VIEJAS BAND OF KUMEYAAY INDIANS
TRIBAL CODE

CODE OF CIVIL PROCEDURE

Enacted on 03-01-2018

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CHAPTER 1 – GENERAL PROVISIONS

Section 1 – Scope and Application

1.1.01 **Scope**. This Code of Civil Procedure ("CCP") shall govern the Viejas Tribal Court in all suits of a civil nature.

1.1.02 **One Form of Action**. There shall be one form of action known as a "civil action."

1.1.03 **No Jury Trial**. All civil matters in the Tribal Court shall be heard and determined by a Viejas Tribal Court Judge ("Judge"). There shall be no jury trials.

1.1.04 **Consent to Jurisdiction**. All persons natural or legal who come before the Viejas Tribal Court consent to the court's personal civil jurisdiction over them.

1.1.05 **Contempt of Court**. Any person subject to a valid court order or lawful instruction of the court, with knowledge and the ability to comply with the order, who fails to comply with the terms of the order or instruction, is subject to contempt adjudication and statutory contempt penalties. Contempt of court proceedings may be initiated on motion or *sua sponte* by the court.

(A) Contempt occurring outside the presence of the court may be found by the court upon the issuance and service of an Order to Show Cause and a formal hearing on the matter.

(B) Contempt occurring in the direct presence of the court may be found by the court forthwith.

1.1.06 **Viejas Rules of Evidence**. The court shall use the Viejas Rules of Evidence in all civil actions.

Section 2 – Jurisdiction

1.2.01 **Subject Matter Jurisdiction**. The Viejas Tribal Court is a court of limited jurisdiction and has jurisdiction to hear all civil actions authorized by the Viejas Band of Kumeyaay Indians ("Viejas Band") pursuant to Viejas Band law or pursuant the Viejas Band's express authorization to utilize applicable California or federal laws for a limited purpose.

1.2.02 **Personal Jurisdiction**. The court's personal jurisdiction extends to the furthest extent permitted under the United States Constitution and Viejas Band law, and attaches:

(A) To all persons present or domiciled within the territorial jurisdiction of the Viejas Band when served.

(B) To all entities and corporations created under the laws of the Viejas Band.

(C) To all persons, entities, or corporations that have an interest in property situated within the Viejas Band's lands.

(D) To all persons, entities, and corporations that consent to the Viejas Band's jurisdiction.

(E) To all persons, entities, and corporations that engaged in substantial activities, purposely directed their activities, or availed themselves of the privilege of conducting activities with Viejas Band residents or within the territorial jurisdiction of the Viejas Band.

(F) To all persons, entities, and corporations that have such minimum contacts with the Viejas Band or a member of the Viejas Band that the exercise of personal jurisdiction provides fair play and substantial justice.

(G) When a Viejas Band statute specifically confers grounds for personal jurisdiction over the defendant.

(H) When any person, entity, or corporation commits, or causes to commit, an act or omission within the territorial jurisdiction of the Viejas Band that injures the plaintiff.

1.2.03 **Statute of Limitations**. Except where applicable tribal law provides otherwise, no complaint shall be filed in a civil action unless the event shall have occurred within a three year period prior to the date of the filing of the complaint.

CHAPTER 2 – CIVIL ACTIONS

Section 1 – Commencement of Civil Actions

2.1.01 **Filing a Complaint**. A civil action is commenced by filing a complaint with the court.

2.1.02 **Filing Fees**. Unless otherwise provided under Viejas Band law or the Viejas Band gaming compact, a plaintiff must pay a filing fee in accordance with the Viejas Tribal Court Civil Fee Schedule ("Fee Schedule"). If the plaintiff requests that the court

serve process on a defendant, the plaintiff must pay the court clerk an additional service fee in accordance with the Fee Schedule. Unless determined otherwise by the court, the plaintiff must pay these fees at the time of the filing.

Section 2 – Service of Process

2.2.01 **Time Limit for Service**. Unless otherwise provided by this CCP, the plaintiff, or a party hired by the plaintiff, shall serve a defendant with the summons and a copy of the complaint within 30 days of receiving them from the court clerk. If service does not occur within that time frame, the court shall dismiss the case or order the plaintiff to serve the defendant(s) by a specified date. If the plaintiff shows good cause for failing to execute service during the 30-day timeframe, the court may extend the service deadline by a reasonable period.

2.2.02 **Dismissal of Action**. If a defendant is not served within 30 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

2.2.03 **Issuance of Summons**. Upon the clerk's receipt of the complaint for filing, the clerk shall write on it the day and hour on which it was filed and the number of the action, and shall then issue a summons and deliver it for service to any tribal law officer or to the plaintiff. Separate summons shall issue against each defendant.

2.2.04 **Form of Summons**. The summons shall be signed by the clerk, be under the seal of the court, contain the name of the court and the names of the parties, be directed to the defendant, state the name and address of the plaintiff's counsel, if any, otherwise the plaintiff's address, and the time within which this CCP requires the defendant to appear and defend, and shall notify him or her that in case of his or her failure to do so, judgment by default will be rendered against him or her for the relief demanded in the complaint. A copy of the complaint and summons shall be prepared for each defendant. If a summons is returned without being served, or if it has been lost, the clerk shall issue a duplicate summons in the same form and it shall be issued and served within the same time as the original.

2.2.05 **Personal Service**. Personal service of process shall by any person who is at least 18 years of age and is not a party to the civil action. A proof of service in accordance with Section 2.2.09 must be filed with the court.

(A) **Generally**. Except specified in paragraphs (B), (C), (D) and (E) of this Section, personal service can be by leaving copies at a defendant's dwelling house or usual place of abode with a person 14 years or older residing therein.

(B) **Service on a Minor**. Service on a minor under 18 years of age shall be made to a parent, legal guardian, or custodian or, if none is found, then upon any

person having the care or control of the minor, or with whom the minor resides.

(C) **Service on an Incompetent Person**. Service on a person who has been judicially declared to be insane or mentally incompetent shall be to his or her legal guardian, or if no guardian has been appointed, upon such person as the court designates.

(D) **Service on a Corporation**. Service on a corporation or partnership shall be made by delivering a copy of the summons and of the complaint to a partner, an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by law to receive service and the law so requires, by also mailing a copy to the defendant.

(E) **Service on Viejas Band of Kumeyaay Indians**. Service on the Viejas Band of Kumeyaay Indians shall be made by delivering a copy of the summons and of the complaint to the Viejas Office of the Attorney General, provided, however, that this Section shall not be construed as a waiver of the sovereign immunity of the Viejas Band of Kumeyaay Indians, its subdivisions, agents, agencies, enterprises, or officers.

2.2.06 **Service by Certified Mail**. Service can be made by certified mail with return receipt requested. A proof of service in accordance with Section 2.2.09 must be filed with the court.

2.2.07 **Service by Electronic Means**. Electronic service is allowable if the person to be served consents in writing. In such cases, electronic service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served. A proof of service in accordance with Section 2.2.09 must be filed with the court.

2.2.08 **Publication**. A Plaintiff shall file an ex parte application to request service by publication after three unsuccessful personal service attempts.

(A) Upon application by the plaintiff, the court shall issue an order allowing service by publication, the plaintiff shall publish the summons in a newspaper of general circulation where the person resides, or in a newspaper of general circulation in the area of the person's last known residence;

(B) Publication shall be at least once a week for at least four successive weeks. Service on a slower publication schedule satisfies this Section if it is the fastest printing schedule available, the notice appears at least four times, and the notices are in consecutive issues.

(C) The party shall, on or before the date of the first publication, mail a copy of the

summons and of the complaint to the defendant at the defendant's last known address, if any;

(D) The plaintiff shall file a proof of service with the court, in accordance with 2.9, showing compliance with this Section.

2.2.09 **Proof of Service**. A proof of service must indicate, for:

(A) Personal service, the document(s) served and the date, time, and place of service.

(B) Mail service, the document(s) mailed, the date of receipt by defendant, and the original return receipt.

(C) Electronic service, document(s) served, receiving email or facsimile address(s), date and time of sent, and proof of written consent to electronic service. And,

(D) Publication, dates of each publication, the name of the newspapers, and the contents of the publication.

Section 3 – Rules and Form of Pleadings and Motions

2.3.01 **Pleadings Allowed**. There shall be a complaint, an answer, a cross-complaint, an answer to a cross-complaint, and a motion. No other pleading shall be allowed, except that the court may order a reply to an answer. The allegations in pleadings are to be liberally construed, with a view to substantial justice between the parties.

2.3.02 **Time to File Answer**. A defendant must serve an answer within 30 days of being served with the summons and complaint, unless otherwise ordered by the court. A party must serve an answer to a cross-complaint within 30 days after being served, unless otherwise ordered by the court. The parties may agree to a 15-day extension of time to respond to a complaint or cross-complaint without a court order.

2.3.03 **General Rules of Pleading**. For purposes of this Section 2.3.03, the term "complaint" includes a cross-complaint, the term "plaintiff" includes a cross-complainant, and the term "defendant" includes a cross-defendant.

(A) **Claims for Relief**. A complaint shall contain:
- (I) A short and plain statement of the grounds for the court's jurisdiction.
- (II) A short and plain statement of the claim showing that the pleader is entitled to relief.
- (III) A demand for judgment for the relief. Relief in the alternative or of several different types may be demanded.

(B) **Verification Not Required**. A complaint is not required to be verified. If a party elects to verify a complaint, the answering party is under no obligation to

respond with a verified pleading.

(C) **Defenses; Answers and Denials**.

(I) The answer to a complaint may contain:

(a) The general or specific denial of the material allegations of the complaint controverted by the defendant.

(b) A statement of any new matter constituting a defense.

(II) Affirmative relief may not be claimed in the answer.

(III) A general denial is sufficient to answer, but only puts in issue the material allegations of the complaint. A defendant may state his or her denial of allegations positively or according to the information and belief of the defendant.

(IV) If the defendant has no information or belief upon the subject sufficient to enable him or her to answer an allegation of the complaint, he or she may so state in his or her answer and place his or her denial on that ground.

(V) The denials of the allegations controverted may be stated by reference to specific paragraphs or parts of the complaint, or by express admission of certain allegations of the complaint with a general denial of all of the allegations not so admitted, or by denial of certain allegations upon information and belief, or for lack of sufficient information or belief, with a general denial of all allegations not so denied or expressly admitted.

(VI) The defenses shall be separately stated, and the several defenses shall refer to the causes of action which they are intended to answer, in a manner by which they may be intelligibly distinguished.

(D) **Pleading to be concise and direct; consistency**.

(I) Each allegation in a pleading shall be simple, concise, and direct. No technical forms of pleadings are required.

(II) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them, if made independently, would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he or she has, regardless of consistency and whether based on legal or equitable grounds or both.

(E) **Signing the Pleadings; Effect Thereof**. Every pleading of a party represented by counsel shall be signed by at least one counsel, whose contact information shall be stated. A party who is not represented by counsel shall sign the pleadings and include contact information. Except when otherwise specifically provided by section or statute, pleadings need not be verified or accompanied by affidavit. The signature of counsel constitutes a certificate by him or her that he or she has read the pleading, that to the best of his or her knowledge,

information, and belief there is good ground to support it, and that it is not interposed for delay. If a pleading is not signed or is signed with intent to defeat the purpose of this Rule, it may be stricken and the action may proceed a though the pleading had not been served. For a willful violation of this Section counsel may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

2.3.04 **Cross-Complaints**. For purposes of this Section 2.3.04, the term "complaint" includes a cross-complaint, the term "plaintiff" includes a cross-complainant, and the term "defendant" includes a cross-defendant.

(A) **Defendant's Claims Against Other Parties**. A defendant may state as a cross-complaint a claim that – at the time of service of the complaint – the defendant has against any other party only if:

(I) The claims and issues stated in the cross-complaint arise out of the same transaction or occurrence that is the subject matter of the plaintiff's complaint; and,

(II) Adjudication of the claims and issues raised in the cross-complaint would otherwise be permissible under Viejas Band Law or this CCP had the cross-complaint been brought as a separate action.

(B) **Defendant's Claims Against Third-Parties**. A defendant may state as a cross-complaint a claim that – at the time of service of the complaint – the defendant has against a third-party only if:

(I) The claims and issues stated in the cross-complaint arise out of the transaction or occurrence that is the subject matter of the plaintiff's complaint;

(II) The cross-complaint does not require adding a third-party over whom the court cannot acquire jurisdiction; and,

(III) Adjudication of the claims and issues raised in the cross-complaint would otherwise be permissible under Viejas Band Law or this CCP had the cross-complaint been brought as a separate action.

(C) **No Waiver of Sovereign Immunity**. No cross-complaint may be stated against the Viejas Band that would otherwise be impermissible under Viejas Band Law, this CCP, or the doctrine of sovereign immunity. Nothing contained in this Code is intended or shall be construed as a waiver of the sovereign immunity of the Viejas Band.

(D) **Time for Filing a Cross-Complaint; When Order Required**.

(I) Cross-Complaint Against Party to the Complaint. A party may file a cross-complaint against another party before or at the same time as its answer as a matter of right.

(II) Cross-Complaint Against Third Party. A party may file a cross-complaint against a third-party without leave of court at any time before the court sets the first trial date.

(III) Leave of Court Otherwise Required. Except as provided in the preceding parts, leave of court must be obtained to file a cross-complaint.

2.3.05 Motions, Petitions, and Other Papers.

(A) An application to the court for an order shall be by petition or motion which, unless make during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefore, and shall set forth the relief or order sought. The requirement or writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(B) All motions must be served and filed no later than 21 days before the hearing date, and in accordance with Section 4 of this Chapter.

(C) A party receiving notice of a motion must serve and file its opposition, if any, no later than 14 days before the hearing date, and in accordance with Section 4 of this Chapter.

(D) A party who originally noticed a motion must serve and file its reply, if any, no later than 5 days before the hearing date, and in accordance with Section 4 of this Chapter.

(E) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by this CCP.

2.3.06 Form of Pleadings and Other Papers.

(A) **Caption; names of parties**. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation of the type of pleading it is. In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(B) **Paragraphs; separate statements**. All allegations of a claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of single set of circumstances, and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(C) **Adoption by reference; exhibits**. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in a motion. A copy of a written instrument which is an exhibit to a pleading is a

part thereof for all purposes.

(D) **Method of preparation and filing**. All pleadings and other papers filed in any action or proceeding shall be on white, opaque, unglazed paper measuring 8 1/2 inches x 11 inches, with a margin at the top of each page of not less than 1 1/2 inches and a left hand margin of not less than 1 inch. Notwithstanding the foregoing, exhibits or attachments to pleadings may be folded and fastened to pages of the specified size. An exhibit or attachment not in compliance with the foregoing provisions may be filed only if it appears that compliance is not reasonably practicable.

All pleadings filed shall be endorsed with the number of the action, the title of the court and action, the nature of the paper filed, and the name and address of the party and counsel, if any, and shall be written clearly in handwriting or typewritten on one side of a sheet only, double-spaced, except in the case of quotations, and the pages numbered. Originals only shall be filed, except that where it is necessary to file more than one copy of a pleading.

(E) **Erasures and interlineation**. All erasures and interlineation shall be called to the attention of the clerk, and noted by him or her on the margin with his or her initials, but no erasures or interlineation will be allowed in any order, finding or judgment signed by the court.

(F) **Designation of defendant**. When the name of the defendant is unknown to the plaintiff, the defendant may be designated in the pleadings or proceeding by any name. When his true name is discovered the pleading or proceeding may be amended accordingly.

Section 4 – Time

2.4.01 **Computation of Time**. Time shall be computed as follows:

(A) Exclude the day of the event that triggers the period.

(B) Count every day, including intermediate Saturdays, Sundays, and Viejas Band holidays.

(C) Include the last day of the period, but if the last day is a Saturday, Sunday, or Viejas Band holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or Viejas Band holiday.

2.4.02 **Extension of Time**. The court for good cause may (A) with or without motion or notice, order a period enlarged if request is made before the expiration of the period originally prescribed or as extended by a previous order or (B) upon motion made after the expiration of the specified period permitting the act to be done, where the failure to act was the result of excusable neglect, unless specifically prohibited under this CCP.

2.4.03 **Notice of Hearing on Motions**. Notice of hearing on a motion shall be served on the parties at least 21 days prior to the time specified for the hearing, unless a different period is authorized by this CCP or by order of the court.

2.4.04 **Orders to Show Cause**. An order to show cause shall be served at least seven days prior to the time specified for the hearing.

2.4.05 **Additional Time after Service by Mail, Express Mail, or by Electronic Means**. Whenever a party is required to do some act within a prescribed time after receiving service of a notice or other paper upon him and the notice or paper is served by U.S. mail, 5 days shall be added to the prescribed time. If the notice or paper is served by overnight mail (or by electronic means by agreement of the parties), 2 days shall be added to the prescribed time.

Section 5 – Case Management Conference and Designation of Civil Actions

2.5.01 **Case Management Conference**. The court shall, within 90 days of the commencement of actions, hold a case management conference at which all parties, or their attorney of record, will be required to appear. The purpose of the case management conference is for the court to conduct an intensive review of the case, and to discuss and implement appropriate litigation boundaries and trial timelines (including deadlines for the exchange of expert witness information, completion of fact discovery, and completion of expert discovery) with the parties. The court shall establish early and continuing controls (such as scheduling orders, order of depositions, and the like) so that the case will not be protracted because of lack of management. The court will establish appropriate controls to discourage wasteful pretrial activities.

The court will send notice of the case management conference to the parties a minimum of 30 days prior thereto. If the court does not set a trial date at the case management conference, the court shall set a date for a continued case management conference at a date and time it deems appropriate.

2.5.02 **Meet and Confer by the Parties**. No later than 15 days prior to the case management conference, the parties (or their respective counsel) shall meet in person to discuss in detail the following topics:

(A) Whether the matter is amendable to mediation and, if so, timeline for completion of mediation.

(B) Each and every deposition the parties anticipate taking.

(C) Any and all written discovery the parties anticipate exchanging.

(D) Any discovery the parties anticipate seeking from non-parties.

(E) The anticipated date by which the parties will be ready to proceed to trial.

(F) Any and all other discovery issues, disputes, or unique aspects of the case for which parties anticipate requiring the assistance of the court to resolve.

(G) Any anticipated cross-complaint; and,

(H) Whether either Party anticipates requesting the court designate the matter an Unlimited Civil Matter within the meaning of this CCP.

2.5.03 **Written Report to the Court**. Following the meeting between the parties described in Section 2.5.02 above, and no later than 7 days prior to the case management conference, the plaintiff shall prepare and submit a jointly-approved written report to the court accurately summarizing the results of the parties meeting. The report must be approved and signed by all parties or their counsel, and shall include the following certification by all parties:

I certify, under penalty of perjury, that all matters discussed herein are true and correct under the laws of the Viejas Band of Kumeyaay Indians and the State of California. I have met in person with opposing counsel, and I made a good faith attempt to anticipate, discuss, and resolve any issues in this case over which opposing counsel and I may reach impasse, and I am prepared to have a detailed discussion with the court concerning this matter.

2.5.04 **Failure to Comply with this Section**. If the court, in its discretion, determines the parties have not fully complied with this Section, it may do any or all of the following:

(A) Continue the case management conference to a future date and time;

(B) Order the parties to immediately comply with the requirements of this Section by directing the parties to hold an in-person meeting at the date and time set for the case management conference, and to submit their written report within 24 hours;

(C) Issue a monetary sanction in accordance with this CCP.

Section 6 – Trial Readiness Conference

2.6.01 **Trial Readiness Conference**. The court shall hold a trial readiness conference with the parties no later than 15 days before trial. The court, in its discretion, can set a sooner or later date for the trial readiness hearing.

2.6.02 **Attendance**. A represented party must authorize at least one of its attorneys to make stipulations and admissions about all matters that can reasonably be anticipated for discussion at a trial readiness hearing. If appropriate, the court may require that a

party or its representative be present or reasonably available by other means to consider possible settlement.

2.6.03 Matters for Consideration at the Trial Readiness Conference. At the trial readiness conference, the court may consider and take appropriate action to ensure the parties are prepared for trial and to ensure the trial proceeds expediently. The court and the parties are expected to consider and take appropriate action on any or all of the following matters, as appropriate in each case:

(A) Formulating and simplifying the issues, and eliminating frivolous claims or defenses.

(B) Amending the pleadings if necessary or desirable.

(C) Obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence.

(D) Avoiding unnecessary proof and cumulative evidence, and limiting the use of expert witness testimony except where absolutely necessary.

(E) Discussing any anticipated motions *in limine* by the parties.

(F) Ordering the presentation of evidence early in the trial on a manageable issue that might, on the evidence, be the basis for a judgment as a matter of law, or a judgment on partial findings.

(G) Establishing a reasonable limit on the time allowed to present evidence;

(H) Facilitating in other ways the just, speedy, and inexpensive disposition of the action.

2.6.04 Pretrial Orders. Following the trial readiness conference, the court shall issue an order reciting the action taken.

Section 7 – Offers to Compromise

2.7.01 Offers by a Party to Compromise.

(A) Not less than 10 days prior to commencement of trial, any party may serve an offer in writing upon any other party to the action to allow judgment to be taken or an award to be entered in accordance with the terms and conditions stated at that time. The written offer shall include a statement of the offer, containing the terms and conditions of the judgment or award, and a provision that allows the accepting party to indicate acceptance of the offer by signing a statement that the offer is accepted. Any acceptance of the offer, whether made on the document containing the offer or on a separate document of

acceptance, shall be in writing and shall be signed by counsel for the accepting party or, if not represented by counsel, by the accepting party.

(I) If the offer is accepted, the offer with proof of acceptance shall be filed and the clerk or the judge shall enter judgment accordingly.

(II) If the offer is not accepted prior to trial or within 30 days after it is made, whichever occurs first, it shall be deemed withdrawn, and cannot be given in evidence upon the trial.

(III) For purposes of this subdivision, a trial shall be deemed to be actually commenced at the beginning of the opening statement of the plaintiff or counsel, or, if there is no opening statement, at the time of the administering of the oath or affirmation to the first witness, or the introduction of any evidence.

(B) If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall not recover his or her costs and shall pay the defendant's costs from the time of the offer. In addition, in any action or proceeding other than an eminent domain action, the court, in its discretion, may require the plaintiff to pay a reasonable sum to cover costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial, or during trial, of the case by the defendant. In determining whether the plaintiff obtains a more favorable judgment, the court shall exclude the costs.

(C) If an offer made by a plaintiff is not accepted and the defendant fails to obtain a more favorable judgment or award in any action or proceeding other than an eminent domain action, the court, in its discretion, may require the defendant to pay a reasonable sum to cover costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial, or during trial, of the case by the plaintiff, in addition to plaintiff's costs.

(D) If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the costs under this Section, from the time of the offer, shall be deducted from any damages awarded in favor of the plaintiff. If the costs awarded under this Section exceed the amount of the damages awarded to the plaintiff the net amount shall be awarded to the defendant and judgment or award shall be entered accordingly.

(E) For purposes of this Section, "plaintiff" includes a cross-complainant and "defendant" includes a cross-defendant. Any judgment or award entered pursuant to this Section shall be deemed to be a compromise settlement.

CHAPTER 3 – PARTIES

Section 1 - Plaintiff and Defendant; Capacity

3.1.01 **Real Party in Interest**. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by law may sue in his own name without joining with him the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

3.1.02 **Actions by Personal Representatives; Setting Aside Judgment**. Actions for the recovery of personal injury damages may be commenced by an executor, administrator, or guardian appointed pursuant to Viejas Band law, or the law of the applicable jurisdiction, in the same manner as if commenced by the testator or intestate, and judgment therein shall be as conclusive as if rendered in favor of or against the testator or intestate. The judgment may be set aside upon the application of any person interested for fraud or collusion on the part of the executor, administrator, or guardian.

3.1.03 **Infants or Incompetent Persons**. Whenever an infant or incompetent person has a representative, such as a general guardian, or similar fiduciary, the representative may sue or defend on behalf of the infant or incompetent person.

CHAPTER 4 – DISCOVERY

Section 1 - Scope of Discovery

4.1.01 **Scope of Discovery, Generally**. Unless otherwise limited by order of the court in accordance with this CCP, parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not grounds for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

4.1.02 **Application of Evidentiary Privileges and Protections**. Information subject to an evidentiary privilege as recognized in the Viejas Rules of Evidence is not subject to discovery unless the court determines: (a) the requested information is directly relevant to the subject matter of the pending action, or a claim or defense of any other

party; (b) the party seeking the discovery will suffer unfair prejudice if disclosure is not ordered; and (c) the prejudice suffered by any party if disclosure is not ordered substantially outweighs the interest of the party asserting the privilege in protecting the information.

4.1.03 **Trial Preparation Materials**. A party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative. If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

Section 2 – Limited Civil Actions

4.2.01 **All Actions Are Designated Limited Civil Actions**. It is the goal of this CCP to encourage focused, economically sensible discovery in all Civil Actions. To that end, all Civil Actions are automatically designated Limited Civil Actions within the meaning of this Section unless and until the court designates the matter an "Unlimited Civil Action," as discussed in this Chapter.

4.2.02 **Limitation on Frequency of Discovery in a Limited Civil Actions**. Discovery in a Limited Civil Action shall proceed in accordance with this CCP, except with the following limitations:

(A) Each party may serve no more than 35 of any combination of interrogatories, requests for admission, or inspection demands on any other party.

Section 3 – Unlimited Civil Actions

4.3.01 **Motion to Designate a Matter an Unlimited Civil Action**. On motion by any party, or *sua sponte* according to its discretion, the court may designate a Limited Civil Action an Unlimited Civil Action. In deciding whether to designate a Limited Civil Action an Unlimited Civil Action, the court shall exercise discretion and consider the following factors:

(A) The extent to which the complexity of the matter warrants permitting the parties to conduct additional discovery;

(B) The extent to which the damages sought by the parties warrant additional discovery; and

(C) Any opposition to permitting additional discovery.

4.3.02 **Discovery in Unlimited Civil Actions**. If a court designates a matter an Unlimited Civil Action, it has discretion to impose whatever limitations on discovery it deems just and proper.

Section 4 – Mandatory Disclosures

4.4.01 **Initial Disclosures**. At least 15 days before Case Management Conference, the parties must disclose to one another the following information:

(A) The name, address, and telephone number of every witness likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(B) A copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(C) A computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and

4.4.02 **Disclosure of Expert Witness Information**.

(A) **In General**. A party must disclose to the other parties the identity of any witness it may use at trial to present expert witness testimony.

(B) **Witnesses Who Must Provide a Written Report**. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as the party's employee regularly involve giving expert testimony. The report must contain:

(I) A complete statement of all opinions the witness will express and the basis and reasons for them;
(II) The facts or data considered by the witness in forming them;
(III) Any exhibits that will be used to summarize or support them;
(IV) The witness's qualifications, including a list of all publications authored in the previous 10 years;
(V) A list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
(VI) A statement of the compensation to be paid for the study and testimony in the case.

(C) **Witnesses Who Do Not Provide a Written Report**. Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state:

(I) The subject matter on which the witness is expected to present evidence; and

(II) A summary of the facts and opinions to which the witness is expected to testify.

(D) **Time to Disclose Expert Testimony**. A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made:

(I) At least 90 days before the date set for trial or for the case to be ready for trial; or

(II) If the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party in their expert witness disclosure, within 30 days after the other party's disclosure.

(E) **Supplementing the Disclosure**. A party must supplement its disclosure in a timely manner if the party learns that in some material respect the disclosure is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

4.4.03 Pre-Trial Disclosures.

(A) **In General**. In addition to all other mandatory disclosures discussed in this Section, a party must provide to the other parties and promptly file the following information about the evidence that the party may present at trial other than solely for impeachment:

(I) The name and, if not previously provided, the address and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises.

(II) The designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

(III) An identification of each document or other exhibit, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises.

(B) **Time for Pretrial Disclosures; Objections**. Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections: any objections to the use of a deposition designated by another party; and any objection, together with the grounds for it, that may be made to the admissibility of materials intended to be offered by the opposing party at time of trial. An objection not so made – except as to relevance, prejudice, confusion or waste of time – is waived unless excused by the court for good cause.

4.4.04 **Form of Disclosures**. Unless the court orders otherwise, all disclosures under this Section must be in writing, signed by the party or its counsel of record, and served on all parties.

Section 5 – Depositions

4.5.01 **When Depositions May be Taken**. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant, except that leave is not required if a defendant has served a notice of taking deposition or otherwise sought discovery. The attendance of witnesses may be compelled by subpoena as provided in this CCP.

4.5.02 **Notice of Deposition**. A party desiring to take the deposition of any person or party upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(A) Leave of court is not required for the taking of a deposition by plaintiff prior to the expiration of 30 days after service of the summons and complaint upon any defendant if the notice (a) states that the person to be examined is about to leave the reservation, and will be unavailable for examination unless his deposition is taken before expiration of the 30-day period, and (b) sets forth facts to support the statement. The plaintiff or his counsel shall sign the notice, and his signature constitutes a certification by him that to the best of his knowledge, information, and belief the statement and supporting facts are true.

(B) On notice to all parties, a deposition may be recorded by video.

(C) The notice to a party deponent may be accompanied by a request made in compliance with Section 8 of Chapter 4 for the production of documents and tangible things at the taking of the deposition, provided that there is 30 days advance notice to allow for the production of documents.

(D) A party may in his notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. The persons so designated shall testify as to matters known or reasonably available

to the organization.

(E) The notice must be served at least 10 days before the date set for the deposition. Extensions of time apply where notices are served by mail: 5 days if the address and place of mailing are in California, 10 days if either is in another state, and 20 days if either is in another country.

4.5.03 Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Viejas Rules of Evidence. The examination shall commence at the time and place specified in the notice or within thirty minutes thereafter and, unless otherwise stipulated or ordered, will be continued on successive days, except Saturdays, Sundays, and Viejas Band holidays until completed. Any party not present within thirty minutes following the time specified in the notice of taking deposition waives any objection that the deposition was taken without his presence. The officer before whom the deposition is to be taken shall put the witness on oath and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. A certified court reporter shall serve as the officer. The testimony shall be taken stenographically or recorded by any other means ordered by the court. If requested by one of the parties, the testimony shall be transcribed.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, or to the manner of taking it, or to the evidence presented, or to the conduct of any party, and any other objection to the proceedings, shall be noted by the officer upon the deposition. Evidence objected to shall be taken subject to the objections.

4.5.04 Motion to Terminate or Limit Examination. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition. If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order.

4.5.05 Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read by the witness, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its

submission to the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as though signed unless on a motion to suppress the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

4.5.06 Certification and Filing by Officer; Exhibits; Copies; Notice of Filing; Preservation of Notes and Tapes of Depositions.

(A) The officer shall certify on the deposition that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness. The officer shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of [here insert the name of witness]" and shall promptly file it with the court.

Documents and things produced for inspection during the examination of the witness, shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party, except that (a) the person producing the materials may substitute copies to be marked for identification, if all parties are afforded fair opportunity to verify the copies by comparison with the originals, and (b) if the person producing the materials requests their return, the officer shall mark them, give each party an opportunity to inspect and copy them, and return them to the person producing them, and the materials may then be used in the same manner as if annexed to and returned with the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(B) Upon payment of reasonable charges therefore, the officer shall furnish a copy of the deposition to any party or to the deponent.

(C) The party taking the deposition shall give prompt notice of its filing to all other parties.

(D) The officer shall preserve and retain for a period of 10 years all original notes and stenographic tapes taken or recorded by him during deposition, which shall be retained by the officer in such place and manner as to ensure their availability to the court or any party upon request.

4.5.07 Failure to Attend or to Serve Subpoena, Expenses.

(A) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by counsel pursuant to the notice, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by the other party and counsel in attending, including reasonable attorney's fees.

(B) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness, because of such failure, does not attend, and if another party attends in person or by counsel because the party or counsel expects the deposition of that witness to be taken, the court may order the party giving the notice to pay to such other party the reasonable expenses incurred by the party and counsel in attending, including reasonable attorney's fees.

4.5.08 Travel Limits on Depositions. The deposition of any expert to be deposed shall be taken at a place that is within San Diego County, unless otherwise agreed by the parties. On motion for a protective order by the party designating an expert witness, and on a showing of exceptional hardship, the court may order that the deposition be taken at a more distant place from the courthouse.

4.5.09 Deposition of Expert Witnesses.

(A) Except as provided in subdivision (E), this Section applies to an expert witness, other than a party or an employee of a party, who is any of the following:

(I) Any natural person identified by a party whose oral or deposition testimony in the form of expert opinion any party expects to offer in evidence at trial or has been retained by a party for the purpose of forming and expressing an opinion in anticipation of the litigation or in preparation for the trial of the action.

(II) A treating physician and surgeon or other treating health care practitioner who is to be asked during the deposition to express opinion testimony, including opinion or factual testimony regarding the past or present diagnosis or prognosis made by the practitioner or the reasons for a particular treatment decision made by the practitioner, but not including testimony requiring only the reading of words and symbols contained in the relevant medical record or, if those words and symbols are not legible to the deponent, the approximation by the deponent of what those words or symbols are.

(III) An architect, professional engineer, or licensed land surveyor who was involved with the original project design or survey for which that person is asked to express an opinion within the person's expertise and relevant to the action or proceeding.

(B) A party desiring to depose an expert witness described in subdivision (A) shall pay the expert's reasonable and customary hourly or daily fee for any time spent at the deposition from the time noticed in the deposition subpoena, or from the time of the arrival of the expert witness should that time be later than the time noticed in the deposition subpoena, until the time the expert witness is

dismissed from the deposition, regardless of whether the expert is actually deposed by any party attending the deposition.

(C) If any counsel representing the expert or a non-noticing party is late to the deposition, the expert's reasonable and customary hourly or daily fee for the time period determined from the time noticed in the deposition subpoena until the counsel's late arrival, shall be paid by that tardy counsel.

(D) Notwithstanding subdivision (C), the hourly or daily fee charged to the tardy counsel shall not exceed the fee charged to the party who retained the expert, except where the expert donated services to a charitable or other nonprofit organization.

(E) A daily fee shall only be charged for a full day of attendance at a deposition or where the expert was required by the deposing party to be available for a full day and the expert necessarily had to forgo all business that the expert would otherwise have conducted that day but for the request that the expert be available all day for the scheduled deposition.

4.5.10 Travel Expenses for Experts. The party desiring to depose expert is responsible for any fee charged by the expert for preparing for a deposition and for traveling to the place of the deposition, as well as for any travel expenses of the expert.

4.5.11 Payment for Expert at Time of Deposition.

(A) The party taking the deposition of an expert witness shall either accompany the service of the deposition notice with a tender of the expert's fee based on the anticipated length of the deposition, or tender that fee at the commencement of the deposition.

(B) The expert's fee shall be delivered to the attorney for the party designating the expert.

(C) The service of a proper deposition notice accompanied by the tender of the expert witness fee described in this Chapter is effective to require the party employing or retaining the expert to produce the expert for the deposition.

(D) If the deposition of the expert takes longer than anticipated, the party giving notice of the deposition shall pay the balance of the expert's fee within five days of receipt of an itemized statement from the expert.

(E) If the party noticing the deposition fails to tender the expert's fee under this Chapter, the expert shall not be deposed at that time unless the parties stipulate otherwise.

4.5.12 Challenging Expert Fees.

(A) If a party desiring to take the deposition of an expert witness under this article deems that the hourly or daily fee of that expert for providing deposition testimony is unreasonable, that party may move for an order setting the compensation of that expert. Notice of this motion shall also be given to the expert.

(B) A motion under subdivision (A) shall be accompanied by a meet and confer declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. In any attempt at an informal resolution, either the party or the expert shall provide the other with all of the following:

(I) Proof of the ordinary and customary fee actually charged and received by that expert for similar services provided outside the subject litigation.
(II) The total number of times the presently demanded fee has ever been charged and received by that expert.
(III) The frequency and regularity with which the presently demanded fee has been charged and received by that expert within the two-year period preceding the hearing on the motion.

(C) In addition to any other facts or evidence, the expert or the party designating the expert shall provide, and the court's determination as to the reasonableness of the fee shall be based on, proof of the ordinary and customary fee actually charged and received by that expert for similar services provided outside the subject litigation.

(D) In an action filed, the expert or the party designating the expert shall also provide, and the court's determination as to the reasonableness of the fee shall also be based on, both of the following:

(I) The total number of times the presently demanded fee has ever been charged and received by that expert.
(II) The frequency and regularity with which the presently demanded fee has been charged and received by that expert within the two-year period preceding the hearing on the motion.

(E) The court may also consider the ordinary and customary fees charged by similar experts for similar services within the relevant community and any other factors the court deems necessary or appropriate to make its determination.

(F) Upon a determination that the fee demanded by that expert is unreasonable, and based upon the evidence and factors considered, the court shall set the fee

of the expert providing testimony.

(G) The court shall impose a monetary sanction against any party, person, or attorney who unsuccessfully makes or opposes a motion to set the expert witness fee, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

Section 6 – Depositions in Court Proceedings

4.6.01 **Use of Depositions**. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Viejas Rules of Evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(A) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(B) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent, or a person designated to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(C) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (a) that the witness is dead; or (b) that the witness is at a greater distance than 50 miles from the place of trial or hearing, or is not within the reservation, unless it appears that the absence of the witness was procured by the party offering the deposition; or (c) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (d) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (e) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(D) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state or Indian tribe has been dismissed and another action involving the same subject

matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefore.

4.6.02 Objections to Admissibility. Subject to the provisions of this CCP, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

4.6.03 Effect of Errors and Irregularities in Depositions.

(A) **As to notice**. All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(B) **As to disqualification of officer**. Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(C) **As to taking of deposition**.

(I) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(II) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(D) As to completion and return of depositions. Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

Section 7 – Interrogatories to Parties

4.7.01 Availability; Procedure for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or

private corporation or a partnership or association or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Interrogatories may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the party or counsel making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order with respect to any objection to or other failure to answer an interrogatory.

4.7.02 **Scope**; Use at Trial. Interrogatories may relate to any matter within the scope of permissible discovery, and the answers may be used to the extent permitted by the Viejas Rules of Evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or other later time.

4.7.03 **Option to Produce Business Records**. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

Section 8 – Production of Documents and Things and Entry Upon Land for Inspection

4.8.01 **Scope**. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated through detection devices into reasonably usable form when translation is practicably necessary) or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of permissible discovery and which are in the possession, custody or control of the party upon whom the request is served; or

(2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of permissible discovery.

4.8.02 **Procedure**. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon the party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

4.8.03 **Persons not Parties**. This Section does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

Section 9 – Physical and Mental Examination of Persons

4.9.01 **Order for Examination**. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court may order the party to submit to a physical or mental examination by a physician or to produce for examination the person in his custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

4.9.02 **Report of Examining Physician**.

(A) If requested by the party against whom an order is made or the person examined, the party causing the examination to be made shall deliver to him a copy of a detailed written report of the examining physician setting out his findings, including results of all tests made, diagnoses and conclusions, together with like reports of all earlier examinations of the same condition. After delivery, the party causing the examination shall be entitled upon request

to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless in the case of a report of examination of a person not a party, the party shows that he is unable to obtain it.

The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if a physician fails or refuses to make a report the court may exclude his testimony if offered at trial.

(B) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege he or she may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine him or her in respect of the same mental or physical condition.

(C) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of an examining physician or the taking of a deposition of the physician in accordance with the provisions of any other rule.

4.9.03 Alternate Procedure: Notice of Examination; Objections.

(A) When the parties agree that a mental or physical examination is appropriate but do not agree as to the examining physician, the party desiring the examination may seek it by giving reasonable notice in writing to every other party to the action. The notice shall specify the name of the person to be examined, the time, place and scope of the examination, and the person or persons by whom it is to be made.

(B) Upon motion by a party or by the person to be examined, and for good cause shown, the court may, in addition to other orders appropriate under subdivision (A) of this Section, make an order that the examination be made by a physician other than the one specified in the notice. If a party after being served with a proper notice under this subdivision does not make a motion under this Section and fails to appear for the examination or to produce for examination the person in his custody or legal control, the court may on motion make such orders in regard to the failure as are just.

Section 10 – Requests for Admission

4.10.01 Request for Admission. A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of permissible discovery set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be

served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other with or after service of the summons and complaint upon the party. Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, or, in the case of a defendant, within 45 days after service of the summons and complaint upon that defendant, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his or her counsel. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his or her answer or deny only a part of the matter of which an admission is requested, the answering party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the answering party states that he or she has made reasonable inquiry and that the information known or readily obtainable by the answering party is insufficient to enable an admission or denial. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the answering party may, subject to the provisions of this Section, deny the matter or set forth reasons why the answering party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pre-trial conference or at a designated time prior to trial.

4.10.02 **Effect of Admission**. A matter admitted under this Section is conclusively established unless the court, on motion, permits the admission to be withdrawn or amended. The court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this Section is not an admission for any other purpose and cannot be used against the party in any other proceeding.

Section 11 – Discovery Sanctions

4.11.01 **Motion for Order Compelling Discovery**. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

(A) **Motion**. If a deponent fails to answer a question propounded or submitted under this CCP, or a corporation or other entity fails to make a designation under this CCP, or a party fails to answer an interrogatory submitted under this CCP, or if a party, in response to a request for inspection submitted under this CCP, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(B) **Evasive or incomplete answer**. For purposes of this subdivision, an evasive or incomplete answer is to be treated as a failure to answer.

4.11.02 Failure to Comply with Order.

(A) **Refusal to Testify**. If a deponent fails to be sworn or to answer a question after being directed to do so by the court, the failure may be considered a contempt of court.

(B) **Failure to Obey Order**. If a party or an officer, director, or managing agent of a party or a person designated to testify on behalf of a party fails to obey an order to provide or permit discovery, the court may make such orders in regard to the failure as are just, and among others the following:

(I) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

(II) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting such party from introducing matters in evidence.

(III) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

(IV) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination; and,

(V) Where a party has failed to comply with an order requiring such party to produce another for examination, such orders as are listed in paragraph (1),(2), and (3) of this subdivision, unless the party failing to comply shows that such party is unable to produce such person for examination.

4.11.03 Failure of Party to Attend at Own Deposition or Serve Answers to

Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party, or a person designated to testify on behalf of a party, fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice, or (2) to serve answers or objections to interrogatories submitted under this CCP, after proper service of the interrogatories, or (3) to serve a written response to a request for inspection, after proper service of the request, the court on motion may make such orders in regard to the failure as are just.

CHAPTER 5 – TRIALS

Section 1 – Bench Trial

All cases shall be tried by a judge. A trial date shall be scheduled within 120 days of the Case Management Conference, unless the court for good cause orders a later trial date. The decision of the court shall be given within 60 days after submission of the action. Where briefs are filed, the action shall not be deemed submitted until the time for filing the briefs has expired.

Section 2 – Dismissal of Actions

5.2.01 **Dismissal by Plaintiff**. The plaintiff, without court order, may dismiss an action any time before the defendant files an answer or a motion for summary judgment.

5.2.02 **By the Court**. Except as otherwise provided in this Section, the plaintiff may not dismiss an action except by court order, upon a finding that the terms of the dismissal are in the interests of justice. If the defendant files a counterclaim before the court files an order to dismiss, the court shall retain the original action unless the counterclaim has an independent basis for subject matter jurisdiction.

5.2.03 **By the Defendant**. The defendant may request an order for dismissal if the plaintiff fails to prosecute the case in a reasonably expedient manner or comply with this CCP.

Section 3 – Consolidation; Separate Trials

5.3.01 **Consolidation**. When there are pending actions involving a common question of law or fact, the court may order all the actions consolidated, and it may make orders to avoid unnecessary costs or delay.

5.3.02 **Separate Trials**. The court, for convenience or to avoid prejudice, or when separate trials will promote judicial economy, may order a separate trial of any claim, crossclaim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, crossclaims, counterclaims, third-party claims, or issues.

Section 4 – Order of Trial

5.4.01 **Order of Trial by the Court**. The trial shall proceed in the following order, unless

the court for good cause stated in the record, otherwise directs:

(A) The plaintiff or plaintiff's counsel may make a statement of the case to the court;

(B) The defendant or defendant's counsel may make a statement of the case to the court, but may defer making such statement until after the close of the evidence by the plaintiff.

(C) Other parties admitted to the action or their counsel may make a statement of their cases to the court, but they may defer making such statement until after the close of the evidence by the plaintiff and defendant. The statement of such parties shall be in the order directed by the court.

(D) The plaintiff shall then introduce evidence.

(E) The defendant shall then introduce evidence.

(F) The other parties, if any, shall then introduce evidence in the order directed by the court.

(G) The parties may then introduce rebutting evidence on each side in the respective orders set forth in this Section.

(H) The plaintiff or plaintiff's counsel may make a closing argument to the court;

(I) The defendant or defendant's counsel may make a closing argument to the court;

(J) Other parties admitted to the action or their counsel may make a closing argument to the court.

(K) The plaintiff or plaintiff's counsel may make a rebuttal argument to the court.

The statements to the court shall be confined to a concise and brief statement of the facts which the parties propose to establish by evidence on the trial, and any party may decline to make such statement.

Section 5 – Taking Testimony

5.5.01 **Definition of Witness**. A witness is a person whose declaration under oath or affirmation is received as evidence for any purpose, whether such declaration is made on oral examination or by deposition or affidavit.

5.5.02 **Affirmation in Lieu of Oath**. Whenever under this Section an oath is required to be taken, a solemn affirmation to tell the truth may be accepted.

5.5.03 **Evidence on Motion**. When a motion is based on facts not appearing of record, the court may hear the matter on affidavits presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

Section 6 – Subpoena

5.6.01 **Subpoena for Attendance of Witnesses; Form; Issuance**. Except as otherwise provided by Rules of Court, every subpoena shall be signed by a Judge under the seal of the court, and shall state the name of the court and title of the action, and shall command each person to whom it is directed to attend and give testimony at time and place specified.

5.6.02 **Subpoena for Production of Documentary Evidence**. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein, but the court, upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if it is unreasonable and oppressive. In the alternative, the court may condition denial of the motion to quash or modify the subpoena upon the advancement by the person on whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

5.6.03 **Failure to Produce Documentary Evidence**. Upon failure to comply with a subpoena, secondary evidence of the books, papers, documents or tangible things may be given at the trial.

5.6.04 **Service of Subpoena**. A subpoena shall be served by any other person who is at least 18 years of age and is not a party to the civil action. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to the person the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Tribe or an officer or agency thereof, fees and mileage need not be tendered.

5.6.05 **Subpoena for Taking Depositions; Place of Examination**.

(A) Proof of service of a notice to take a deposition constitutes a sufficient authorization for the issuance by the clerk of the court of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things which constitute or contain matters within the scope of the examination.

The person to whom the subpoena is directed may, within 10 days after the service thereof or on or before the return date if the return date is less than 10 days after service, serve upon the party or counsel designated in the subpoena

written objection to inspection or copying of any and all of the designated materials. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the court.

The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(B) A person served on the reservation may be requested to attend an examination at any reasonable location within the reservation. A person served outside of the reservation may be required to attend within or outside of the reservation, as long as such place is within forty miles from the place of service, or at such other convenient place as is fixed by an order of court.

5.6.06 **Subpoena for Hearing or Trial**. At the request of any party, subpoenas for attendance at a hearing or trial shall be issued by the court. A subpoena requiring the attendance of a witness at a hearing or trial may be served any place.

5.6.07 **Contempt**. Failure of any person without adequate excuse to obey a subpoena lawfully served may be deemed in contempt of the court.

Section 7 – Findings and Conclusions by the Court

5.7.01 **Findings and Conclusions**.

(A) **In General**. The court must find facts specifically and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or shall appear in an opinion or a memorandum of decision filed by the court.

(B) **Interlocutory Injunction**. In granting or refusing an interlocutory injunction, the court must similarly state the findings and conclusions that support its action.

(C) **For a Motion**. The court shall find facts specifically and state its conclusions of law when ruling on a motion.

(D) **Questioning the Evidentiary Support**. A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

(E) **Setting Aside the Findings**. Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous.

5.7.02 **Amended or Additional Findings**. On a party's motion filed no later than 21 days after the entry of judgment, the court may amend its findings--or make additional findings--and may amend the judgment accordingly. The motion may accompany a motion for a new trial.

5.7.03 **Judgment on Partial Findings**. If a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings must be supported by findings of fact and conclusions of law.

CHAPTER 6 – JUDGMENT

Section 1 – Judgments and Costs

6.1.01 **Definition; Form**. "Judgment" as used in this CCP includes a decree and an order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

6.1.02 **Judgment Upon Multiple Claims or Involving Multiple Parties**. When more than one claim for relief is presented in a complaint or cross-complaint, or when multiple parties are involved, the court may direct the entry of final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however, designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

6.1.03 **Demand for Judgment**. A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

6.1.04 **Entry of Judgment after Death of Party**. Judgment may be entered after the death of a party upon a decision upon an issue of fact rendered in his lifetime.

6.1.05 **Costs**. Unless otherwise provided under the Viejas Band's law, the court may award costs to a prevailing party. A party who claims costs shall file a statement of his costs and serve a copy thereof on the opposing party. The statement shall be filed and served within 15 days after judgment, unless for good cause shown the time is

extended by the court. At any time within 15 days after receipt of the copy of the statement of costs, the opposing party may file objections to the statement serving a copy thereof on the party claiming such costs. The court shall pass upon the objections and by its order correct the statement of costs to the extent that it requires correction.

Section 2 – Default

6.2.01 **Entry**. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these Rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter such party's default.

6.2.02 **Judgment by Default**. Judgment by default may be entered as follows:

(A) **By motion**. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the court upon motion of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and if the defendant is not an infant or incompetent person.

(B) **By hearing**. In all other cases the party entitled to a judgment shall apply to the court herefor, but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party or, if appearing by representative, the party's representative, shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper.

6.2.03 **Setting Aside Default**. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside. The party seeking to set aside a default must file his or her motion to set aside the default promptly upon discovery of the default, and in no event may default be set aside more than 2 years after the defaulting party discovers the default.

6.2.04 **Plaintiffs, and Cross-Complainants**. The provisions of this Section apply whether the party entitled to the judgment by default is a plaintiff, or a cross-complainant.

6.2.05 **Judgment against the Viejas Band**. No judgment by default shall be entered against the Viejas Band or an officer or agency thereof unless the claimant establishes jurisdiction and a claim or right to relief by evidence satisfactory to the court. This

Section shall not be construed as a waiver of the sovereign immunity of the Viejas Band.

6.2.06 **Judgment when Service by Publication; Statement of Evidence**. Where service of process has been made by publication and no answer has been filed within the time prescribed by law, judgment shall be rendered as in other cases, but a reporter's transcript certified by the reporter as correct shall be filed as a part of the record.

Section 3 – Summary Judgments

6.3.01 **For Plaintiff**. A party seeking to recover upon a complaint or cross-complaint, or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the service of process upon the adverse party or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any party thereof.

6.3.02 **For Defendant**. A party against whom a complaint or cross-complaint is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

6.3.03 **Motion and Proceedings Thereon**. Upon timely request by any party, the court shall set a time for hearing of the motion. If no request is made, the court may, in its discretion, set a time for such hearing. Notice of the motion and supporting papers shall be served on all other parties to the action at least 75 days before the time appointed for hearing the motion. A party opposing the motion must file affidavits, memoranda or both not less than 14 days prior to the hearing the motion. The moving party shall have 5 days thereafter in which to serve reply memoranda and affidavits. The foregoing time periods may be shortened or enlarged by the court or by agreement of the parties (subject to court approval). The judgment sought shall be rendered forthwith if the pleadings, depositions, answer to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

6.3.04 **Case not Fully Adjudicated on Motion**. If, on motion under this Section, judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

6.3.05 **Form of Affidavits; Further Testimony; Defense Required**. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the pleading, but in responding, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the opposing party does not so respond, summary judgment, if appropriate, shall be entered against the opposing party.

6.3.06 **When Affidavits are Unavailable**. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

6.3.07 **Affidavits Made in Bad Faith**. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this Section are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Section 4 – Declaratory Judgments

The procedure for obtaining a declaratory judgment shall be in accordance with this CCP. The existence of another remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Section 5 – Entry of Judgment

6.5.01 **Entry**. All judgments shall be in writing and signed by a judge. The filing with the clerk of the judgment constitutes entry of such judgment, and the judgment is not effective before such entry, except that in such circumstances and on such notice as justice may require, the court may direct the entry of a judgment nunc pro tunc, and the reasons for such direction shall be entered of record. The entry of judgment shall not be delayed for taxing cost.

6.5.02 **Enforcement of Judgment**. The court shall cause the judgment to be carried into execution.

6.5.03 **Objections to Form**.

(A) In case of a judgment other than for money or costs, or that all relief be denied, the judgment shall not be settled, approved and signed until the expiration of five days after the proposed form thereof has been served upon opposing counsel unless the opposite party or his or her counsel endorses on the judgment an approval as to form. The five-day provision may be waived by the court only upon an express written finding by minute order or otherwise of necessity to shorten time or to enter judgment without notice.

(B) If objection to the form of the judgment is made within the time provided in paragraph (A) of this subdivision, the matter shall be presented to the court for determination.

(C) The requirements of this Section shall not apply to parties in default.

Section 6 – New Trials and Amendments of Judgments

6.6.01 **Procedure; Grounds**. A decision or judgment may be vacated and a new trial granted on motion of the aggrieved party for any of the following causes materially affecting the party's rights:

(A) Irregularity in the proceedings of the court, or abuse of discretion, whereby the moving party was deprived of a fair trial.

(B) Misconduct of the prevailing party.

(C) Accident or surprise which could not have been prevented by ordinary prudence.

(D) Material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at the trial.

(E) Excessive or insufficient damages.

(F) Error in the admission or rejection of evidence or other errors of law occurring at the trial or during the progress of the action.

(G) That the decision, finding of fact, or judgment is not justified by the evidence or is contrary to law.

6.6.02 **Contents of Motion; Amendment; Rulings Reviewable**.

(A) The motion for new trial shall be in writing, shall specify generally the grounds upon which the motion is based, and may be amended at any time before it is ruled upon by the court.

(B) Upon the general ground that the court erred in admitting or rejecting evidence, the court shall review all rulings during the trial upon objections to evidence.

(C) Upon the general ground that the verdict, decision, findings of fact, or judgment is not justified by the evidence, the court shall review the sufficiency of the evidence.

6.6.03 Time for Motion. A motion for a new trial shall be filed not later than 15 days after entry of the judgment.

6.6.04 Time for Serving Affidavits. When a motion for new trial is based upon affidavits they shall be served with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding twenty days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits.

6.6.05 Questions to be Considered in New Trial. A new trial, if granted, shall be only a new trial of the question or questions with respect to which the verdict or decision is found erroneous, if separable. If a new trial is ordered because the damages are excessive or inadequate and granted solely for that reason, the verdict shall be set aside only in respect of the damages, and shall stand in all other respects.

6.6.06 Motion on Ground of Excessive or Inadequate Damages.

(A) When a motion for new trial is made upon the ground that the damages awarded are either excessive or insufficient, the court may grant the new trial conditionally upon the filing within a fixed period of time of a statement by the party adversely affected by reduction or increase of damages accepting that amount of damages which the court shall designate. If such a statement is filed within the prescribed time, the motion for new trial shall be regarded as denied as of the date of such filing. If no statement is filed, the motion for new trial shall be regarded as granted as of the date of the expiration of the time period within which a statement could have been filed. No further written order shall be required to make an order granting or denying the new trial final. If the conditional order of the court requires a reduction of or increase in damages, then the new trial will be granted in respect of the damages only and the verdict shall stand in all other respects.

(B) If a statement of acceptance is filed by the party adversely affected by reduction or increase of damages, and the other party thereafter perfects an appeal, the party filing such statement may nevertheless cross-appeal and the perfecting of a cross-appeal shall be deemed to revoke the consent to the decrease or increase in damages.

6.6.07 After Service by Publication.

(A) When judgment has been rendered on service by publication, and the defendant has not appeared, a new trial may be granted upon application of the defendant for good cause shown by affidavit, made within one year after rendition of the judgment.

(B) Execution of the judgment shall not be stayed unless the defendant gives bond, approved by the court, in double the amount of the judgment or value of the property adjudged, payable to the plaintiff in the judgment, conditioned that the party will prosecute the application for new trial to effect, and will satisfy such judgment as may be rendered by the court should its decision be against him.

6.6.08 Number of New Trials. Not more than two new trials shall be granted to either party in the same action.

6.6.09 Motion to Alter or Amend a Judgment. A motion to alter or amend the judgment shall be filed no later than 15 days after entry of judgment.

6.6.10 Specification on Grounds of New Trial in Order. No order granting a new trial shall be made and entered unless the order specifies with particularity the ground or grounds on which the new trial is granted.

Section 7 – Relief from Judgment or Order

6.7.01 Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on motion of any party and after such notice, if any, as the court orders. During pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the Viejas Appellate Court.

6.7.02 Correction of Error in Record of Judgment.

(A) When a mistake in a judgment is corrected as provided by Section 6.7.01, thereafter the execution shall conform to the judgment as corrected.

(B) Where there is a mistake, miscalculation or misrecital of a sum of money, or of a name, and there is among the records of the action a decision or instrument of writing whereby such judgment may be safely corrected, the court shall on application and after notice, correct the judgment accordingly.

6.7.03 Mistake; Inadvertence; Surprise; Excusable; Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under this Chapter; (3) fraud (whether heretofore

denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged, or a prior judgment on which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be filed within a reasonable time, and for reasons (1), (2) and (3) not more than six months after the judgment or order was entered or proceeding was taken. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This Section does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to grant relief to a defendant served by publication as provided by this CCP or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Section 8 – Harmless Error

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Section 9 – Stay of Proceedings to Enforce a Judgment

6.9.01 **Stay in Injunctions**. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal.

6.9.02 **Stay on Motion for New Trial or for Judgment**. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment, or of a motion for relief from a judgment or order, or of a motion for judgment in accordance with a motion for a directed verdict, or of a motion for amendment to the findings or for additional findings, or when justice so requires in other cases until such time as the court may fix.

6.9.03 **Injunction Pending Appeal**. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

6.9.04 **Stay of Judgment Directing Execution of Instrument; Sale of Perishable Property and Disposition of Proceeds**.

(A) If the judgment or order appealed from directs the execution of a conveyance or other instrument, the execution of the judgment or order shall not be stayed by the appeal until the instrument is executed and deposited with the clerk of the court to abide the judgment of the Court of Appeals.

(B) A judgment or order directing the sale of perishable property shall not be stayed, but the proceeds of the sale shall be deposited with the clerk of the court to abide the appeal.

6.9.05 **Stay in Favor of the Viejas Band or Agency Thereof**. When an appeal is taken by the Viejas Band or an officer or agency thereof or by direction of any department of the Viejas Band and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

6.9.06 **Stay of Final Judgment**. When a court has ordered a final judgment upon multiple claims or involving multiple parties, the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

Section 10 – Appeal of Judgment

Any party may appeal a judgment entered by the Viejas Tribal Court by filing such appeal with the Viejas Appellate Court in accordance with the Viejas Rules of Appellate Court. The appeal must be filed within 30 days of service of Notice of Entry of Judgment. The party filing the appeal must bear all costs and expenses associated with the appeal, regardless of outcome.

CHAPTER 7 – PROVISIONAL AND FINAL REMEDIES

Section 1 – Injunctions

7.1.01 **Preliminary Injunctions**. The court may issue a preliminary injunction only on notice to the adverse party. Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.

7.1.02 **Temporary Restraining Order**.

(A) Issuance without Notice. The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if (1) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant

before the adverse party can be heard in opposition, and (2) the movant's attorney certifies in writing any efforts made to give notice to the adverse party and the reasons why it should not be required.

(B) Contents; Expiration. Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and (1) state why it is irreparable, (2) state why the order was issued without notice, and (3) be promptly filed in the clerk's office and entered in the record. The order expires 14 days from the time after entry, unless, for good cause, the court extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(C) Expediting the Preliminary-Injunction Hearing. If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

(D) Motion to Dissolve. On two (2) days' notice to the party who obtained the order without notice--or on shorter notice set by the court--the adverse party may appear and move to dissolve or modify the order. The court must then hear and decide the motion as promptly as justice requires.

7.1.03 **Security**. The court may issue a preliminary injunction or a temporary restraining order 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 or restrained. The Viejas Band, its officers, and its agencies are not required to give security.

7.1.04 **Contents and Scope of Every Injunction and Restraining Order**.

(A) Contents. Every order granting an injunction and every restraining order must:
- (I) State the reasons why it issued;
- (II) State its terms specifically; and
- (III) Describe in reasonable detail--and not by referring to the complaint or other document--the act or acts restrained or required.

(B) Persons Bound. The order binds only the following who receive actual notice of it by personal service:
- (I) The parties;
- (II) The parties' officers, agents, servants, employees, and attorneys; and
- (III) Other persons who are in active concert or participation with anyone described in parts (1) and (2) above.

VIEJAS

TRIBAL GOVERNMENT

P. O. Box 908
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Robert J. Welch, Jr., Chairman
Victor E. Woods, Vice Chairman
Rene Curo, Tribal Secretary
Samuel Q. Brown, Tribal Treasurer
Adrian M. Brown, Councilman
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TRIBAL COUNCIL RESOLUTION
APPROVING AND ADOPTING VIEJAS CODE OF CIVIL PROCEDURE

Resolution No. 030118C

WHEREAS, the Viejas Band of Kumeyaay Indians, (appearing in the U.S. Federal Register as the *Capitan Grande Band of Diegueno Mission Indians of California: Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California)* (the "Viejas Band") is a self-governing federally recognized Indian Tribe exercising sovereign authority over the lands of the Viejas Indian Reservation;

WHEREAS, the Viejas Band is governed by a duly elected Tribal Council (the "Tribal Council");

WHEREAS, an inherent power of the Viejas Band as a sovereign government is the power to formalize official dispute resolution through a tribal court and mandate structure for its processes;

WHEREAS, the Viejas Band wishes to adopt the Viejas Code of Civil Procedure to give structure and guidance to such tribal court and all who seek redress through it; and

WHEREAS, the Tribal Council has reviewed the Viejas Rules of Court attached as Exhibit A and desires that it shall take effect.

NOW, THEREFORE BE IT RESOLVED THAT THE TRIBAL COUNCIL HEREBY CERTIFIES AND DULY APPROVES AND AUTHORIZES, AFTER MOTION AND UPON THE VOTE OF THE MAJORITY OF COUNCIL MEMBERS, THE FOLLOWING:

The Tribal Council hereby adopts and approves the Viejas Rules of Court, attached as Exhibit A.

Any prior Code of Civil Procedure, whether or not it conflicts with this Viejas Code of Civil Procedure, is hereby rescinded.

CERTIFICATION

Resolution passed this 1st day of March, 2018, at a duly noticed meeting of the Viejas Tribal Council by a vote of 6 for 0 against and 0 abstaining.

Absent
Robert J. Welch, Jr., Chairman

Victor E. Woods, Vice Chairman

Rene Curo
Rene Curo, Tribal Secretary

Samuel Q. Brown, Tribal Treasurer

Adrian M. Brown, Councilman

Gabriel T. TeSam, Jr., Councilman

Kevin M. Carrizosa, Councilman