



UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET #300
ARLINGTON, VIRGINIA 22203
703-235-3816

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CALIFORNIA VALLEY MIWOK TRIBE, CALIFORNIA.

APPELLANT

PACIFIC REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS.

APPELLEE

YAKIMA DIXIE, VELMA WHITEBEAR, AND
CHADD EVERONE.

INTERESTED PARTIES

**INTERESTED PARTIES
JUDICIAL NOTICE**

DOCKET No. IBIA 07-100-A

AUGUST 15, 2008

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The pleadings in this Appeal are posted at:

<http://www.californiavalleymiwok.com/IBIA-2>

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The Interested Parties wish to bring to the attention of the Board two recent events that may impact on this Appeal and reinforce the merit of an expedited determination.

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I

On July 26, 2008, the Appellant, Silvia Burley, in the name of the Tribe, filed her "First Amended Complaint Combined With Petition For Writ of Mandate" in the Superior Court of the State of California for the County of San Diego - Central District. Her suit is against the California Gambling Control Commission, and the case number is #37-2008-00075326-CU-CO-CTL. This suit, originally filed 6 months prior in State Court, on January 7, 2008, was removed to Federal Court; but on July 24, 2008, the Federal Court

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26 declined jurisdiction and remanded it back to State Court. ^[1] The pleadings in this case
are posted at:

28 <http://www.californiavalleymiwok.com/Suit-Burley-v-CGCC>

30 In that Complaint, Silvia Burley (the Appellant in IBIA Appeal 07-100-A) seeks a Court
order to force the California Gambling Control Commission to release to the Tribe and in
32 her custody the money which she say is "over \$3 million in RSFT money". (Actually,
the amount is over \$4 million.) The Commission has been withholding the distribution of
34 the Revenue Sharing Trust Fund money until the BIA is able to officially recognize an
authority for this Tribe. In fact, such recognition of tribal authority has already been
36 made over 1 years ago in the April 2007 Public Notices of the BIA, but the implementa-
tion is impeded due to the still-pending resolution of this Appeal (IBIA 07-100-A). ^[2]
38 Ms. Burley is using this current suit to substantiate that she is the rightful authority for
the Tribe, and she basis that claim on several old letters which were addressed to her by
40 the BIA, using the title of Chairperson, and her fallacious assertion that the BIA has to
right to be involved in assisting the Tribe to become organized such that a recognized
42 authority can be established.

44 Here, it would be superfluous to parse and analyze this First Amended Complaint, which
is appended as an Exhibit and which can be read by the Board if it is considered relevant.
Suffice it to say that Ms. Burley makes numerous mis-representations in her allegations.
46 Of note is the persistent attempt to confuse the difference between a Federally Recog-
nized Tribe with a Federally Recognized Authority for a Federally Recognized Tribe.
48 This confusion must be deliberate. Also, in ¶ 24 of the Complaint, it states: "Under the
existing Tribal "customs and traditions", Burley has been "selected" to represent the
50 Tribe....". Ms. Burley has absolutely no standing by Miwok custom or tradition to repre-
sent the Tribe. In a more egregious mis-statement of fact, the suit alleges that the
52 "decision is presently on appeal", referring to Case #1:05-cv-00730 in U.S. District Court
for the District of Columbia, in which Ms. Burley sued the BIA to prohibit the Bureau
54 from being involved in helping the tribe to re-organize. In fact, over 5 months prior to
filing this Complaint, on February 15, 2008, the United States Court of Appeals (case No.
56 06-5203) Affirmed the District Court's Dismissal and also Denied Ms. Burley's Petition
for a Re-hearing on April 24, 2008. Again, the Complaint is replete with
58 mis-representations which can only be compounded while IBIA 07-100-A is still
pending.
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¹ A copy of the First Amended Complaint is included herein. The sole Exhibit in that Complaint was a copy of the California Tribal-State Gaming Compact for February 2002, all of which was redacted here except for the cover page. Incidentally, the Complaint refers only to the 1999 Compact.

² In the Public Notices of April 2007, the BIA defined Putative Member status in terms of the lineal descendants of 14 historically recognized tribal members with whom government-to-government relations had been conducted. Ms. Burley does not qualify for Putative Member status both *per se* and *per quod* - i.e., she does not have the proper lineal descent nor did she file her genealogy with the BIA.

62 The Interested Parties, the BIA, and the California Gambling Control Commission
 believe that this suit has no substance; but it is given some buoyancy by IBIA 07-100-A,
 64 and this Complaint could be obviated if the Appeal were dismissed, as it should be.
 Dealing with this Complaint is costing a considerable amount of resources to all parties
 (i.e., the use of tribal resources by Ms. Burley for her extensive legal expenses, the costs
 66 to the State of California for its defense, the costs to the Interested Parties who must
 Intervene to protect the Putative Members, and the potential costs to the BIA if the case
 68 is not dismissed on a Demur and the Bureau must be Joined.)

70 II

72 On June 18, 2008, the Appellant, Silvia Burley, deeded her heavily mortgaged house at
 10601 Escondido Place, Stockton, California to the Tribe. An Exhibit is included. The
 74 Tribe feels that she may be preparing the title to transfer the \$1,000,000 mortgage on that
 property from her name to that of the Tribe and thus be able to default on the \$8,000 per
 76 month payment with impunity to herself, saddling the Tribe with that obligation. Orig-
 inally, Ms. Burley purchased her house for about \$750,000, using \$250,000 of the Tribe's
 78 money for a down payment. Then, in 2006, she deeded the property to the Tribe (ostensi-
 bly due to her concern about the discovery of her illegal conveyance). But in 2007, she
 80 deeded it back to herself, borrowed \$1,000,000, paid off the old mortgage, and pocketed
 to herself the difference of about \$500,000. Now, she re-deeds it back to the Tribe. The
 82 convoluted conveyances on that property are chronicled in the posting at:

<http://www.californiavalleymiwok.com/2007-10-20-EscondidoPlace-abridged-file.pdf>

84 Respectfully,

*Authorized by Phone,
 Signed Copy On File*

Yakima K. Dixie,
 Chief & Hereditary Authority
 California Valley Miwok Tribe (formerly
 Sheep Ranch Rancheria of Me-Wuk Indians of
 California)

*Authorized by Phone,
 Signed Copy On File*

Velma WhiteBear,
 Executive Director
 California Valley Miwok Tribe (formerly
 Sheep Ranch Rancheria of Me-Wuk Indians of
 California)

Drafted for Interested Parties by:

Chadd Everone, Deputy
 2140 Shattuck Ave. #602
 Berkeley, California 94704
 510-486-1314

Date: _____

Certificate of Service

I hereby certify that, on or about August 14, 2008, copies of the foregoing were served by First Class Mail (USPS) to the following addressees:

The IBIA:

Board of Indian Appeals
Office of Hearings and Appeals
U.S. Department of the Interior
801 North Quincy St.
Arlington, Virginia 22203

Appellee:

Associate Solicitor
Division of Indian Affairs
Attention: Jane Smith / Scott Keep
Office of the Solicitor
MS-6456-MIB
U.S. Department of the Interior
1849 "C" Street, N.W.
Washington, DC 20240

Amy Dutschke, Acting Regional Director
Pacific Regional Office
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2800 Cottage Way
Sacramento, California 95825

Troy Burdick, Superintendent
Bureau of Indian Affairs,
Central California Agency
650 Capitol Mall 8-500
Sacramento, California 95814

Office of the Solicitor
Pacific Southwest Region
2800 Cottage Way, Room E-1712
Sacramento, CA 95825-1890

Appellant:

Silvia Burley
California Valley Miwok Tribe
10601 Escondido Pl.
Stockton, California 95212

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CALIFORNIA VALLEY MIWOK TRIBE

CIVIL DIVISION OFFICE 9
CENTRAL DISTRICT
2008 JAN -8 P 3:29
CLERK OF SUPERIOR COURT
SAN DIEGO, CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO – CENTRAL DISTRICT

CALIFORNIA VALLEY MIWOK TRIBE,

Plaintiff,

v.

THE CALIFORNIA GAMBLING
CONTROL COMMISSION; and DOES
1 THROUGH 50, Inclusive,

Defendants.

Case No. 37-2008-00075326-CU-CO-CTL

COMPLAINT FOR:

- 1. INJUNCTIVE RELIEF
- 2. DECLARATORY RELIEF
- 3. BREACH OF CONTRACT
- 4. BREACH OF FIDUCIARY DUTY
- 5. INTENTIONAL INTERFERENCE
WITH PROSPECTIVE ECONOMIC
ADVANTAGE

Plaintiff alleges as follows:

PARTIES

- 1. Plaintiff CALIFORNIA VALLEY MIWOK TRIBE ("MIWOK TRIBE" or
COMPLAINT FOR INJUNCTIVE RELIEF, ETC.

1 "PLAINTIFF") is a federally recognized Indian Tribe situated in Stockton, California.

2 2. Defendant CALIFORNIA GAMBLING CONTROL COMMISSION ("The
3 Commission") was created by enactment of Senate Bill 8 (Lockyer, Chapter 867,
4 Statutes of 1997), a measure that created the Gambling Control Act. The Commission
5 has jurisdiction over operation, concentration, and supervision of gambling
6 establishments and over all persons or things having to do with the operations of
7 gambling establishments in the State of California. In addition, The Commission
8 serves as Trustee and/or Administrator of various funds in the State Treasury,
9 including the Gambling Control Fund established in the Gambling Control Act, the
10 Indian Gaming Revenue Sharing Trust Fund ("RSTF"), and the Indian Gaming Special
11 Distribution Fund ("SDF").

12 3. Plaintiff is ignorant of the true names and capacities of the defendants named
13 herein as DOES, and will seek leave of court to amend the complaint to set forth their
14 true names when ascertained.

15 VENUE

16 4. Pursuant to Cal. Bus. & Prof. Code section 19807, venue is established in San
17 Diego County, California.

18 GENERAL ALLEGATIONS

19 5. In September of 1999, the State of California ("the State") entered into a "Tribal-
20 State Gambling Compact" ("Compact") with various Indian Tribes in the State, which
21 enabled these Tribes to conduct gambling operations and build gambling casinos for
22 that purpose. A copy of this Compact is attached and marked as Exhibit "1". In
23 exchange, these Compact Tribes are required to contribute a percentage of their
24 winnings to the RSTF and SDF.

25 6. At all times herein mentioned, the Miwok Tribe is and was a non-compact Tribe
26 with no casinos or gambling operations. As a result, it qualifies as a recipient of funds
27 from the RSTF. The Commission, as Trustee of the RSTF, distributes the monies
28 received into the RSTF on a quarterly basis to non-compact Tribes, such as the Miwok

1 Tribe. Recipient Tribes, including the Miwok Tribe, are entitled to receive up to \$1.1
2 million per year from the RSTF. Section 4.3.2.1(a) of Compact. If the RSTF does not
3 have sufficient funds to pay the non-compact Tribe \$1.1 million per year, Cal. Gov.
4 Code § 12012.90(d) requires The Commission to take funds from the SDF to make up
5 any shortfall, and do so "without delay to eligible recipient Indian Tribes ...".

6 7. At all times herein mentioned, the Miwok Tribe was and is eligible to receive
7 funds from the RSTF and shortfall funds from the SDF, so as to be given its entitled
8 \$1.1 million per year pursuant to Section 4.3.2.1(a) of the Compact and Cal. Gov. Code
9 §§ 12012.75 and 12012.90.

10 8. In 1994, Congress enacted the Federally Recognized Tribe List Act of 1994,
11 Pub. La 103-454, and the Miwok Tribe's name was placed on the list of federally
12 recognized tribes. In 1998, the Miwok Tribe established a tribal council, by Resolution
13 No. GC-98-01. On June 25, 1999, the Bureau of Indian Affairs ("BIA") recognized Silva
14 Burley ("Burley") of the Miwok Tribe as tribal chairperson.

15 9. In late 1999, a leadership dispute developed within the Miwok Tribe. On July 12,
16 2000, the BIA again recognized Burley as chairperson of the Miwok Tribe, amid the
17 Miwok Tribe's efforts to have the BIA approve its constitution, and the Miwok Tribe's
18 ongoing internal leadership disputes.

19 10. In September 2001, the Miwok Tribe adopted a new version of its constitution,
20 and sent it to the BIA for approval. On October 31, 2001, the BIA declined to approve
21 the proposed new constitution, but recognized the Miwok Tribe as an "unorganized
22 Tribe".

23 11. In November of 2003, the BIA acknowledged the existence of a "government-to-
24 government relationship" with the Miwok Tribe through the tribal council that Burley
25 chaired.

26 12. On March 26, 2004, the BIA advised the Miwok Tribe that it still considered the
27 tribe to be unorganized, despite the passage of the Native American Technical
28 Corrections Act of 2004, giving Tribes the power to adopt governing documents of their

1 own. In the letter, the BIA asked the Miwok Tribe to draft a constitution that identified
2 more of its membership base. Nevertheless, the letter still recognized Burley as "a
3 person of authority" with respect to the Miwok Tribe.

4 13. In March 2005, the BIA met with the Miwok Tribe in an effort to resolve the tribe's
5 ongoing leadership disputes.

6 14. The BIA has continued to recognize the Miwok Tribe only as an "unorganized"
7 tribe, because it has not adopted a governing constitution that identified other putative
8 members of the tribe. It also will only recognize Burley as a "person of authority" for
9 the Miwok Tribe, rather than its tribal chairperson.

10 15. Because of the ongoing Miwok tribal leadership dispute and the BIA's decision to
11 recognize the Miwok Tribe as "unorganized" and Burley as merely a "person of
12 authority", The Commission notified the Miwok Tribe in August of 2005, that it would be
13 withholding distributions from the RSTF. The Commission advised it would be doing
14 so, until the Miwok Tribe's leadership was formally established.

15 16. Despite repeated requests that The Commission distribute to the Miwok Tribe its
16 share of funds under the RSTF, The Commission has refused and continues to refuse
17 to do so.

18 17. In 2005, the Miwok Tribe filed suit in the U.S. District Court in Washington, D.C.,
19 seeking declaratory and injunctive relief against the BIA. The complaint alleged the
20 BIA was interfering with the Miwok Tribe's internal affairs by refusing to permit it to
21 adopt its own constitution. The District Court dismissed the complaint as failing to state
22 a claim, because under 25 U.S.C. § 476(h), the BIA can still require the tribe to
23 organize its tribe so as to identify and include all putative mandates. There was no
24 decision in the merits of whether the Miwok Tribe was "organized" or a recognized
25 Tribe. The decision is presently on appeal. Despite this, The Commission has
26 erroneously interpreted the District Court's Decision as a decision on the merits of
27 these issues, and has wrongfully asserted that as an additional basis to withhold
28 distribution of money to the Miwok Tribe from the RSTF.

1 18. Pursuant to Cal. Gov. Code § 12012.75, The Commission has a mandatory duty
2 to distribute funds from the RSTF to the Miwok Tribe, and under Section 4.3.2.1(b) it
3 has no discretion in deciding whether a non-compact Tribe is entitled to such funding.
4 On December 21, Plaintiff made written demand for its RSTF money. On January 3,
5 2008, The Commission refused to distribute as demanded, for the reasons set forth
6 herein. It advised the total amount withheld as of September 30, 2007, was
7 \$3,121,397.76.

8 FIRST CAUSE OF ACTION

9 (Injunctive Relief Against Defendant

10 The California Gambling Control Commission and DOES 1-10)

11 19. The allegations in paragraphs 1 through 18 are realleged and incorporated
12 herein by reference.

13 20. At all times herein mentioned, Cal. Gov. Code Section 12012.75 was and is in full
14 force and effect. It states that The Commission has a mandatory duty to distribute
15 RSTF payments to non-compact Tribes such as the Miwok Tribe. It provides:

16 There is hereby created in the State Treasury a special fund
17 called the "Indian Gaming Revenue Sharing Trust Fund" for
18 the receipt and deposit of moneys derived from gaming
19 device license fees that are paid into the fund pursuant to
20 the terms of tribal-state gaming compacts for the purpose of
21 making distributions to noncompact tribes. Moneys in the
22 Indian Gaming Revenue Sharing Trust Fund shall be
23 available to the California Gambling Control Commission,
24 upon appropriation by the Legislature, for the purpose of
25 making distributions to noncompact tribes, in accordance
26 with distribution plans specified in tribal-state gaming
27 compacts. (Emphasis added.)

23 As stated, Cal. Gov. Code Section 12012.75 requires The Commission to distribute
24 RSTF payments in accordance with the terms of the Compact.

25 21. Section 4.3.2.1(a) provides that non-compact tribes are to receive \$1.1 million
26 per year from the RSTF. It states in relevant part as follows:

27 The Tribe agrees with all other Compact Tribes that are
28 parties to compacts having this Section 4.3.2, that each Non-
Compact Tribe in the State shall receive the sum of \$1.1

1 million per year ...

2 Section 4.3.2.1(a) further provides that if there is not enough money in the RSTF to pay
3 each non-compact tribe \$1.1 million per year, then the funds are to be distributed in
4 equal shares. However, Cal. Gov. Code Section 12012.90(d) requires The
5 Commission to take funds from the SDF to make up any shortfall, and that The
6 Commission "shall distribute [such] moneys without delay to eligible recipient Indian
7 Tribes ...".

8 22. Under the Compact, the RSTF payments are to be made quarterly, and The
9 Commission is to be a trustee of these funds for distribution purposes, having no
10 discretion on whether to disburse the funds or how much each tribe is to receive.

11 Section 4.3.2.1(b) provides in pertinent part as follows:

12 ... The Commission shall have no discretion with respect to
13 the use or disbursement of the trust funds. Its sole authority
14 shall be to serve as a depository of the trust funds and to
15 disburse them on a quarterly basis to Non-Compact
16 Tribes...

17 23. Despite these clear statutory and Compact requirements, The Commission has
18 taken it upon itself, wrongfully, to withhold RSTF money to the Miwok Tribe because it
19 is not "organized". Under Section 4.3.2.s(b), The Commission has no discretion to
20 make that determination. Moreover, nowhere in the Compact is there any requirement
21 that a Non-Compact Tribe be "organized" in order to be entitled to distribution
22 payments under the RSTF. To the contrary, all that the Compact requires is that the
23 Non-Compact Tribe be "recognized", either formally or informally, to be eligible for
24 payment. For example, Section 2.12 of the Compact states:

25 "Tribe" means a federally-recognized Indian tribe, or
26 an authorized official or agency thereof. (Emphasis
27 added.)

28 24. Despite the disputes involving the Miwok Tribe's leadership, the BIA has
recognized, and continues to recognize, Burley as a 'person of authority', and the
Miwok Tribe as an "unorganized Tribe". The language of Section 2.21 o the Compact

1 requires only that the Tribe be federally recognized, not necessarily "organized". The
2 BIA has to date never stated that the Miwok Tribe was no longer recognized, or that
3 Burley is no longer a "person of authority".

4 25. Accordingly, the plaintiff is entitled to continued distribution of moneys under the
5 RSTF, and The Commission's decision to withhold such funds is wrongful, an abuse of
6 its powers, and a breach of its fiduciary duties. The Commission's decision to withhold
7 such funds is based in part on its erroneous interpretation of the U.S. District Court
8 Decision in *California Valley Miwok Tribe v. The United States* (D.D.C. 2006) 424
9 F.Supp.2d 197, which made no ruling on the merits of the Miwok Tribe's entitlement to
10 RSTF money in California, or The Commission's fiduciary duties to distribute those
11 funds to plaintiff. Indeed, The Commission was not a party to that action.

12 26. To date, The Commission has wrongfully withheld from the Miwok Tribe over \$3
13 million in RSTF money.

14 27. Plaintiff has repeatedly requested and demanded that The Commission distribute
15 such sums to Plaintiff, but The Commission has refused.

16 28. Plaintiff has no adequate remedy at law.

17 29. Grounds exist for injunctive relief under CCP § 526(a)(7), because the requested
18 relief involves an obligation arising from a trust. The RSTF is a "trust" fund, and The
19 Commission is contractually and statutorily designated to "serve as the trustee of the
20 fund." Section 4.3.2.1(b) of Compact.

21 30. Accordingly, Plaintiff requests the court order The Commission to discharge its
22 fiduciary and mandatory, statutory duties, and distribute to the Plaintiff its entitled share
23 of funds under the RSTF as herein alleged.

24 SECOND CAUSE OF ACTION

25 (Declaratory Relief as Against Defendant The

26 California Gambling Control Commission and DOES 1-10)

27 31. The allegations in paragraphs 1 through 30 are realleged and incorporated
28 herein by reference.

1 32. An actual controversy has arisen and now exists between Plaintiff and
2 Defendants concerning defendant Commission's (and relevant DOE defendants')
3 obligations under the Compact and under the California Government Code, including,
4 but not limited to, Cal. Gov. Code Section 12012.75 and Cal. Gov. Code Section
5 12012.90(d), and other statutes and regulations, to distribute moneys to Plaintiff under
6 the RSTF, and Plaintiff's entitlement to such money. CCP § 1060. The dispute
7 requiring judicial determination under CCP § 1060, includes, but is not limited to The
8 Commission's decision to withhold such funding, because Plaintiff is purportedly not an
9 "organized" tribe. Plaintiff dispute The Commission's decision, and contends that The
10 Commission has no discretion to withhold the RSTF moneys on such grounds, and
11 alleges that it is entitled to RSTF payments, because the BIA still recognizes it as an
12 "unorganized" tribe and still recognizes Silvia Burley, a tribal member, as an authorized
13 representative of the Miwok Tribe.

14 33. At all times herein mentioned, the Miwok Tribe was and is a third party
15 beneficiary under the Compact with respect to the RSTF payments, and with respect to
16 the SDF for shared full payments into the RSTF. Section 4.3.2.1(a)(1) states in
17 pertinent part as follows:

18 (a) For the purposes of this Section 4.3.2.1(b).3.2 and
19 section 5.0, the following definitions apply:

20 (i) In Non-Compact Tribes shall be deemed
21 third party beneficiaries of this and other
22 compacts identical in all material
23 respects ...

23 34. CCP Section 1060 provides in pertinent part as follows:

24 Any person interested under a written instrument ... or under
25 a contract, or who desires a declaration of his or her rights or
26 duties with respect to another, ... may, in cases of actual
27 controversy relating to the legal rights and duties of the
28 respective parties, bring an original action ... in the superior
court for a declaration of his or her rights and duties ...,
including a determination of any question of construction or
validity arising under the instrument or contract ...
(Emphasis added.)

1 As a third party beneficiary under the Compact, Plaintiff Miwok Tribe is a "person
2 interested under a written instrument ... or under a contract ...". The Compact is a
3 written instrument or "contract". Pursuant to CCP § 1060, the Plaintiff seeks a judicial
4 declaration of its rights under the Compact with respect to RSTF payments, and The
5 Commission duties as a "trustee" of the RSTF to make payments to Plaintiff. Plaintiff
6 further seeks a determination of a proper construction of Section 4.3.2.1, including, but
7 not limited to, the phrase: "The Commission shall have no discretion with respect to the
8 use or disbursement of the trust funds [RSTF]." The Commission contends that it can
9 withhold RSTF payment from the Miwok Tribe because it is "unorganized". Plaintiff
10 disputes this, and contends that The Commission has made RSTF payments to it in
11 the past when it was purportedly not "organized". Plaintiff contends The Commission
12 has no discretion to suddenly stop making payments, because the Minok Tribe has an
13 ongoing tribal leadership dispute. Plaintiff further contends that The Commission has
14 no discretion to withhold RSTF payment based on The Commission's interpretation of
15 an unrelated U.S. District Court Decision between the Plaintiff and the BIA. In any
16 event, Plaintiff contends The Commission's interpretation of that Decision is erroneous.
17 Plaintiff contends The Commission has breached its fiduciary duties under the
18 Compact by wrongfully withholding Plaintiff's entitled share of RSTF payments. The
19 Commission disputes Plaintiff's claims and contends it has a right to withhold RSTF
20 payments because Plaintiff is not an "organized" tribe. Plaintiff contends, however, that
21 the Compact does not require Plaintiff to be "organized", just recognized through an
22 "authorized representative". (Section 2.21 of the Compact.) Plaintiff contends that the
23 BIA has recognized Barley as an "authorized representative" of the Miwok Tribe while it
24 has been "unorganized", and that the Compact requires nothing more for entitlement to
25 RSTF payments.

26 35. Plaintiff contends The Commission has wrongfully withheld, to date, over \$3
27 million, and desires a judicial determination that The Commission pay these withheld
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1 funds forthwith to the Miwok Tribe via its authorized representative, Silvia Burley.

2 36. Plaintiff desires a judicial determination and declaration of Plaintiff's and The
3 Commission's (and relevant DOE defendants) rights and duties under the Compact
4 and relevant state law, including a proper and correct interpretation of the Compact
5 and relevant Cal. Gov. Code Sections and other statutory questions.

6 **THIRD CAUSE OF ACTION**

7 **(Breach of Contract As Against Defendant The**

8 **California Gambling Control Commission and DOES 11-20)**

9 37. The allegations in paragraphs 1 through 36 are realleged and incorporated
10 herein by reference.

11 38. At all times herein mentioned, Plaintiff was and is a third party beneficiary under
12 the Compact, specifically as it pertains to RSTF payments. (Section 4.3.2.(a)(1)).

13 39. Defendant Commission (and relevant DOE defendants) breached the express
14 terms of the Compact, by refusing to pay to Plaintiff money owed from the RSTF.

15 40. At all times herein mentioned, Plaintiff was, and is, entitled to distribution of
16 RSTF payments.

17 41. At all times herein mentioned, Plaintiff performed all the conditions and duties
18 required of it under the Compact, so as to be eligible for receipt of RSTF money.

19 42. At no time was The Commission excused from performance, or was performance
20 under the Compact frustrated or prevented.

21 43. As a result of defendant Commission's (and relevant DOE defendants') breach of
22 contract, Plaintiff suffered damages, including, but not limited to loss of RSTF money
23 and interest thereon.

24 44. Plaintiff makes no claim against any of the Compact Tribes, and as such, they
25 are not necessary and indispensable parties.

26 45. Sovereign immunity has been specifically waived under Section 9.4 of the
27 Compact, for purposes of collecting the funds due Plaintiff by The Commission under
28 the RSTF.

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3 **FOURTH CAUSE OF ACTION**

4 **(Breach of Fiduciary Duty as Against Defendant the**

5 **California Gambling Control Commission and DOES 11-20)**

6 46. The allegations in paragraphs 1 through 45 and realleged and incorporated
7 herein by reference.

8 47. The Commission's (and that of relevant DOE defendants') conduct as herein
9 alleged constitutes a breach of its (and/or their) fiduciary duties under the Compact and
10 under State law.

11 48. As a result of The Commission's (and that of relevant DOE defendants') breach
12 of fiduciary duties, Plaintiff suffered damages as herein alleged, including loss of RSTF
13 payments exceeding \$3 million.

14 **FIFTH CAUSE OF ACTION**

15 **(Intentional Interference With Prospective Economic**

16 **Advantage, As Against DOES 21-50)**

17 49. The allegations in paragraphs 1 through 48 are realleged and incorporated
18 herein by reference.

19 50. Upon information and belief, DOE defendants 21-50 have conspired with one
20 another to take over the Miwok Tribe, so they can build and operate a casino in its
21 name. To accomplish this, DOE defendants 21-50 have stirred up strife and contention
22 amid the Miwok Tribe leadership, making it difficult for the tribe to form an organized
23 constitution. This faction of conspirators have wrongfully influenced and persuaded
24 The Commission to withhold funding, because the Miwok Tribe is not "organized".
25 DOE defendants 21-50, upon further information and belief, have attacked the Miwok
26 Tribe's legitimacy through the BIA, hoping to form a coalition against Plaintiff to stop
27 funding and destroy the tribe as a constituted Native American Indian Tribe. By doing
28 so, this faction of conspirators hope to take over the tribe and build and operate a tribal

1 casino for profit.

2 51. Accordingly, The Commission's decision to stop RSTF payments to Plaintiff is a
3 byproduct of the efforts of DOE defendants 21-50 to take over the tribe.

4 52. The actions of DOE defendants 21-50 were and are intentional, and have been,
5 and are, calculated to interfere with Plaintiff's rights and entitlement to distribution
6 payments under the RSTF. DOE defendants 21-50 have intentionally interfered with
7 Plaintiff's right to such funding, for the wrongful purposes as herein alleged.

8 53. As a legal result of DOE defendants 21-50's wrongful and intentional actions of
9 interfering with Plaintiff's prospective economic advantage relative to the RSTF
10 payments, Plaintiff suffered damages as herein alleged, including loss of RSTF money
11 in excess of \$3 million. To the extent such intentional interference involves private
12 (non-public entity) parties, Plaintiff will seek punitive damages against such
13 individuals, because such conduct was and is despicable, fraudulent and oppressive.

14 WHEREFORE, Plaintiff prays for judgment as follows:

- 15 1. For injunctive relief under CCP Section 526, restraining The Commission from
16 withholding Plaintiff's RSTF money, and then ordering and commanding The
17 Commission and relevant DOE defendants to discharge their contractual and
18 statutory duties, and pay Plaintiff its entitled RSTF money.
- 19 2. For declaratory relief regarding the obligations of The Commission and
20 relevant DOE defendants to pay (and continue to pay) Plaintiff funds under
21 the RSTF, and the proper interpretation of the Compact with respect to those
22 duties, and Plaintiff's entitlement to the RSTF money withheld.
- 23 3. For compensatory damages owed to Plaintiff from the RSTF, since The
24 Commission withheld those funds from Plaintiff.
- 25 4. For punitive damages against DOE defendants 21-50 for actions amounting
26 to intentional interference with prospective economic advantage, according to
27 proof at trial.
- 28 5. For costs of suit and expenses of litigation.

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- 6. For prejudgment interest.
- 7. For any relief consistent with the case made by the Complaint and embraced within the issues, pursuant to CCP § 580(a).
- 8. For such other relief as the court deems just and proper.

DATED: January 7, 2008



Manuel Corrales, Jr., Esq.
Attorney for Plaintiff
California Valley Miwok Tribe

Recording Requested By
Silvia Burley

Doc #: 2008-100432
Wed Jun 18 13:12:15 PDT 2008 1:12 PM
Page: 1 of 2 Fee: \$11.00
Gary W. Freeman
San Joaquin County Recorders
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When Recorded Mail To

California Valley Miwok Tribe
10601 Escondido Place
Stockton, CA 95212

Above Space Reserved for Recording

Quitclaim Deed

GIFT

Date of this Document: June 18, 2008

Reference Number of Any Related Documents: _____

Grantor:

Name Silvia Burley
Street Address 10601 Escondido Place
City/State/Zip Stockton, CA 95212

Grantee:

Name California Valley Miwok Tribe
Street Address 10601 Escondido Place
City/State/Zip Stockton, CA 95212

Abbreviated Legal Description (i.e., lot, block, plat or section, township, range, quarter/quarter or unit, building and condo name): Lot 36, Tract No. 1388, Morada Estates North

Assessor's Property Tax Parcel/Account Number(s): 086-640-28

THIS QUITCLAIM DEED, executed this 18th day of June, 2008, by first party, Grantor, Silvia Burley, whose mailing address is 10601 Escondido Place, Stockton, CA 95212, to second party, Grantee, California Valley Miwok Tribe, whose mailing address is 10601 Escondido Place, Stockton, CA 95212.

WITNESSETH, That the said first party, for good consideration and for the sum of -0- Dollars (\$0.0) paid by the said second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto the said second party forever, all the right, title, interest and claim which the said first party has in and to the following described parcel of land, and improvements and appurtenances thereto in the County of San Joaquin, State of California to wit: Lot 36, Tract No. 1388, Morada Estates North, according to the Official Map thereof filed for record in Vol. 30 of Maps and Plats, Page 23, San Joaquin County Records.

IN WITNESS WHEREOF, The said first party has signed and sealed these presents the day and year first above written. Signed, sealed and delivered in presence of:

Signature of Grantor: *Silvia Burley*
Print Name of Grantor: Silvia Burley

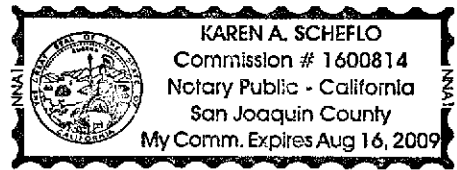
State of: California
County of: San Joaquin

On 6/18, 2008, before me, KAREN A. SCHEFLO, Notary Public, appeared Silvia Burley, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of Notary: *Karen A. Scheflo*



Affiant _____ Known X Produced ID _____
Type of ID California Drivers License
(Seal)