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10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA
12

13 CALIFORNIA VALLEY MIWOK TRIBE,)	
14	)	No. 08-CV-0984-WBS-GGH
15 Plaintiff,)	
16	)	MEMORANDUM OF POINTS
17 v.	)	AND AUTHORITIES IN
18	)	SUPPORT OF MOTION TO
19 CALIFORNIA GAMBLING CONTROL	)	INTERVENE AS PARTY
20 COMMISSION, <i>et al.</i>,	)	DEFENDANTS PURSUANT
21	)	TO RULE 24
22 Defendants,)	
23	)	Motion Hearing noticed for
24 YAKIMA K. DIXIE and MELVIN DIXIE,	)	2 p.m. on July 21, 2008,
25	)	in Courtroom 5, Honorable
26 Movant-Intervenor-Defendants.	)	William B. Shubb, presiding
27 _____)	

28
29 Pursuant to Rule 24 of the Federal Rules of Civil Procedure Yakima K. Dixie and
30 Melvin Dixie submit this Memorandum of Points and Authorities in Support of their
31 Motion to Intervene in this proceeding as party defendants. Movants are lineal
32 descendants of Indian residents of the Sheep Ranch Rancheria set aside by the United
33 States Government in Calaveras County, California, and are thus putative members of the
34 California Valley Miwok Tribe (“the Tribe”), also known as the Sheep Ranch Me-Wuk
35 Indians of the Sheep Ranch Rancheria, which is the beneficiary of a share of gaming

1 revenue currently held by defendant California Gambling Control Commission (“the
2 Commission”). It is the position of movants that Silvia Burley, the person who
3 authorized her attorneys to file this action in the San Diego County Superior Court in the
4 name of the “California Valley Miwok Tribe”, does not speak for the Tribe, and had no
5 authority to direct the filing of this lawsuit. Further, the relief sought in this lawsuit,
6 namely to order the State of California to distribute the gambling revenue directly to her,
7 would cause great harm and a great injustice to those descendants of the people of Sheep
8 Ranch who are seeking to organize a tribal government to govern the affairs of the Tribe.

9 **BACKGROUND**

10 Movant-Inteviewer Yakima K. Dixie is the hereditary chief of the Sheep Ranch Mi-
11 Wuk Indians. He and his brother, Melvin Dixie, are the great grandsons of Peter Hodge,
12 who was the leader of the small band of Miwok Indians who were settled by the federal
13 government on a small parcel of land in Calaveras County almost 100 years ago. *See*
14 Exhibit A, an August 13, 1915 letter to the Commissioner of Indian Affairs from the
15 Special Indian Agent. This land was held in trust for the Sheep Ranch Indians until
16 implementation of the California Rancheria Termination Act of 1958, as amended. Act
17 of August 18, 1958, (72 Stat. 619), *amended by* Act of August 11, 1964 (78 Stat. 1965)
18 [enactments attached as Appendix 1 in accordance with Local Rule 7-130(i).] Those
19 laws authorize the distribution of the assets of California Indian Rancherias. The mother
20 of Yakima and Melvin Dixie, Mabel Louise Hodge Dixie, was listed as the only
21 distributee of the Sheep Ranch property. *See* Exhibit B, BIA documents from 1965

1 showing her to be the distributee of the Sheep Ranch land. When Mrs. Dixie died in
2 1971, her oldest son Richard became the head of the Tribe; and upon his death in 1984,
3 Yakima Dixie became hereditary chief. *See* Exhibit C, an excerpt from the Handbook of
4 California Indians regarding Miwok chieftainship. The attached Declarations of Yakima
5 and Melvin Dixie, Exhibits D and E, are offered to explain the family relationships.

6 In 1996 Mr. Yakima Dixie provided assistance to a distant relative named Silvia
7 Burley and her children, allowing them into the Tribe so that they could obtain medical
8 and educational benefits. In 1999 without Mr. Dixie's permission Ms. Burley
9 represented herself to be the chairperson of the Tribe. She has relied on a document
10 purportedly showing Mr. Dixie's resignation as Tribal Chairman. That document is a
11 forgery. *See* Declaration of Yakima K. Dixie, attached as Exhibit D.

12 Mr. Yakima Dixie has challenged Silvia Burley's claims to tribal leadership in
13 lawsuits and administrative appeals for several years. Attached as Exhibit F is a February
14 11, 2005, letter to Mr. Dixie from Interior Department Assistant Secretary Michael D.
15 Olsen, advising that the BIA regards the California Valley Miwok Tribe as an "not an
16 organized tribe", namely one for which no tribal government has been recognized. The
17 BIA has refused to recognize a "tribal constitution" submitted by Ms. Burley as the
18 official organic document of the Tribe. She challenged that decision in litigation in the
19 U.S. District Court for the District of Columbia, California Valley Miwok Tribe v. U.S.
20 Department of the Interior. Her suit was dismissed, 424 F.Supp.2d 197 (D.D.C. 2006),

1 and that dismissal was affirmed on appeal on February 15, 2008. 515 F.3d 1262
2 (D.C.Cir. 2008).¹

3 Meanwhile, in September 2005, while the U.S. District Court litigation was
4 pending in the District of Columbia, Silvia Burley and her two daughters, acting as the
5 “Tribal Council”, purported to disenroll Yakima Dixie from the Tribe on the spurious
6 ground that he had enrolled in another Tribe, namely the Sheep Ranch Me-Wuk Indians
7 of Sheep Ranch Rancheria, simply the Tribe’s former name. See Exhibits G and H.

8 More recently, the BIA has proceeded to assist the Tribe to organize its members
9 to draft and adopt an organic charter. See Exhibit I (“eye”), a Public Notice published on
10 April 11, 2007. Silvia Burley is not cooperating in this effort, and has sought to block it
11 through her endless administrative appeals. See Exhibit J.

12 **ARGUMENT – STANDARDS FOR INTERVENTION**

13 Rule 24 provides two grounds for intervention in Federal Court – “intervention as
14 of right” and “permissive intervention.” Rule 24(a) governs applications for intervention
15 as of right. Rule 24(a)(2) provides:

16 "Upon timely application anyone shall be permitted to intervene in an
17 action ... when the applicant claims an interest relating to the property or
18 transaction which is the subject of the action and the applicant is so situated
19 that the disposition of the action may as a practical matter impair or impede
20 the applicant's ability to protect that interest, unless the applicant's interest
21 is adequately represented by existing parties."
22

¹ Yakima Dixie was accorded *amicus curiae* status in that appeal, which included oral argument time. His Motion to Intervene in the District Court was denied as moot because Judge Robertson had already decided to dismiss Silvia Burley’s Complaint. 424 F.Supp.2d at 198, note 2.

1 In the absence of a statute conferring an unconditional right to intervene, the applicant
2 must demonstrate that: (1) the application is timely; (2) the applicant has “a significantly
3 protectable interest relating to the property ... that is the subject of the action”; (3) absent
4 intervention, applicant's interest will be impaired; and (4) the existing parties
5 inadequately represent the applicant's interests. Arakaki v. Cayetano, 324 F.3d 1078,
6 1083 (9th Cir. 2003). The focus of the court's inquiry should be the effect on the
7 applicant, not on other parties to the litigation. *See* Moore's Federal Practice, 3d Ed.,
8 §24.03(1) (c) (2003).

9 Movant also may seek permissive intervention under Rule 24(b), which provides:

10 Upon timely application anyone may be permitted to intervene in an action
11 ... when an applicant's claim or defense and the main action have a question
12 of law or fact in common.... In exercising its discretion, the court shall
13 consider whether the intervention will unduly delay or prejudice the
14 adjudication of the rights of the original parties.

15

16 Unlike intervention as of right, permissive intervention focuses on possible prejudice to
17 the original parties to the litigation, not the intervenor. *See* Moore's Federal Practice 3d
18 Ed. § 24.10(1) (2003).

19 In reviewing a motion to intervene, the court generally should accept as true the
20 allegations and the evidence which is submitted by the applicant in his motion,
21 memorandum, and pleading. Southwest Center for Biological Diversity v. Berg, 268
22 F.3d 810, 819 (9th Cir. 2001).

23

1 **A. MOVANT IS ENTITLED TO INTERVENTION OF RIGHT.**

2 Movants should be permitted to intervene as of right under Rule 24(a)(2) because
3 they have satisfied all of the elements required by that rule.

4 **1. Timeliness**

5 Timeliness is "the threshold requirement" for intervention as of right. United
6 States v. Oregon, 913 F.2d 576, 588 (9th Cir. 1990). In determining whether a motion is
7 timely, the court considers: (1) the stage of the proceedings; (2) the prejudice to other
8 parties; and (3) the reason for and length of the delay. United States ex rel. McGough v.
9 Covington Tech., 967 F.2d 1391, 1394 (9th Cir. 1992).

10 This Action was filed in San Diego County Superior Court on January 8, 2008. It
11 was removed to federal court on January 22, 2008. Defendants' Motion for Change of
12 Venue was then granted, and the case was transferred to the Eastern District on May 6,
13 2008, only a few weeks ago. The initial schedule conference is currently set for August
14 25, 2008. Because consideration of this intervention motion precedes case scheduling, it
15 is not untimely. There are two motions currently pending in the case, to be heard on June
16 23, 2008—a Motion for Remand to state court filed by the plaintiff, and a Motion to
17 Dismiss by the defendant. If the Motion to Dismiss is granted, this Motion to Intervene
18 will likely be moot. But if the case is not dismissed in its entirety, the addition of
19 intervenors to the case will not prejudice the other parties in any way.

20

21

1 **2. Interest in the Subject Mater**

2 In addition to filing a timely motion, Movant must show that he has an interest in
3 the subject matter of the litigation. Sagebrush Rebellion, Inc. v. Watt, 713 F.2d 525, 527
4 (9th Cir. 1983). Movants' interest is very clear. As putative members of an unorganized
5 tribe, they are justifiably concerned that the estimated \$3 million in revenue sharing funds
6 held by the Commission for the benefit of the Tribe will be distributed to Silvia Burley,
7 as the alleged leader of their Tribe. When she received previous distributions of such
8 gaming money, Movants never saw any evidence of that money. Movants seek to protect
9 the interests of other putative members of the Tribe pending its re-organization.

10 **3. Impairment of Applicant's Interest**

11 Plaintiff Silvia Burley is demanding that the revenue sharing funds be immediately
12 distributed to her, as the leader of the Tribe. There is no question that such relief would
13 imperil the interests of other putative members of the Tribe pending the ongoing tribal
14 organization. Since Movants do not recognize her authority as a leader or spokesperson
15 for the Tribe, they expect that they will never see any share of the subject funds. Indeed,
16 they expect that Ms. Burley would use the money to fund her warchest to fight for control
17 of the Tribe, and to exclude them from any meaningful role in tribal decisions, as she has
18 done in the past.

19 Plaintiff's counsel will no doubt invoke this Court's decision in California Valley
20 Miwok Tribe v. United States, No. Civ. S-02-0912, where Yakima Dixie's Motion to
21 Intervene was denied on the ground that those proceedings would not impair his interests.

1 However, that case involved very different issues, and a different prayer for relief by the
2 Plaintiff. There Ms. Burley was seeking an order to compel the Department of the
3 Interior to acquire land in trust for the Tribe. (Her claim was ultimately dismissed.) The
4 Court found that Mr. Dixie's "interests in the actual subject matter of this litigation are
5 completely consonant with those of plaintiff" Order, at page 9 (attached as Appendix
6 2.) This case is dramatically different. Rather than involving a demand for agency action
7 which would benefit the Tribe generally, this case involves a demand for distribution of
8 \$3 million in funds to a person whom neither the Bureau of Indian Affairs nor other tribal
9 members recognize as an authorized spokesperson for the Tribe. This is the consummate
10 internal tribal struggle.

11 **4. Inadequate representation.**

12 An application for intervention need only show "that representation of his interest
13 'may be' inadequate; and the burden of making that showing should be treated as
14 minimal." Trbovic v. United Mine Workers of America, 404 U.S. 528, 538, n. 10 (1972).
15 Here the California Gambling Control Commission has acknowledged that it cannot fully
16 represent the Movants' interests, even positing that Yakima Dixie is an indispensable
17 party to these proceedings. Defs.' Memo. of Pts. & Auths. in Supp. of Mot. to Dismiss,
18 at p. 14.

19 **B. MOVANT IS ALSO ENTITLED TO PERMISSIVE INTERVENTION.**

20 Movant may also seek permissive intervention under Rule 24(b)(2). In order to
21 intervene permissively, he first must satisfy the criterion for timeliness, discussed above.

1 Second, he must identify a common question of law or fact with the original matter. The
2 simple, common question of fact is “Who is entitled to receive the gaming revenue
3 share?” Plaintiff Silvia Burley, emplying the device of bringing suit in the name of the
4 Tribe, contends it is she. Movant-intervenors deny her claim of authority. They assert
5 that Yakima Dixie is the hereditary chief of the Tribe, but are nevertheless cooperating
6 with the Bureau of Indian Affairs in its efforts to assist the Tribe in its organizational
7 efforts.

8 CONCLUSION

9
10 The evidence submitted by Movants demonstrates that they satisfy the statutory
11 criteria for “intervention of right” or alternatively, for “permissive intervention”. Without
12 this opportunity to weigh in with his interests in this adjudication, there is a very real
13 possibility that those interests may be ignored and prejudiced. A ruling in the favor of
14 Plaintiff in this lawsuit will not only deprive putative members of the Tribe from their
15 legitimate share of the gaming revenues, but it will newly empower Silvia Burley in her
16 illegitimate efforts to be treated as the leader of the Tribe. Based on the foregoing the
17 Movants respectfully request that this Court grant their motion for Intervenor status,
18 pursuant to either Rule 24(a)(2) or 24(b)(2).

19 June 2, 2008

Respectfully submitted,

21
22 Tim Vollmann
23 Attorney for Movant-Intervenors
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CERTIFICATE OF SERVICE

I, Tim Vollmann, hereby certify that on June 2, 2008, I electronically filed the foregoing Memorandum of Points and Authorities in Support of the Motion to Intervene as Party Defendants, thereby providing automatically for electronic service of process on the following individual attorneys:

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