

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

THE CALIFORNIA VALLEY MIWOK
TRIBE,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

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

THE TRIBAL COUNCIL,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

YAKIMA DIXIE,
11178 Sheep Ranch Road
Mountain Ranch, CA 95246

VELMA WHITEBEAR,
213 Downing Drive
Galt, CA 95632

ANTONIA LOPEZ
P.O. Box 1432
Jackson, CA 95642

MICHAEL MENDIBLES,
P.O. Box 1432
Jackson, CA 95642

EVELYN WILSON
4104 Blagen Boulevard
West Point, CA 95255

ANTOINE AZEVEDO,
4001 Carriebee Court
North Highlands, CA 95660

Plaintiffs,

v.

KEN SALAZAR, in his official capacity as
Secretary of the United States Department of
the Interior,
United States Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

LARRY ECHO HAWK, in his official capacity as Assistant Secretary-Indian Affairs of the United States Department of the Interior, Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

MICHAEL BLACK, in his official capacity as Director of the Bureau of Indian Affairs within the United States Department of the Interior, Bureau of Indian Affairs
MS-4606
1849 C Street, N.W.
Washington, D.C. 20240

Defendants.

DECLARATION OF ROBERT A. ROSETTE IN SUPPORT OF PROPOSED INTERVENOR-DEFENDANT'S MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

I, Robert A. Rosette, hereby declare:

1. I am an attorney licensed to practice before all courts of the District of Columbia and the United States District Court for the District of Columbia. I am a Partner of the law firm Rosette, LLP, attorneys of record for the California Valley Miwok Tribe ("Tribe"), a federally-recognized Indian tribe and Proposed Intervenors in the above-captioned matter. I make this declaration in support of the Tribe's Motion To Dismiss Plaintiffs' First Amended Complaint For Declaratory And Injunctive Relief.

2. I have personal knowledge of the facts stated herein and would be competent to testify as to those facts if called upon to do so in a court of law.

3. On February 3, 1966, the Bureau of Indian Affairs (“BIA”) issued correspondence to Dora Mata stating that the BIA found no evidence that Lena Shelton, her brother Tom Hodge, her daughter Dora Shelton Mata or her two granddaughters had ever lived on the Rancheria, and, therefore, denied their claims to membership in the Tribe and issued deed to the land to Mabel Dixie. Attached hereto as Exhibit “A” is a true and correct copy of the letter from the BIA, Sacramento Office, to Mrs. Dora Mata, dated February 3, 1966.

4. On August 5, 1998, Yakima Dixie accepted Silvia Burley, Rashel Reznor, Angelica Paulk and Tristian Wallace as enrolled members of the Tribe, then known as the Sheep Ranch Rancheria, and acknowledged such enrollment in formal documentation. Attached hereto as Exhibit “B” are true and correct copies of the enrollment documents for Silvia Burley, Rashel Reznor, Anjelica Paulk and Tristian Wallace.

5. On November 5, 1998, my client, the California Valley Miwok Tribe, established its governing body through Resolution #GC-98-01. This resolution is referenced several times in the final agency action at issue in this case. Attached hereto as Exhibit “C” is a true and correct copy of the California Valley Miwok Tribe’s Resolution #GC-98-01, enacted on November 5, 1998.

6. Having met with BIA officials, including then Central California Agency Superintendent Dale Risling on September 8, 1998, on September 24, 1998, the Tribe received correspondence from Superintendent Risling that verifies the enrollment and recognition of Yakima Dixie, Silvia Burley, Rashel Reznor, Anjelica Paulk, and Tristian Wallace as Tribal members. My client provided me with a true and correct copy of this correspondence during the course of my representation of the Tribe. Attached hereto as Exhibit “D” is a true and correct

copy of the letter from Superintendent Dale Risling to Yakima K. Dixie, Spokesperson of the Sheep Ranch Rancheria, dated September 24, 1998.

7. On February 4, 2000, the Tribe received correspondence from Superintendent Risling that recognizes Silvia Burley, Rashel Reznor, Anjelica Paulk and Tristian Wallace as members of the Tribe “enjoying all benefits, privileges, rights, and responsibilities of Tribal membership.” The correspondence further acknowledged that “[o]n November 5, 1998, the majority of adult members of the Tribe adopted Resolution #GC-98-01, thus establishing a General Council to serve as the governing body of the Tribe.” My client provided me with a true and correct copy of this correspondence during the course of my representation of the Tribe. Attached hereto as Exhibit “E” is a true and correct copy of the letter from Superintendent Risling to Mr. Yakima Dixie, dated February 4, 2000.

8. On March 7, 2000, the Tribe received correspondence from Superintendent Risling that confirms the Bureau of Indian Affairs’ acknowledgement of Silvia Burley, Rashel Reznor, Anjelica Paulk and Tristian Wallace as enrolled Tribal members. My client provided me with a true and correct copy of this correspondence during the course of my representation of the Tribe. Attached hereto as Exhibit “F” is a true and correct copy of the letter from Superintendent Risling to Silvia Burley, Chairperson of the Sheep Ranch Rancheria, dated March 7, 2000.

9. On March 26, 2004, BIA Superintendent Risling issued a letter to the Tribe stating that the BIA would not accept a Constitution previously submitted by the Tribe as evidence that the Tribe was organized pursuant to the IRA. Attached hereto as Exhibit “G” is a true and correct copy of the letter from Superintendent Risling to Silvia Burley, Chairperson of the California Valley Miwok Tribe, dated March 26, 2004.

10. On February 11, 2005, the Acting Assistant Secretary for Indian Affairs, Michael Olsen, dismissed an appeal filed by Yakima Dixie challenging the BIA's recognition of the Tribe's Membership. In rejecting Mr. Dixie's appeal, Mr. Olsen reaffirmed the well-established Membership of the Tribe and "encourage[d]" Mr. Dixie to work with the *other tribal members* and organize the Tribe pursuant to an IRA constitution and along the lines outlined in the March 26, 2004 letter. Attached hereto as Exhibit "H" is a true and correct copy of the letter from Acting Assistant Secretary Olson to Yakima Dixie, dated February 11, 2005.

11. On November 6, 2006, contrary to almost a century of relations between the Tribe and the United States, the Superintendent of the BIA Central California Agency made a decision to open the existing membership and governing structure of the Tribe. Attached hereto as Exhibit "I" is a true and correct copy of the letter from then Superintendent Troy Burdick to Silvia Burley and Yakima Dixie, dated November 6, 2006.

12. On April 11, 2007, contrary to all prior holdings and final agency actions of the United States, the BIA published a public notice in the *Ledger Dispatch* newspaper for the purpose of identifying descendants of those very individuals that the BIA previously deemed ineligible for membership. Attached hereto as Exhibit "J" is a true and correct copy of the publication submitted in the *Ledger Dispatch* by the BIA, dated April 11, 2007.

13. On October 23, 2009, an Order was filed by the United States District Court for the Eastern District of California granting Silva Burley's Motion for Sanctions in the amount of \$3,750.00 against Plaintiffs' counsel in a California State Court proceeding (Thomas W. Wolfrum), pursuant to Federal Rule of Civil Procedure 11(b) for his failure to make a reasonable pre-filing inquiry into the merits of the action, thus filing a frivolous lawsuit resulting in a waste of judicial resources and unnecessary costs to the Defendants. Attached as Exhibit "K" is a true

and correct copy of the October 23, 2009 Order issuing sanctions against Thomas W. Wolfrum in the amount of \$3,750.00 for filing a frivolous action.

14. On December 22, 2010, I received a copy of the correspondence from Larry Echo Hawk, Assistant Secretary – Indian Affairs wherein Mr. Echo Hawk explicitly vested the right to determine membership with the already-recognized California Valley Miwok Tribe (“Tribe”). Attached hereto as Exhibit “L” is a true and correct copy of the December 22, 2010 decision issued by Larry Echo Hawk, Assistant Secretary – Indian Affairs, and sent to me on December 22, 2010.

15. On January 6, 2011, Plaintiffs sought a stay and reconsideration of the December 22, 2010 Decision. On January 21, 2011, I received a copy of the correspondence from Pilar M. Thomas, Deputy Solicitor, Indian Affairs, Office of the Solicitor, U.S. Department of the Interior, to Mr. Robert J. Uram, Esq., of Sheppard, Mullin, Richter & Hampton, LLP. The letter states that “the Assistant Secretary has declined to reconsider the December 22, 2010 decision...” Attached hereto as Exhibit “M” is a true and correct copy of the January 21, 2011 correspondence from Deputy Solicitor Thomas to Robert J. Uram.

16. On April 1, 2011, I received a copy of the correspondence from Assistant Secretary Echo Hawk to Mr. Yakima Dixie. The letter states that actions subsequent to the issuance of his December 22, 2010 decision led him to reconsider the matters addressed in the decision and that he would be requesting the submission of briefs by both parties. Attached hereto as Exhibit “N” is a true and correct copy of the April 1, 2011 correspondence from Assistant Secretary Echo Hawk to Yakima Dixie.

17. On April 8, 2011, I received a copy of the correspondence from Assistant Secretary Echo Hawk to Mr. Yakima Dixie to Ms. Silvia Burley. The letter requests that Mr.

Dixie and Ms. Burley (not listing a single one of the non-member Plaintiffs), submit briefs addressing three substantive issues set forth therein by a deadline of May 3, 2011. Attached hereto as Exhibit "O" is a true and correct copy of the April 8, 2011 correspondence from Assistant Secretary Echo Hawk to Mr. Dixie and Ms. Burley.

18. On August 31, 2011, I received a copy of the correspondence from Assistant Secretary Echo Hawk to Mr. Yakima Dixie and Ms. Silvia Burley. The letter states that "the factual record is clear: there are only five citizens of the [Tribe]." The letter further states that pursuant to Resolution #GC-98-01, the governing document of the Tribe, "the Tribe's General Council [solely the five acknowledged citizens] is authorized to exercise the Tribe's governmental authority." The letter further makes clear that "[t]he Federal government is under no duty or obligation to 'potential citizens' of the [Tribe]" and that "[t]hose potential citizens, if they so desire, should take up their cause with the [Tribe's] General Council directly." Attached as Exhibit "P" is a true and correct copy of the August 31, 2011 correspondence from Assistant Secretary Echo Hawk to Mr. Dixie and Ms. Burley.

19. On November 4, 2011, I received a copy a Resolution #PDX-11-014, which was adopted by the National Congress of American Indians ("NCAI"), the oldest and largest national organization of American Indian and Alaska Native tribal governments. This Resolution was enacted at NCAI's recent 2011 Annual Conference and asserts NCAI's support for the Assistant Secretary's August 31, 2011 decision and "opposes any effort by state or federal governments or courts to interfere with tribal internal decision making." Attached hereto as Exhibit "Q" is a true and correct copy of the November 4, 2011 Resolution of the National Congress of American Indians.

20. On November 18, 2011, the Superior Court for the State of California, County of San Diego – Central Division, in Case No. 37-2008-00075326-CU-CO-CTL (the “California State Court Action”), ordered sanctions against intervenor Yakima Dixie in the amount of \$750.00 for his refusal to answer deposition questions. Given that Yakima Dixie and the non-member Plaintiffs in the above-captioned action claim that they are the California Valley Miwok Tribe, it is quite telling that, on November 28, 2011, the law firm of Sheppard Mullin Richter & Hampton, LLP, counsel for Yakima Dixie in the California State Court Action, issued a check payable to “*California Valley Miwok Tribe*” in the amount of \$750.00, representing the sanctions imposed upon Mr. Dixie. In other words, by their own admission, Plaintiffs’ acknowledge that the Proposed Intervenor is, indeed, the authentic Tribe, despite their misleading filing of the Amended Complaint in the Tribe’s name. Attached hereto as Exhibit “R” is a true and correct copy of the check referenced in this paragraph.

21. The Tribe seeks to intervene in the action on the grounds that it is a real party in interest with a substantial stake in the outcome of this proceeding. The Tribe meets the standards for mandatory intervention pursuant to Rules 24(a)(2) of the Federal Rules of Civil Procedure because it has timely moved to intervene, has a cognizable interest in this action, could potentially be adversely affected or impaired by this litigation, and because representation in this action “may not” be adequate. The Tribe also meets the standard for permissive intervention into this action pursuant to Fed. R. Civ. P. Rule 24(b) because it has timely moved to intervene and because it has a clear common interest in law or fact.

22. Pursuant to the requirements of Local Civil Rule 7(m) of the Rules of the United States District Court for the District of Columbia, on November 28, 2011 an attorney from my office contacted counsel to Plaintiffs, Roy Goldberg, as well as counsel to Defendants, Kenneth

Rooney, by telephone to notify them of the Tribe's intention to file its Amended Motion for Leave to Intervene and Motion to Expedite Consideration of Amended Motion for Leave to Intervene, in order to ascertain whether either party would oppose such a motion.

23. On November 30, 2011, Mr. Goldberg notified me via e-mail that Plaintiffs would not consent to Proposed Intervenor's Amended Motion for Leave to Intervene for reasons that include what was set forth in Plaintiffs' opposition to the original motion. Mr. Goldberg did not provide Plaintiffs' position as to Proposed Intervenor's Amended Motion to Expedite Consideration of the Amended Motion for Leave to Intervene.

24. On December 1, 2011, Mr. Rooney notified me via e-mail that the United States does not oppose the Proposed Intervenor's original Motion to Intervene, (Dkt. No. 11). The United States takes no position as to the Proposed Intervenor's Amended Motion for Leave to Intervene and the Motion to Expedite Consideration of the Amended Motion for Leave to Intervene.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 13th day of December, 2011.

By: /s/ Robert A. Rosette
Robert A. Rosette