABSTAIN: 0  
ABSENT: 0

Claudia Brundin  
Claudia Brundin, Chairperson

11-1-12  
Date

ATTEST:

Bonnie Mobbs  
Bonnie Mobbs, Secretary

Nov 1 - 2012  
Date