

EXHIBIT 3

To

**Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Preliminary
Injunction**

AFFIDAVIT OF VELMA WHITEBEAR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA
Civil Division**

**THE CALIFORNIA VALLEY MIWOK
TRIBE, *et al.*,**

v.

**KEN SALAZAR, in his official capacity
as Secretary of the United States
Department of the Interior, *et al.***

Case No. 1:11-cv-00160-RWR

**Affidavit of Velma Whitebear In Support of
Plaintiffs' Motion for Preliminary
Injunction**

Hon. Richard W. Roberts

AFFIDAVIT OF VELMA WHITEBEAR

I, Velma Whitebear, declare as follows:

1. I am an individual and a party in the above-entitled action. I am over the age of 18 and a resident of Sacramento County, California. I have personal knowledge of the facts set forth herein, which are known by me to be true and correct, and if called as a witness, I could and would competently testify thereto.

2. This affidavit is submitted in support of Plaintiffs' Motion for Preliminary Injunction.

3. I am a member of the California Valley Miwok Tribe ("Tribe") and a member of its Tribal Council ("Council"). I trace my tribal lineal descent from my great grandparents (John Jeff, born 1867, and Tillie Jeff, born 1889), my grandmother (Laural Geto, born 1902) and my mother (Annie Jeanette Geto, born 1928), all of whom are listed in the Indian Census Roll of June 30, 1929, for Calaveras County as taken by L.A. Dorrington, Superintendent of the BIA.

1 4. I recognize Yakima Dixie as the Hereditary Chief and Traditional
2 Spokesperson of the Tribe.

3
4 5. I do not recognize Silvia Burley as any authority for the Tribe.

5
6 6. In 2003, Yakima Dixie appointed me to the Council. The Council
7 currently consists of Yakima Dixie, me, and four other persons who are recognized as
8 persons of authority within the Tribe: Antonia Lopez, Michael Mendibles, Evelyn Wilson
9 and Antone Azevedo. With few exceptions, the Council has met each month since 2003 to
10 conduct Tribal business, enact resolutions, and perform other governmental functions.

11
12 7. The Council met with the Bureau of Indian Affairs ("BIA") in
13 September 2003 and presented the BIA with documentation of the Council's legitimate
14 claim to Tribal authority. We also presented the BIA with a list of Tribal community
15 members who should be allowed to participate in the initial organization of the Tribe. We
16 requested that the BIA call a Secretarial election under the IRA to select a tribal
17 government by majority vote that would be recognized by the United States government.
18 The BIA did not act on the Council's request to call a Secretarial election but continued to
19 meet with the Council to discuss efforts to organize the Tribe.

20
21 8. Tribal Council meetings are open to all members of the Tribal
22 community. Attendance at the meetings ranges from approximately 30 persons to more
23 than 100 persons. Attendance records are kept and meetings are recorded and archived. I
24 participate regularly in these meetings. Burley was specifically invited to the initial
25 meetings and has never been excluded, but she has never attended any of the meetings that
26 I attended.

27
28

1 9. Under the leadership of the Council, the Tribe has initiated a number
2 of programs aimed at benefiting the full Tribal membership, strengthening the tribal
3 community, and reestablishing historic ties with the larger Indian community. These
4 programs and activities include the following:

5
6 10. The Tribe has interceded in approximately ten child custody
7 proceedings under the Indian Child Welfare Act ("ICWA"), on behalf of children of Tribe
8 members. In those cases where a child is removed from its family, the Tribe seeks to have
9 the child placed with an Indian family or a family with ties to Indian traditions. I have
10 been the Tribe's contact person for local agencies seeking to determine whether children
11 are eligible for protection under ICWA (i.e., are members or potential members of the
12 Tribe). I have referred many of the cases to John Bergersen of the Kene Me-Wu Family
13 Healing Center, who has represented the Tribe in those proceedings. A true and correct
14 copy of a letter from me to Mr. Bergersen, authorizing him to represent the Tribe in an
15 ICWA proceeding for a member of the Tribe, is attached hereto as Exhibit "A".

16
17 11. Burley has consistently opposed the Tribe's efforts to protect children
18 in ICWA proceedings. She and her daughter, Rashel Reznor, have asserted that I and
19 others involved in these efforts are not members of the Tribe and are not authorized to
20 represent the Tribe or its children in ICWA proceedings. They have asserted that the
21 children themselves are not members of the Tribe, and thus not entitled to protection under
22 ICWA. According to Burley, the only child who is a member of the Tribe is her
23 granddaughter, Tristian Wallace. A true and correct copy of a letter from Rashel Reznor to
24 Amador County Deputy Counsel Jennifer Magee, claiming that two children are not
25 members of the Tribe, is attached hereto as Exhibit "B". As a result of the actions taken by
26 Burley and Reznor, some children who were members of the Tribe have been denied
27 protection under ICWA and placed for adoption with non-Indian families. Outcomes such
28

1 as this deprive the children of their cultural identity and deprive the Tribal community of
2 contact with its members.

3
4 12. Recently I was contacted by county officials regarding custody
5 proceedings for another child who is a member of our Tribe. I wish to intervene under
6 ICWA on behalf of the Tribe and this child, but I am afraid to do so because the Assistant
7 Secretary's December 22 decision casts doubt on my authority to represent the Tribe and
8 its members in ICWA proceedings. Without intervention by the Tribe, the child is likely
9 be placed with a non-Indian family.

10
11 13. The Tribe has participated, with other Miwok tribes, in an intertribal
12 Miwok Language Restoration Group. Evelyn Wilson is the senior Miwok member who
13 still speaks the Miwok language.

14
15 14. The Tribe has formed a ceremonial Indian dance group that represents
16 the Tribe at events throughout California.

17
18 15. The Tribe has consulted with Caltrans and other agencies regarding
19 Indian cultural artifacts and remains found at development sites.

20
21 16. The Tribe has offered classes in traditional crafts and skills, such as
22 basket weaving, and participates in ongoing efforts to revive the gathering of native plants,
23 pine nuts, and other materials for such crafts, as well as to protect the sites where those
24 materials are gathered. I have participated in the gathering of those materials, such as
25 willow roots for basket weaving, and would like to continue to do so. However, the loss of
26 federally recognized tribal status would prevent me from doing so, because only members
27 of federally recognized tribes are permitted to gather such materials on public lands.

28

1 17. The Tribe participates in the annual Salmon Distribution Project in
2 which it obtains several tons of fresh salmon from the Oroville Dam hatchery and
3 distributes it to Tribe members.

4
5 18. The Tribe has issued Tribal identification cards and keeps a
6 membership roll that is updated regularly.

7
8
9 19. In April 2007, the BIA published public notices requesting that
10 individuals who asserted a claim to Tribal membership provide the BIA with
11 documentation of their claims, such as personal genealogies showing their descent from
12 historical members of the Tribe. I submitted my genealogy to the BIA. To my knowledge,
13 no member of the Burley Faction submitted any documentation of their claims to
14 membership.

15
16 20. As a result of the Assistant Secretary for Indian Affairs' December 22,
17 2010 Decision to recognize the Tribe as organized under an invalid 1998 resolution (the
18 "December 22 Decision"), the Council's authority is infringed, and the United States does
19 not recognize the Council or its members as representatives or authorities of the Tribe.

20
21 21. I would like to participate in the organization of the Tribe under the
22 Indian Reorganization Act, but as a result of the December 22 Decision, neither I nor any
23 other member of the Tribal Council or the larger Tribal community will be allowed to
24 participate in the organization process, the drafting and adoption of a Tribal constitution,
25 or the creation of a Tribal government that is recognized by the United States.

1 22. Based on the December 22 Decision, Burley held a “special meeting”
2 on January 7, 2011, at which only Burley, her daughters, and her granddaughter were
3 allowed to attend. I was not permitted to attend the special meeting.
4

5 23. Burley characterized the special meeting as a meeting of the Tribe’s
6 General Council and attempted to hold a Tribal election at the meeting. I do not recognize
7 Burley’s authority to call a Tribal election or General Council meeting.
8

9 24. I do not recognize the results of the election Burley conducted at that
10 meeting, in which only Burley and her family members voted. However, the BIA has
11 issued decisions recognizing the results of the election and recognizing Burley as
12 Chairperson and her daughter Rashel Reznor as Secretary/Treasurer of the Tribe.
13

14 25. Burley also seeks to use the December 22 Decision as a basis to
15 exclude me and the other members of the Council from participating in litigation that she
16 filed in California Superior Court to gain access to more than \$6 million in Revenue
17 Sharing Trust Fund ("RSTF") money held in trust for the Tribe by the state of California.
18

19 26. Based on the December 22 Decision, the BIA has resumed payment
20 of tribal “self-determination” funds to Burley under Public Law 93-638. Those funds are
21 intended to assist the Tribe in organizing itself, forming a representative government and
22 providing governmental functions and services.
23

24 27. I have never received any of the RSTF money that Burley previously
25 received from the state of California, or any of the federal self-determination funds that
26 Burley previously received from the United States under Public Law 93-638. I am not
27 aware of any other Tribal member who received any of the funds except for Burley and her
28 immediate family. I am not aware of any programs or services for the benefit of the Tribe

1 or its members that were established or supported using the funds. If Burley receives the
2 funds, neither the Tribe itself, nor the Council, nor any other members of the Tribe will
3 receive any of the funds or benefit from the funds. In addition, the funds will support
4 Burley's continued efforts to deny the benefits of Tribe membership to other members.

5
6 28. The Assistant Secretary's December 22 Decision deprives me of
7 membership in the Tribe, because it allows Burley to deny membership to anyone who is
8 not a member of her immediate family. As a result of this deprivation, I feel a loss of my
9 cultural identity and my place in the Native American community. In addition, I will not
10 have access to federal medical benefits and other services available to members of
11 federally recognized Indian tribes.

12
13 I declare under penalty of perjury under the laws of the United States of
14 America that the foregoing is true and correct.

15
16 Executed March 7, 2011, at Sacramento County, California.

17
18 
19
20 Velma Whitebear

21
22
23
24
25
26
27
28

Exhibit "A"



California Valley Miwok Tribe, California
(formerly the Sheep Ranch Rancheria of Me-Wuk Indians of California)
11178 Sheep Ranch Rd. (Sheep Ranch)
Mountain Ranch, California 95246
209-728-8726
{www.californiavalleymiwok.com}

January 23, 2008

Velma WhiteBear, Executive Director
916-690-2312

John Bergersen
Kene Me-Wu Family Healing Center, Inc.
P.O. Box 605
Sonora, California 95370
209-984-8602
<icwa@volcano.net>

Regarding [REDACTED]

Mr. Bergesen:

This is to acknowledge that you and the Kene Me-Wu Family Healing Center, Inc. are authorized to represent the California Valley Miwok Tribe in proceedings of [REDACTED] under Indian Child Welfare Act (ICWA). [REDACTED] is a 3 year old child and is legible for enrollment with the California Valley Miwok Tribe.

Respectfully,

Velma WhiteBear

Velma WhiteBear, Executive Director

Exhibit "B"

Mar 24 09 09:33a KNUFHC.

209 984-8608

CALIFORNIA VALLEY MIWOK TRIBE

10601 Escondido Pl., Stockton CA 95212 Bus: (209) 931-4567 Fax: (209) 931-4333

<http://www.california-valley-miwok-tribe.com>



March 19, 2009

~~Jennifer Magee SBN 150561
Deputy County Counsel
810 Court Street
Jackson, California 95642-9534~~

Re: Case No. 08-DP-0266 / 08-DP-0267 – Destiny Fisher and Dakota Fisher

Dear Ms. Magee,

I am the ICWA (Indian Child Welfare Act) Director for the California Valley Miwok Tribe aka Sheep Ranch Rancheria. The California Valley Miwok Tribe is located in Stockton, California and listed in the federal register. Our Tribe is also listed in the Department of the Interior/Bureau of Indian Affairs Winter 2008 Tribal Leaders Directory (of which our address is listed at 10601 Escondido Pl., Stockton, CA 95212).

Be it known that, I am not an employee of Amador County Department of Social Services who has recommended foster care in the 08-DP-0266 / 08-DP-0267 Case. I have been the ICWA Director for the California Valley Miwok Tribe for eight (8) years and have extensive knowledge of the social and cultural standards within our Tribe. I have reviewed the records and reports in this matter including but not limited to: Detention Report filed November 17, 2008; Jurisdiction Report filed December 9, 2008; and the Disposition Report filed December 23, 2008.

In review of the aforementioned case, I am declaring that [redacted] and/or [redacted] are not members of our Tribe. I do know that their Grandmother [redacted] and their father [redacted] were purported to be Tribal Members of the Calaveras Band of MI-Wuk Indians located in West Point California, contact Chairperson Gloria J. Grimes (209) 293.1218, then they left that Tribe and were said to have joined with the Calaveras County Mountain Miwuk, located in West Point, California, Chairperson Dolores Turner (510) 566.3670 of which there are relatives who are active members in the Calaveras County Mountain Miwuk. I have been informed that Ms. [redacted] has again, left that Tribe and joined with a fictitious group lead by Chadd Everone (non Indian) of which our Tribe has filed a complaint (against Chadd Everone and Velma Whitebear) with the Calaveras County Sheriff's Department and the Berkeley Police Department, for Fraud, Identity Theft and creating fake Tribal ID cards.

Mar 24 09 09:33a KNUFHC.

209 984-8608

p.2

Chadd Everone, Velma Whitebear, [REDACTED] and/or [REDACTED] are not members of our Tribe, nor are they affiliated with our Tribe. They do not have applications pending with our Tribe. If Tribal ID cards (purporting to be our Tribe) have been submitted to the courts, the back of the cards must be signed by Chairperson Silvia Burley and Enrollment Director Anjelica Pauk. The card will have the Tribe's DOT GOV website listed as <http://www.californiavalleymiwoktribe-nsn.gov>.

In my opinion, as the ICWA Director for the California Valley Miwok Tribe, the courts should take into consideration the seriousness of the fact that misrepresentations by Chadd Everone, [REDACTED] are being purported to the courts.

Respectfully,

Rachel Reznor
Rachel Reznor
ICWA Director

Cc:

- Ken Salazar, Secretary of the Interior – Indian Affairs, 1849 C St. NW, Washington DC 20240
- Calaveras County Sheriff's Department, 891 Mountain Ranch Rd., San Andreas, CA 95249
- Berkeley Police Department, 2100 Martin Luther King Jr. Blvd., Berkeley, California 94704
- Congressman Jerry McNerney, 5776 Stoneridge Mall Rd. Suite 175, Pleasanton, Calif. 94588
- Sarah Moffat, Field Rep. for Senator Dianne Feinstein, Fresno, California
- Attorney General Jerry Brown, 1300 I Street, Sacramento, California 95814
- Calaveras County Mtn. Miwok, Dolores Turner, Chairperson turnerdolores@comcast.net
- Calaveras Band of Mi-Wuk Indians, Gloria J. Grimes, 579 Bald Mt. Rd, West Point, CA 95255
- Chairman Senator Byron Dorgan, Senate Committee on Indian Affairs, Washington DC 20510
- NICWA – 5100 S.W. Macadam Avenue, Ste. 300, Portland Oregon 97239
- Mary Enriquez, ICWA Specialist, CDSS, 744 P Street, MS 11-82, Sacramento, CA 95814
- ✓ John Bergersen, ICWA - Kene Me-Wu Family Healing Center., P.O. Box 605 Sonora, CA 95370