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CALIFORNIA VALLEY MIWOK TRIBE

**IN THE INTERIOR BOARD OF INDIAN APPEALS**

CALIFORNIA VALLEY MIWOK  
TRIBE,

Appellant,

v.

PACIFIC REGIONAL DIRECTOR,  
BUREAU OF INDIAN AFFAIRS,

Appellee.

DOCKET NO. IBIA 07-100-A

**MOTION TO INSTITUTE  
DISCIPLINARY PROCEEDINGS  
AGAINST CHADD EVERONE**

## I. INTRODUCTION

Appellant, the California Valley Miwok Tribe ("Tribe/s"), through its legal counsel, respectfully moves this Board to institute disciplinary proceedings against Chadd Everone ("Everone") prior to the resolution of this appeal pursuant to 43 C.F.R. § 1.6 ("Section 1.6") for practicing before the Department of the Interior ("Department") in violation of 43 C.F.R. § 1.3 ("Section 1.3") and Section 1.6 and for acting in an unethical and unprofessional manner in violation of Section 1.6.

Upon finding that neither statute nor Department regulation empowers Everone to practice before this Board, the Tribe asks that this Board undertake the following remedial and sanctionary measures: (1) remove Everone from the distribution list for this appeal and Docket No. 09-13-A ("09-13-A"); (2) prohibit Everone from filing any documents in the future in connection with this appeal, 09-13-A, or any other appeal initiated by the California Valley Miwok Tribe or Silvia Burley wherein Everone is not a named party and he fails to satisfy one of the Section 1.3 criteria; (3) warn Everone there will be severe monetary and non-monetary consequences should he make such future filings directly or through one of his associates; (4) strike all of Everone's filings from the records in this appeal and 09-13-A, thereby preventing this Board from considering the evidence contained therein when determining the questions on appeal; (5) institute disciplinary proceedings against Everone pursuant to Section 1.6; (6) require Everone to produce the original, signed versions of his filings within a reasonable time following the filing of this motion; and (7) notify the City of Berkeley Police Department and the Alameda County District Attorney's Office that Everone has unlawfully practiced law before this Board from his home in Berkeley, CA for the past three years in violation of Section 1.3 and likely Cal. Bus. & Prof. Code § 6125 (Unauthorized Practice of Law<sup>1</sup>), Cal. Bus. & Prof. Code § 16240 (Illegal Practice of Business<sup>2</sup>), Cal. Bus. & Prof. Code §§ 17200 and 17206(a) (Unfair

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<sup>1</sup> Cal. Bus. & Prof. Code § 6125 states: "No person shall practice law in California unless the person is an active member of the State Bar."

<sup>2</sup> Cal. Bus. & Prof. Code § 16240 states: "Every person who practices, offers to practice, or advertises any business, trade, profession, occupation, or calling, or who uses any title, sign, initials, card, or device to indicate that he or she

Competition<sup>3</sup>), and Cal. Penal Code §§ 484(a) and 487 (Grand Theft by False Pretenses<sup>4</sup>) – making sure to inform the authorities of every one of his filing, including any future filings such as an opposition to this Motion, as each instance is an actionable offense – as Cannon Number 11 of the American Bar Association’s Canons of Judicial Ethics requires this Board to do.

**II.  
PRACTICING BEFORE THE DEPARTMENT OF THE INTERIOR**

Section 1.3 lists the individuals the Department authorizes to “practice” before it. 43 CFR § 1.3. “Practice” is defined in pertinent part as “any action taken to support or oppose the assertion of a right before the Department or to support or oppose a request that the Department grant a privilege,” including “any such action whether it relates to the substance of, or the procedural aspects of handling, a particular matter.” 43 C.F.R. § 1.1(c) (“Section 1.1(c”). In addition to Indian tribes and their members, only those individuals that fall within one of the categories expressly identified in Section 1.3 are allowed to practice before the Department. *Id.*

According to Section 1.3, these individuals are:

- (1) Any individual who has been formally admitted to practice before the Department under any prior regulations and who is in good standing on December 31, 1963[.]
- (2) Attorneys at law who are admitted to practice before the courts of any State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Trust Territory of the Pacific Islands, or the District

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is qualified to practice any business, trade, profession, occupation, or calling for which a license, registration, or certificate is required by any law of this state, without holding a current and valid license, registration, or certificate as prescribed by law, is guilty of a misdemeanor.”

<sup>3</sup> Cal. Bus. & Prof. Code § 17206(a), in pertinent part, states: “Any person who engages, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General.” In pertinent part, Cal. Bus. & Prof. Code § 17200 defines “unfair competition” as “any unlawful, unfair, or fraudulent business act or practice.”

<sup>4</sup> Cal. Penal Code § 484(a), in pertinent part, states: “Every person who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property... is guilty of theft... For the purposes of this section, any false or fraudulent representation or pretense made shall be treated as continuing, so as to cover any money, property or service received as a result thereof, and the complaint, information, or indictment may charge that the crime was committed on any date during the particular period in question.” In pertinent part, Cal. Penal Code § 487(a) defines grand theft as theft where “the money, labor, or real or personal property taken is of a value exceeding four hundred dollars (\$400).”

Court of the Virgin Islands will be permitted to practice without filling an application for such privilege.

- (3) An individual who is not otherwise entitled to practice before the Department may practice in connection with a particular matter on his own behalf or on behalf of:
- i. A member of his family;
  - ii. A partnership of which he is a member;
  - iii. A corporation, business trust, or an association, if such individual is an officer or a full-time employee;
  - iv. A receivership, decedent's estate, or a trust or estate of which he is the receiver, administrator, or other similar fiduciary;
  - v. The lessee of a mineral lease that is subject to an operating agreement or sublease which has been approved by the Department and which grants to such individual a power of attorney;
  - vi. A Federal, State, county, district, territorial, or local government or agency thereof, or a government corporation, or a district or advisory board established pursuant to statute; or
  - vii. An association or class of individuals who have no specific interest that will be directly affected by the disposition of the particular matter.

*Id.* Here, the contents of Everone's filings conclusively prove that he is practicing law in connection with this matter as the term is defined under Section 1.1(c). The genesis of this case is whether or not the Bureau of Indian Affairs ("BIA") possesses the authority to reorganize a non-terminated, federally-recognized Tribe. In other words, this appeal seeks to protect Silvia Burley ("Burley"), the Tribal Council, and the other federally-recognized Tribal members' rights to protect the Tribe's present composition and, for that matter, its very existence, and to handle internal Tribal affairs free from BIA interference. However, shortly after the commencement of this suit, Everone began interfering with the Tribe's efforts to accomplish this by filing a litany of pleadings either opposing these substantive rights or moving this Board to handle the procedural posture of this appeal in certain manners. With respect to directly contesting the

Tribe's attempts to protect its rights, a cursory overview of the contents of Everone's filings shows that he advanced the following arguments in opposition:

- This Board does not have jurisdiction to hear this appeal<sup>5</sup>;
- Burley does not have standing to bring this appeal<sup>6</sup>;
- The questions on appeal are not ripe for review<sup>7</sup>;
- The questions on appeal have already been adjudicated and this Board is barred from re-litigating them under the doctrine of *res judicata*<sup>8</sup>;
- This Board, for a variety of reasons, should not stay the underlying BIA decision that is the subject of the appeal<sup>9</sup>;

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<sup>5</sup> See Exhibit E, 2:16 (“The Interested Parties oppose the Appeal being considered by the Board. This opposition is based on the grounds that the subject of the appeal deals with a BIA determination that is a final action and is unappealable. Further, the legal basis for this action has already been tried in Federal Court and has been dismissed on the Appellant lacking a cause of action. Also The Appellant would lack a legal basis for this Action owing to her lack of authority for this Action on behalf of the Tribe, and there is not standing for The Appeal due to lack of injury; and in any case, any such appeal would is [sic] premature.”); Exhibit E, 6:28 (“More fundamentally, The Board should not consider The Appeal because it would violate the non-appealable Olson Determination of February 11, 2005.”); Exhibit E, 8:6 (“In reference to the legal basis for The Appeal, the argument has already been made that this action is precluded by the Olsen Determination/Directive of February 11, 2005.”); Exhibit E, 8:18 (“Thus... it would see that The Board does NOT have a legal basis to consider this Appeal[.]”); Exhibit E, 10:13 (“[T]he Regional Director . . . err[ed] when he determined that his decision was subject to appeal, something which... should be precluded[.]”); Exhibit G, 2:45 (“To stay the implementation of an unappealable Mandate would seem to be outside the jurisdiction of the IBIA and an abrogation by the Board of the proper exercise of the discretionary authority of the administration of the BIA according to the provisions of 43 C.F.R. § 4.330[.]”).

<sup>6</sup> See Exhibit E, 6:18 (“Silvia Burley would not have the authority to cause This Appeal on behalf of The Tribe, and therefore, The Appellant-Burley would not have standing for this action.”); Exhibit E, 8:39 (“For the Federal government to accept [Burley’s argument] would be a self-abrogation and voluntary forfeiture of its own sovereignty, which, in relationship to this case, the Federal government is, in fact, the superior sovereign entity with its inherent prerogative, *sui juris*, to defend the class of persons with whom it chooses to deal in any government-to-government relation either with this Tribe or with any other sovereign entity.”); Exhibit E, 10:35 (“The Appellant-Burley addresses the issue of injury in... its Brief. But it is not demonstrated in that Argument that there has been an injury to The Tribe.”); Exhibit L, 3:38 (“Silvia Burley does not have standing to make this Appeal in the name of the Tribe.”).

<sup>7</sup> See Exhibit E, 11:28 (“Assuming, arguendo, that the substance of this matter were [sic] justiciable and the Appellant were to have standing, it would still be premature for The Board to consider the matter.”); Exhibit E, 11:36 (“Until such time that there is a denomination [sic] of such individuals, there is really nothing to appeal.”).

<sup>8</sup> See Exhibit L, 4:11 (“[T]he substance of this IBIA Appeal has already been adjudicated; and there is nothing for the Board to determine.”).

<sup>9</sup> See Exhibit G, 1:15 (“[T]he Interested Parties are OPPOSED to the Appellant (Silvia Burley’s) Motion to have the IBIA order a Stay on the BIA in helping the Tribe to become organized in accordance with the criteria as defined in that Public Notice.”); Exhibit G, 3:77 (“For the IBIA to issue a Stay on the Olsen Determination/Directive as implemented by the Burdick Directive and as affirmed by the Regional Director’s denial of the Burley Appeal and, therefore, for the IBIA to impede the organization of the Tribe with a Stay, this would seem to be, in effect, TRO/Injunction. And the Appellant (Burley), in this case, clearly would not have sufficient legal justification for this kind of action.”); Exhibit G, 4:104 (“The text of [25 C.F.R. § 2.6 and 43 C.F.R. § 4.314] does not seem to dictate any such automatic Stay for this particular situation.”); Exhibit G, 5:156 (“[To] impose a Stay on the

- The appeal is a frivolous, dilatory tactic<sup>10</sup>;
- The appeal would cause injury to the “putative” members<sup>11</sup>;
- The Board should decide the substance of the appeal against Burley and the Tribe<sup>12</sup>; and
- The Board should dismiss the appeal to facilitate the dismissal of one of the Tribe’s other federal suits<sup>13</sup>.

Furthermore, in regard to this Board’s procedural handling of this appeal, Everone’s filings disclose that he advanced the arguments listed below. As in the case with the prior section, the Board should not consider this a complete list of Everone’s arguments or the evidence that supports the arguments cited herein:

- The Board should dismiss the appeal due to improper filing<sup>14</sup>;
- The Board should dismiss the suit till the issues are ripe for review<sup>15</sup>;
- The presiding judge should refrain from recusing himself from hearing this appeal<sup>16</sup>;
- This Board should sanction the Tribe’s former attorney for failing to send copies of his filings to Everone<sup>17</sup>;

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organization will confound who is the proper representative for the tribe to whom this grant money should be entrusted for the benefit of the Tribe.”); Exhibit G, 5:167 (“[Imposing] a Stay on the BIA from continuing to assist the Tribe in its organization by implementing the Public Notices of April 2007 would stifle any motivation toward a settlement of the dispute within the Tribe.”); Exhibit G, 11:379 (“For the reasons stated herein, the Interested Parties believe that Appellant’s Amended Motion to enforce Automatic Stay of November 17, 2007 should be denied.”).

<sup>10</sup> See Exhibit E, 10:8 (“This Appeal is just another attempt on [Burley’s] part to prevent a just resolution to tribal organization; and allowing this to further delay the proceedings would be unconscionable.”).

<sup>11</sup> See Exhibit E, 11:12 (“The Tribe would be injured by allowing this Appeal to move forward and thereby impeding [sic] its legitimate organization under IRA standards.”).

<sup>12</sup> See Exhibit G, 3:58 (“[W]here the tribe is unorganized . . . where the Tribe does not have a reputable and legitimate intra-tribal remedy for resolving its own disputes, and . . . where the tribe has been in such prolonged, acrimonious, and irreconcilable differences about its legitimate authority, then the Bureau, does, indeed have an obligation to establish its own criteria for identifying legitimate members in the tribe with whom the Bureau will deal on a government-to-government basis.”).

<sup>13</sup> See Exhibit M, 3:60 (“The Interested Parties . . . believe that [a federal suit by Burley] has no substance; but it is given some buoyancy by IBIA 07-100-A, and the [federal complaint] could be obviated if the appeal were dismissed, as it should be.”).

<sup>14</sup> See Exhibit D, 1:26 (“[T]hese Interested Parties Move [sic] that this undocketed, IBIA Appeal be dismissed until such time as it becomes properly filed.”).

<sup>15</sup> See Exhibit E, 11:28 (“Assuming, arguendo, that the substance of this matter were [sic] justiciable and the Appellant were to have standing, it would still be premature for The Board to consider the matter.”); Exhibit E, 11:36 (“Until such time that there is a denomination [sic] of such individuals, there is really nothing to appeal.”).

<sup>16</sup> See Exhibit F, 1:29 (“The Interested Parties are opposed to any such recusal of the Chief Administrative Judge from the adjudication of this case (IBIA 07-100-A) or the associated case (IBIA 06-70-A) . . . [t]he cause for such a recusal appears to be groundless; and such a recusal would almost certainly delay and confound the adjudication of the Appeal(s).”).

- This Board should expedite the determination of this appeal<sup>18</sup>;
- The Board should consider only certain precedent when contemplating the merits of this appeal<sup>19</sup>;
- The Board should strike certain pieces of evidence from the record<sup>20</sup>; and
- Everone would likely contest the reopening of the briefing period in this appeal if he did not agree with the BIA's opinion on the subject<sup>21</sup>.

Thus, through these pleadings, Everone not only directly contests the Tribe's arguments concerning their endangered rights that constitute the basis of this appeal, but he also repeatedly asserts his opinion on the proper handling of this case, including the judge who should hear it and the timeframe in which he should issue an opinion. Given this conduct, the only reasonable conclusion is that the filings he's submitted during the course of the past two and one half years in connection with this case and 09-13-A amount to the practice of law as defined by Section 1.1(c).

Further, with even more certainty, Everone's conduct amounts to the practice of law under the California regulatory code. The State of California defines the practice of law as providing "legal advice and legal instrument and contract preparation, whether or not these subjects were rendered in the course of litigation." *Birbower, Montalban, Condo & Frank P.C. v. Superior Court*, 17 Cal.4th 119, 128 (1998). Here, Everone has gone far beyond merely offering legal advice. As his representation agreements clearly depict, he is the architect of

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<sup>17</sup> See Exhibit F, 2:22 ("[Due to the Tribe's former attorney's failure to send copies of his filings to the Interested Parties] the Interested Parties request that The Board levy monetary sanctions on the Appellant-Burley in an amount that is deemed appropriate by The Board.").

<sup>18</sup> See Exhibit H, 1:11 ("The Interested Parties, hereby, request an expedited Determination on this Appeal."); Exhibit L, 1:27 ("More recent events require the Interested Parties to renew their request of an Expedited Determination of this Appeal and to emphasize that time is critical.").

<sup>19</sup> See Exhibit I, 1:20 ("The Appellant Argues that [Civ. Case Nos. 05-0739] cannot be considered by the IBIA until after the time has expired for filing a petition for rehearing in the Court of Appeals. This would seem to be incorrect.").

<sup>20</sup> See Exhibit J, 3:35 ("Therefore, please strike from the record the Pleading of the Interested Parties which is dated March 19, 208 and entitled 'RESPONSE OF INTERESTED PARTIES TO APPELLANT'S REPLY TO APPELLEE'S SUPPLEMENT TO ITS OPPOSITION DATED MARCH 12, 2008.'").

<sup>21</sup> See Exhibit N, 1:38 ("In the interest of avoiding unnecessary pleadings, the Interested Parties will not provide, at this time, responses to the Appellant's assertions [in Appellant's Request to Reopen the Briefing Period and Receive an Extension of Time to Conduct Discovery and File a Supplemental Brief]. Instead, the Interested Parties will wait to review the Response of the Appellee, BIA. If that Response adequately represents the position of the Interested Parties, then no further reply will be made.").

Yakima Dixie (“Dixie”) and the putative members’ litigation strategy seeking the termination of the federally-recognized Tribe purely on the basis of an internal leadership dispute<sup>22</sup>. See 10/30/03 Letter from Y. Dixie, attached hereto as Exhibit A, and 01/12/06 Resolution of Sheep Ranch Rancheria of Miwok Indians, attached hereto as Exhibit B. We are informed and believe that Everone has established a web of financiers, Casino developers, and attorney and lobbyists with the necessary connections and influence to achieve this end. However, in this appeal, he has pushed his cohorts aside in order to advance this goal himself. As the evidence cited above shows, Everone’s arguments cover the gamut of legal subjects, from whether this Board has the jurisdiction to hear the appeal, to Burley’s standing to bring the appeal, to legal descriptions of BIA documents, to argument about the interpretation and validity of judicial precedent, to requests for sanctions against another attorney for, we believe rightfully-so, failing to serve Everone with his filed documents. All told, through these filings, Everone has continuously expressed his, and allegedly his clients, belief that the IBIA should allow the Central California Agency of the BIA to follow through with its plan to terminate and reorganize the federally-recognized, non-terminated Tribe<sup>23</sup>. Thus, there should be no doubt that Everone has clearly practiced law before this Board for the better part of three years, as he has not only provided the putative members with legal advice on how to secure a presently unlawful outcome, but repeatedly advocated that this Board follow his advice and stilted interpretations regarding the facts and law that pertain to this matter.

Yet, despite this, since the outset of the case, Everone has continuously failed to satisfy any of the Section 1.3 criteria for practicing before the Department. First, as the Department itself has acknowledged, Everone is neither an Indian nor eligible for membership in an Indian

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<sup>22</sup> See Exhibit G, 3:58 (“[I]n a situation, a) where the Tribe [does not have] a constitution that has been accepted by the Secretary, b) where the Tribe does not have a reputable and legitimate intra-tribal remedy for resolving its own disputes, and c) where the Tribe has been in such prolonged, acrimonious, and irreconcilable differences about its legitimate authority, then the Bureau, *does*, indeed, have an obligation to establish its own criteria for identifying legitimate members in the Tribe with whom the Bureau will deal on a government-to-government basis.”)

<sup>23</sup> See Exhibit E, 6:23; Exhibit F, 2:28; Exhibit G, 9:312; Exhibit H, 2:30; Exhibit L, 3:41; Exhibit M, 2:34.

Tribe. See Regional Director's Response to Interested Parties Motion to Dismiss, *Everone v. Pacific Regional Director, Bureau of Indian Affairs*, Docket No. 06-70-A. To the best of our knowledge, this is an assertion that Everone has failed to contest and has, in fact, inferentially supported<sup>24</sup>. Thus, the argument that his conduct is permissible under the Department's general rule permitting Indians and Indian tribes to appear before it is utterly without merit.

Second, despite repeated assertions that he has the authority to act in a legal capacity, Everone is not a licensed attorney. Through his pleadings, Everone argues that he is the "deputy" and "counsel general" for Dixie and the putative member class allegedly comprised of upwards of five-hundred individuals. Everone further asserts that these thinly-veiled, fabricated titles confer him with the ability to act in a representative capacity, conduct discovery, and maintain responsibility for the "over-sight of the litigation strategy and its implementation" for these individuals. See 10/30/03 Letter from Y. Dixie, attached as Exhibit A, and 01/12/06 Resolution of Sheep Ranch Rancheria of Miwok Indians, attached as Exhibit B. Yet, the powers Everone expressly claims to possess fall within the exclusive province of bar certified attorneys. Yet, searches conducted on the publicly-available attorney directories for the bar associations for the fifty states, the District of Columbia, and the United States territories using the names "Chadd Ludwig," Everone's legal birth-name, and "Chadd Everone" failed to produce any matching results. Additional Everone's own filings provide further indications that he is not an attorney, as not a single one of them in connection with this appeal, 09-13-A, or 6-70-A state he has attorney licensure from any cognizable federal, state, or territorial jurisdiction. Thus, the whole quantum of publicly available evidence leads our firm to believe that, despite his contentions, Everone is not a licensed attorney.

Third and finally, Everone's connection to this appeal does not bring him within any of the seven Departmental safe-harbors for practicing before the Department, which are codified at

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<sup>24</sup> See Exhibit N, 2:56 ("[Chadd Everone] is not a member of the Tribe not has he ever represented himself as such.").

Section 1.6(3), for the following reasons: (1) Everone is genetically incapable of being related to Dixie or any of the putative members since, as previously mentioned, he is not an Indian, a fact Everone himself is cognizant of, *see* Exhibit N, 2:56 (“[Chadd Everone] is not a member of the Tribe not has he ever represented himself as much.”); (2) according to the California Secretary of State’s website, as of November 21, 2009 Everone is not a member of a partnership with Dixie or any of the other putative members, and, even if he were, the partnership is neither named-in nor relevant-to this suit; (3) according to the California Secretary of State’s website and the Delaware Division of Corporations’ website, as of November 21, 2009 Everone is not an officer or an employee of a corporation, business trust, or business association with Dixie or any of the other putative members, and, even if he were, the business entity is neither named-in nor relevant-to this suit; (4) Everone is not the administrator or receiver of a trust or estate that is relevant to this suit; (5) Everone is not the lessee of a mineral lease that is relevant to this suit; (6) Everone does not represent a federal, state, county, district, territorial, or local government given the fact that the Sheep Ranch Rancheria lacks federal or California state recognition as a Tribal entity, and, even if it carries such recognition, there is no evidence on record in this appeal, any other IBIA appeal, or any state or federal court action indicating that the duly-elected governing body of this ill-defined association voted to appoint Everone as its representative; and (7) Everone represents a class of individuals that do have a direct interest in this case based upon the fact that an IBIA order upholding Central California Agency Superintendent Troy Burdick’s (“Burdick”) plan to reorganize the federally-recognized Tribe would allow the so called putative members to participate in the reorganization, likely become Tribal members, and consequently receive the myriad of federal benefits that accompany such status<sup>25</sup>. Moreover, though this inquiry is outside the scope of the regulation, Everone, personally, is not a disinterested party due to the fact that we are informed and believe he is associated with casino developers and stands to

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<sup>25</sup> *See* Exhibit E, 9:24 (“Because of the long standing, internal tribal dispute about authority and membership of the Tribe . . . the Federal government . . . elected to exercise its sovereign right to take a more active role by identifying the class of persons (Putative Member Class) with whom it will deal in organizing the Tribe[.]”).

make a wind-fall of income should the Board authorize the unlawful reorganization of the non-terminated, federally-recognized Tribe around his largely fictitious and otherwise self-serving client base. *See* 05/17/06 Cover Letter for Memorandum of Understanding between C. Everone and Midstate Consultants, LLC, attached hereto as Exhibit Q. Should Everone contest the factually-accuracy of this final point, we respectfully ask that this Board order him to produce all documentary evidence in his actual or constructive possession related to his association with Dixie, the putative members, a casino developer by the name of A. D. Seeno, Midstate Consultants, any other financiers or casino developers, and further produce any documentary evidence that indicates his contractual ownership stake in the future casino the putative members seek to develop should the Tribal reorganization take place. However, the Board will likely find that this line of inquiries is probably unnecessary due to the fact that Everone's interest is irrelevant to whether his conduct amounts to "practice" under Section 1.1(c), and, even if it's not irrelevant, Everone himself admits that he is an interested party to this litigation in at least one of his filings. *See* Exhibit E, 7:29 ("To this Interested Party (Everone), much of this appears to be legal flimflammy [sic].").

Thus, given Everone's failure to satisfy the requirements of Section 1.3, the Tribe hereby requests that the Board (1) remove Everone from the distribution list for this appeal and 09-13-A; (2) prohibit him from filing any documents in the future in connection with this matter, 09-13-A, or any other appeal initiated by the California Valley Miwok Tribe or Silvia Burley wherein Everone is not a named party and does not satisfy one of the section 1.3 criteria; (3) warn Everone there will be severe monetary and non-monetary consequences should he make future filings directly or through one of his associates; and (4) strike all of Everone's previous filings from the records in this appeal and 09-13-A, thereby preventing this Board from considering the evidence contained therein during the determination of this appeal.

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### III. INSTITUTION OF DISCIPLINARY PROCEEDINGS

In addition to the remedy requested in the section above, the gravity of Everone's actions in connection with this case and 09-13-A warrant the imposition of disciplinary proceedings. Pursuant to Section 1.6, the Board may institute disciplinary proceedings against "anyone who is practicing or has practiced before the Department on the grounds that he is" (1) incompetent, (2) unethical, (3) unprofessional, (4) "practicing without authority under the provisions of this part," or (5) "that he has violated any provisions of the laws and regulations governing practice before the Department." 43 CFR § 1.6. Here, discipline against Everone is appropriate on the grounds that he lacks authorization to practice before the Department, and, even if the Code of Federal Regulations conferred such authorization, his conduct should still be considered both unethical and unprofessional.

As the prior section establishes, Everone is neither an attorney nor an individual that falls within the ambit of the Section 1.3 safe harbors for practicing before the Department. This alone justifies this Board instituting disciplinary proceedings against Everone, particularly in light of the fact that Everone either has actual knowledge of the rules for practicing before this Board or should be imputed with constructive knowledge of the rules given his three-plus years of practice in connection with this suit, 09-13-A, and 06-70-A.

However, should the Board find that Everone's representative status is permissible under Section 1.3, discipline is still appropriate because his conduct as a representative for Dixie and the "Interested Persons" is neither ethical nor professional. The sections of the Code of Federal Regulations related to practice before the Department of the Interior fail to define either of the terms "unethical" or "unprofessional." Without any Departmental guidance, our firm assumes that these terms take on their traditional definitions and embody the general principles set forth in the American Bar Association's Model Rules of Professional Conduct ("Professional Rule/s") since these widely-recognized rules, which have been adopted or used as the model for the formulation of ethical rules in forty-eight of the fifty states, are designed to protect persons from

the improper acts of alleged representatives. Amongst the many Professional Rules that should apply before this Board is Rule 1.7(a), which explains that a representative shall not take on a representation if it involves or would involve “a concurrent conflict of interest.” Model Rules of Prof'l Conduct R. 1.7(a) (2009). A concurrent conflict of interest arises where (1) “the representation of one client will be directly adverse to another client,” or (2) “there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.” *Id.*

Here, Everone’s representation of Dixie and the putative members involves both a direct conflict of interest and a significant risk of material limitation. First, the representation involves a direct conflict of interest because the interests of these two clients are entirely irreconcilable. On one hand, a BIA-orchestrated Tribal reorganization would benefit the putative members by allowing the federal government to rewrite *Santa Clara Pueblo* and forcibly include their names on the membership roll for a federally-recognized, non-terminated Tribe. On the other hand, the reorganization would also terminate Dixie’s Tribal membership and provide no meaningful assurance that Dixie could ever re-attain this status. *See* Exhibit E, 10:1 (Everone states that “Yakima Dixie and the other members with whom he as [sic] been organizing the Tribe accept [sic] this determination even though most of the individuals may not qualify as putative members during the first round or organization.”). Moreover, even if Dixie were fortunate enough to successfully navigate his way through the re-organizational process, his interests would still suffer since his name would be one of allegedly five hundred instead of one of approximately ten, as is the present situation. This outcome would markedly dilute Dixie’s influence, voting power, and proportional entitlement to per capita payments.

This direct conflict of interest is clearly embodied in Everone’s September 16, 2009 letter to BIA Director Jerry Gidner (“Gidner”), attached hereto as Exhibit R, wherein Everone responds to Gidner’s offer to facilitate mediation between Burley and Dixie so the parties may resolve any differences of opinion concerning the leadership of the Tribe. In this letter, Everone

states he is opposed to the mediation “because any mediation between Silvia Burley and Yakima Dixie is fundamentally flawed because, since the Olsen Determination of February 2005, those two parties are NOT recognized as being the authority for the Tribe.” *Id.* This statement would be proper if it came from the advocate for the putative members, a group whose interests would be irreparably harmed if Dixie and Burley were capable of working out their problems, leading the BIA to rescind its unlawful overture to pierce through the revered *Santa Clara Pueblo* opinion and reform a federally-recognized Tribe. However, it certainly isn’t proper coming from an advocate for Dixie, who has steadfastly asserted that he believes the California Valley Miwok Tribe is his Tribe and he wishes to hold a position that is reasonably commensurate with this belief. Thus, through the letter, Everone picked the interests of one client to the detriment of another, and in the process trampled over the express language of Rule 1.7 and the general principles of the Duty of Loyalty that form its foundation<sup>26</sup>. For if Everone were truly protecting Dixie’s interests, he would have either maintained that Dixie is the lawful authority for the Tribe, as Dixie has previously asserted, or agreed to Gidner’s mediation to ascertain whether the parties could come to a mutually-agreeable solution that doesn’t involve the BIA intruding in tribal affairs and undertaking a wholly unlawful course of conduct.

By declaring that Dixie is not the lawful authority for the Tribe, Everone not only establishes there is a direct conflict of interest between Dixie and the putative members but also the underlying realization that his representation of Dixie is materially limited by his other responsibilities in this appeal. Additionally, as Exhibit Q suggests, we are informed and believe that Everone’s is incapable of competently, ethically, or professionally representing Dixie because of his own personal interest in the outcome of this litigation, which is namely a substantial ownership interest in a gaming facility constructed and operated by the reformed

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<sup>26</sup> This is not the first time Everone has done this. In a filing dated August 18, 2007, Everone stated that Dixie no longer has standing with the BIA because the Olsen Determination eradicated his tribal authority. *See* Exhibit E, 4:1 (“The Olsen Determination of February 11, 2005 effectively put aside all historical precedence of the Tribe in its dealings with the Bureau, including any standings which either Yakima Dixie or Silvia Burley may have had with the BIA.”) and 5:1 (“Since the Olsen Directive, the BIA has re-affirmed, in its actions and in documentation, that the Bureau does not recognize Silvia Burley nor anyone as a governing authority for the Tribe.”).

Tribe should the BIA proceed to walk in *Santa Clara Pueblo's* shadow until it achieves its objective. It appears that the dream of obtaining this ownership interest has compelled Everone to argue that Dixie wants the Tribe reorganized, regardless of his client's actual desires, as any other remedy would deprive him of the opportunity to sit at a patriarchal throne, surrounded by a subservient cast of characters who silently watch on while he feasts on the financial remains of a terminated tribe. Again, should Everone contest any of the factual assertions in this paragraph regarding his financial interests in this matter, we respectfully request that this Board demand that he produce any documents in his actual or constructive possession related to his connection to Dixie, the putative members, a casino developer by the name of A. D. Seeno, Midstate Consulting, or any other financiers or casino developers.

Finally, the fact that there are substantial omissions on the majority of Everone's filings raises an additional ethical concern, as there is very little, if any evidence, that Dixie authorized or had any awareness of the filings Everone purports to have filed on his behalf at the time they were filed. This is based in part on the fact that the majority of Everone's filings in connection with this matter are missing Dixie's signature or have someone else's signature in its place. Additionally, it's further based on the fact that our firm received a phone call from Dixie's parole officer on the morning of October 12, 2009, informing us that Dixie was taken into custody three nights earlier, on the evening of October 9, 2009 – some seven days before Everone's latest filing, which, like most of the others, contains Dixie's electronic signature. Yet, given Dixie's then-existing circumstances and communicative restraints, there is serious doubt that Dixie approved this latest filing either in writing or orally. Thus, in order to gauge the full extent of the impropriety Everone has committed in connection with this appeal and 09-13-A, and, consequently, the type and amount of monetary and non-monetary sanctions that should result from the disciplinary proceedings, this Board should require Everone to immediately produce the original versions of every single one of these filings, containing Dixie's legitimate written signature, and representation agreements for each of the approximately five-hundred persons within the putative member class he purports to represent. Further, to ensure Everone refrains

from committing any further unethical acts while attempting to cover up his prior misdeeds, we ask this Board to require Everone to turn these documents over to an attorney and have the attorney file them along with a certification that those document contained what the attorney reasonably believed to be legitimate signatures and dates at the time he or she received them. Further, we request that the Board require Everone's attorney to be someone other than Liz Walker or Thomas Wolfrum given their common histories, shared opinions about the ethicality of representing both Dixie and the putative members, and Wolfrum's penchant for filing frivolous lawsuits. *See Order Granting Defendants' Motion for Sanctions, California Valley Miwok Tribe California, et al. v. Burley, et. al*, Civ. Case No. 09-01900, Docket No. 25 (E.D. Cal. October 23, 2009).

In summation, given the breadth of impropriety in this matter, our firm requests that the Board institute disciplinary proceedings against Everone and alert the City of Berkeley Police Department and the Alameda County District Attorney's Office that Everone has likely violated numerous provisions of the California regulatory code by unlawfully practicing law before this Board for the past three years – making sure to identify every filing since each one is a cognizable offense, including any future filings such as an opposition to this Motion – as this Board should do under cannon number eleven of the American Bar Association's Canons of Judicial Ethics, which states in full:

Unprofessional Conduct of Attorneys and Counsel. He should utilize his opportunities to criticize and correct unprofessional conduct of attorneys and counselors, brought to his attention; and, if adverse comment is not a sufficient corrective, should send the matter at once to the proper investigative and disciplinary authorities.

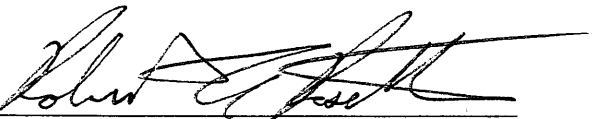
#### IV. CONCLUSION

For the reasons set forth herein, we respectfully ask that, prior to the resolution of this appeal, the Board (1) remove Everone from the distribution list for this appeal and Docket No. 09-13-A ("09-13-A"); (2) prohibit Everone from filing any future documents in connection with this appeal, 09-13-A, or any other appeal initiated by the California Valley Miwok Tribe or

Silvia Burley in which Everone is not a named party and does not satisfy one of the Section 1.3 criteria; (3) warn Everone there will be severe monetary and non-monetary consequences should he make future filings directly or through one of his associates; (4) strike all of Everone's previous filings from the records in this appeal and 09-13-A, thereby preventing this Board from considering the evidence contained therein when determining the questions on appeal; (5) institute disciplinary proceedings against Everone pursuant to Section 1.6; (6) require Everone to produce the original, signed versions of his filings within a reasonable time following the filing of this motion; and (7) notify the City of Berkeley's Police Department and Alameda County District Attorney's Office that Everone has unlawfully practiced law before this Board from his home in Berkeley, CA for the past three years in violation of Section 1.3 and likely Cal. Bus. & Prof. Code § 6125 (Unauthorized Practice of Law), Cal. Bus. & Prof. Code § 16240 (Illegal Practice of Business), Cal. Bus. & Prof. Code §§ 17200 and 17206(a) (Unfair Competition), and Cal. Penal Code §§ 484(a) and 487 (Grand Theft by False Pretenses), making sure to inform the authorities of every filing as each instance is an actionable offense, including any future filings such as an opposition to this Motion, as Canon Number 11 of the American Bar Association's Canons of Judicial Ethics requires this Board to do.

RESPECTFULLY SUBMITTED this 25th day of November, 2009.

ROSETTE & ASSOCIATES, P.C.

By: 

Robert A. Rosette  
Kevin M. Cochrane  
Saba Bazzazieh  
ROSETTE & ASSOCIATES, PC  
565 W. Chandler Blvd., Suite 212  
Chandler, Arizona 85225

**EXHIBIT LIST**

**DOCUMENTS ESTABLISHING CHADD EVERONE REPRESENTS DIXIE AND THE PUTATIVE MEMBERS**

<b>EXHIBIT</b>	<b>TITLE</b>	<b>DESCRIPTION</b>
A	10/30/03 Letter from Y. Dixie	Document Appoints C. Everone as "deputy" with the authority to "represent" and "discover" for Y. Dixie.
B	01/12/06 Resolution of Sheep Ranch Rancheria of Miwok Indians	Document names C. Everone "Counsel General with over-sight of the litigation strategy and its implementation."
C	12/08/08 Interested Parties' Answer in Opposition to the Appeal & to Appellant's Response to Order to Show Cause plus Request to Expedite IBIA 7-100-A and Contingent Intervenor Status, Docket No. 07-100-A	Document establishes the identity of the "Interested Parties" C. Everone purports to represent.

**CHADD EVERONE'S FILINGS IN 07-100-A**

<b>EXHIBIT</b>	<b>TITLE</b>	<b>DESCRIPTION</b>
D	06/12/07 Interested Parties' Request for Judicial Notice	Document is missing the signature for Y. Dixie.
E	08/18/07 Interested Parties' Answer to Order Setting Briefing of the IBIA on June 13, 2007 and to Appellant's Brief in Support of its Appeal July 27, 2007	
F	08/27/07 Interested Parties' Opposition to the Recusal of the Chief Administrative Judge and a Request for Sanctions on Appellant and an Expedited Hearing	Document is missing signature for Y. Dixie.
G	11/26/07 Interested Parties' Opposition to Appellant's (Amended) Motion to Enforce Automatic Stay	
H	02/16/08 Interested Parties' Motion to Expedite the Determination of this Appeal.	Document contains signature for V. Whitebear instead of Y. Dixie.
I	03/19/08 Interested Parties' Response to Appellant's Reply to Appellee's Supplement to its Opposition	Document is missing the signature for Y. Dixie.
J	04/15/08 Interested Parties' Response to IBIA's notice of Non-Receipt of Appellant's Response to February 29, 2008, Order, and Order Granting Additional Time to File – Dated April 3, 2008	Document is missing the signature for Y. Dixie.
K	04/27/08 Interested Parties' Judicial Notice	Document is missing the signature for Y. Dixie.

L	06/09/08 Interested Parties' Renewed Request to Expedite Determination	
M	08/15/08 Interested Parties' Judicial Notice	Document is missing the signature for Y. Dixie.
N	10/05/2009 Interested Parties' Response in Opposition to Appellant's Request to Reopen Briefing Dated September 25, 2009	Document is missing the signature for Y Dixie and was mailed/filed when Y. Dixie was believed to be a fugitive from justice.
O	10/19/09 Interested Parties' Request for Documents	Document is missing the signature for Y Dixie and was mailed/filed when Y. Dixie was incarcerated.

**CHADD EVERONE'S FILINGS IN 09-13-A**

<b>EXHIBIT</b>	<b>TITLE</b>	<b>DESCRIPTION</b>
P	12/08/08 Interested Parties' Answer in Opposition to the Appeal & to Appellant's Response to Order to Show Cause plus Request to Expedite IBIA 7-100-A and Contingent Intervenor Status	Document contains signature for V. Whitebear instead of Y. Dixie.

**DOCUMENTS PERTAINING TO CHADD EVERONE'S FINANCIAL INTEREST IN THE OUTCOME OF THIS APPEAL**

<b>EXHIBIT</b>	<b>TITLE</b>	<b>DESCRIPTION</b>
Q	05/17/06 Cover Letter for Memorandum of Understanding between C. Everone and Midstate Consultants, LLC	

**DOCUMENTS PERTAINING TO CHADD EVERONE'S CONFLICTED REPRESENTATION OF DIXIE AND THE PUTATIVE MEMBERS**

<b>EXHIBIT</b>	<b>TITLE</b>	<b>DESCRIPTION</b>
R	09/16/09 Letter from C. Everone to BIA Director Jerry Gidner	Document, which Everone drafted and is purportedly on behalf of Y. Dixie and V. Whitebear, turned down the BIA's recent offer to facilitate mediation between Burley and Dixie, and, in pertinent part, states: "[f]urther any mediation between Silvia Burley and Yakima Dixie is fundamentally flawed because, since the Olsen Determination of February 2005, those two parties are NOT recognized as being the authority for the Tribe."

**CERTIFICATION OF SERVICE**

**Case: California Valley Miwok Tribe v. Bureau of Indian Affairs**

**Docket No. IBIA 07-100-A**

I, Mary Hastings, declare that I am a citizen of the United States, over eighteen years of age, and not a party to the action discussed herein. My business address is 565 W. Chandler Boulevard, Suite 212, Chandler, Arizona 85225. I hereby certify that on November 25, 2009 I served by United States Priority Mail Appellant's **MOTION TO INSTITUTE DISCIPLINARY PROCEEDINGS AGAINST CHADD EVERONE** on the following recipients at the following addresses:

Board of Indian Appeals  
United States Department of the Interior  
801 North Quincy Street  
Arlington, Virginia 22203

Superintendent  
Central California Agency, BIA  
650 Capitol Mall 8-500  
Sacramento, California 95814

Yakima Kenneth Dixie  
P.O. Box 41  
Mountain Ranch, California 95246-9761

Chadd Everone  
2140 Shattuck Ave., No. 602  
Berkeley, California 94704

Regional Director  
Pacific Regional Office  
Bureau of Indian Affairs  
2800 Cottage Way  
Sacramento, California 95825

Regional Solicitor  
Pacific Southwest Regional Office  
U.S. Department of the Interior  
2800 Cottage Way, Room E-1712  
Sacramento, California 95825

Velma Whitebear  
213 Downing Drive  
Galt, California 95632

California Valley Miwok Tribe  
c/o 11178 Sheep Ranch Road  
Sheep Ranch, California 95250

California Valley Miwok Tribe  
P.O. Box 41  
Sheep Ranch, California 95250

California Valley Miwok Tribe  
c/o 10601 Escondido Place  
Stockton, California 95212

Assistant Secretary – Indian Affairs  
MS 4141 – MIB  
Department of the Interior  
1849 C Street, N.W.  
Washington, D.C. 20240

Associate Solicitor  
Division of Indian Affairs  
Office of the Solicitor  
MS-6513-MIB  
1849 C Street, N.W.  
Washington, D.C. 20240

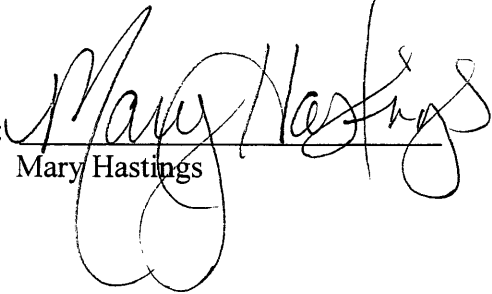
Jane M. Smith, Esq.  
Branch of Tribal Government & Alaska  
Division of Indian Affairs  
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Washington, DC 20240

Phillip E. Thompson, Esq.  
601 Pennsylvania Avenue, N.W., Suite 900  
Washington, D.C. 20004

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

November 25, 2009

Signature:

  
Mary Hastings