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9 Commission

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SAN DIEGO
12 CENTRAL DISTRICT
13

14 **CALIFORNIA VALLEY MIWOK
TRIBE,**

15 Plaintiff,

16 v.

17 **THE CALIFORNIA GAMBLING
18 CONTROL COMMISSION; and DOES 1
19 THROUGH 50, Inclusive,**

20 Defendants.

No. 37-2008-00075326-CU-CO-CTL

**DEMURRER OF DEFENDANT
CALIFORNIA GAMBLING CONTROL
COMMISSION TO THE FIRST
AMENDED COMPLAINT COMBINED
WITH PETITION FOR WRIT OF
MANDATE**

Date: December 12, 2008

Time: 8:30 a.m.

Dept: 65

Judge: The Hon. Joan M. Lewis

Trial Date:

Action Filed: January 8, 2008

22
23 Defendant California Gambling Control Commission ("Commission") hereby demurs
24 to the First Cause of Action of the First Amended Complaint Combined With Petition for Writ of
25 Mandate ("FAC") pursuant to Code of Civil Procedure section 430.10 subdivisions (a), (b), (d),
26 and (e) on the grounds that:

27 1. The California Valley Miwok Tribe possesses no private right of action to enforce
28 Government Code sections 12012.75 or 12012.90, subdivision (d). Thus, the First Cause of

1 Action fails to state facts sufficient to constitute a cause of action;

2 2. Absent a federally recognized constitution, government, membership, or chairperson,
3 there is no individual or entity with the capacity or standing to file suit to enforce any rights the
4 California Valley Miwok Tribe may possess as a result of that entity's placement on the list of
5 federally recognized tribes;

6 3. This Court lacks jurisdiction to determine who has the capacity or standing to file suit
7 on behalf of the California Valley Miwok Tribe; and

8 4. There is a defect in the parties in that the plaintiff has failed to join necessary parties;
9 specifically, the parties the FAC alleges claim to represent the proper government of the
10 California Valley Miwok Tribe.

11 Defendant Commission hereby also demurs to the Second Cause of Action of the FAC
12 pursuant to Code of Civil Procedure section 430.10, subdivisions (a), (b), (c), and (d) on the
13 grounds that:

14 1. The tribal-state class III gaming compacts entered into by the State of California and
15 certain federally-recognized tribes, the written instrument over which the plaintiff alleges there is
16 a dispute, specifically preclude a party such as the California Valley Miwok, asserting rights as a
17 third-party beneficiary, from filing suit to enforce the terms of that instrument. Thus, that cause
18 of action fails to state facts sufficient to constitute a cause of action for declaratory relief;

19 2. Absent a federally recognized constitution, government, membership, or chairperson,
20 there is no individual or entity with the capacity or standing to file suit to enforce any rights the
21 California Valley Miwok Tribe may possess as a result of that entity's placement on the list of
22 federally recognized tribes;

23 3. This Court lacks jurisdiction to determine who has the capacity or standing to file suit
24 on behalf of the California Valley Miwok Tribe; and

25 4. There is a defect in the parties in that the plaintiff has failed to join necessary parties;
26 specifically, the parties whom the FAC alleges claim to represent the proper government of the
27 California Valley Miwok Tribe.

28 Defendant [Respondent] Commission hereby also replies by way of a demurrer to the

1 Fourth Cause of Action of the FAC pursuant to Code of Civil Procedure section 430.10,
2 subdivisions (a), (b), (c), and (d) on the grounds that:

3 1. Absent a federally recognized constitution, government, membership, or chairperson,
4 there is no individual or entity with the capacity or standing to file suit to enforce any rights the
5 California Valley Miwok Tribe may possess as a result of that entity's placement on the list of
6 federally recognized tribes;

7 2. This Court lacks jurisdiction to determine who has the capacity or standing to file suit
8 on behalf of the California Valley Miwok Tribe;

9 3. There is a defect in the parties in that the plaintiff has failed to join necessary parties;
10 specifically, the parties the FAC alleges claim to represent the proper government of the
11 California Valley Miwok Tribe;

12 4. The Commission's obligation to make RSTF payments is contractual not statutory
13 because the statutes upon which plaintiff relies merely implement the Commission's contractual
14 obligations. Thus, the FAC fails to state facts sufficient to constitute a cause of action in
15 mandate because mandate will not lie to enforce a contractual obligation; and

16 5. The Commission does not dispute that it has a duty to distribute RSTF funds to a tribe
17 that is properly on the list of federally-recognized tribes and has, in fact, distributed RSTF funds
18 into an account for the benefit of the California Valley Miwok Tribe pending the federal
19 government's determination as to who may request the withdrawal of such funds on behalf of the
20 Tribe. Thus, the Third Cause of action fails to state facts sufficient to constitute a cause of action
21 because a writ is unnecessary to obtain compliance with the Commission's mandatory duty, or, in
22 the alternative, should be dismissed as moot.

23 This demurrer is based on the grounds set forth herein, the pleadings, papers and files in this
24 action, the memorandum of points and authorities and notice of demurrer filed concurrent
25 herewith and the request for judicial notice filed concurrent herewith.

1 WHEREFORE, defendant Commission prays that its demurrer to the First, Second and
2 Fourth Causes of Action of the FAC be sustained without leave to amend and that plaintiff take
3 nothing by the FAC, that defendant have judgment for its reasonable costs of suit and for such
4 other and further relief as the Court deems just and proper.

5 Dated: September 2, 2008

6 Respectfully submitted,

7 EDMUND G. BROWN JR.
8 Attorney General of the State of California

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10 Senior Assistant Attorney General

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16 Attorneys for Defendant California Gambling
17 Control Commission

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **California Valley Miwok Tribe v. California Gambling Control Commission**

Court: **San Diego Superior Court, Case No. 37-2008-00075326-CU-CO-CTL**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **September 2, 2008**, I served the attached:

1. **DEMURRER OF DEFENDANT CALIFORNIA GAMBLING CONTROL COMMISSION TO THE FIRST AMENDED COMPLAINT COMBINED WITH PETITION FOR WRIT OF MANDATE**
2. **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CALIFORNIA GAMBLING CONTROL COMMISSION'S DEMURRER TO THE FIRST AMENDED COMPLAINT COMBINED WITH PETITION FOR WRIT OF MANDATE; and**
3. **DEFENDANT CALIFORNIA GAMBLING CONTROL COMMISSION'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF ITS DEMURRER TO THE FIRST AMENDED COMPLAINT COMBINED WITH PETITION FOR WRIT OF MANDATE.**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

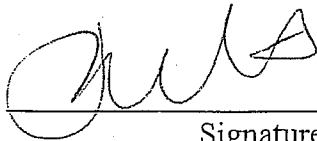
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Co-Counsel for Plaintiff
CALIFORNIA VALLEY MIWOK TRIBE

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **September 2, 2008**, at San Diego, California.

Roberta L. Matson

Declarant



Signature