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8 CALIFORNIA VALLEY MIWOK TRIBE

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

11 CALIFORNIA VALLEY MIWOK TRIBE,

12 Plaintiff,

13 v.

14 THE CALIFORNIA GAMBLING  
15 CONTROL COMMISSION; and DOES  
16 1 THROUGH 50, Inclusive,

17 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

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25 Plaintiff alleges as follows:

26 PARTIES

- 27 1. Plaintiff CALIFORNIA VALLEY MIWOK TRIBE ("MIWOK TRIBE" or  
28 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 of 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  
28

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.

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.  
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California Valley Miwok Tribe