

F I L E D
Clerk of the Superior Court

DEC 23 2008

By: A. HUSTED, Deputy)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

CALIFORNIA VALLEY MIWOK TRIBE,
Plaintiff,

v.

CALIFORNIA GAMBLING CONTROL
COMMISSION, et al.,
Defendants.

Case No. 37-2008-00075326-CU-CO-CTL
ORDER SUSTAINING DEMURRER

Judge: Hon. Joan M. Lewis
Dept.: 65

Defendant California Gambling Control Commission's demurrer to Plaintiff's complaint came on regularly for hearing December 12, 2008, at 8:30 a.m., in Dept. 65 of the above-entitled court, the Hon. Joan M. Lewis, judge presiding. Peter H. Kaufman, Esq., appeared on behalf of the Defendant. Manuel Corrales, Jr., Esq., and Terry Singleton, Esq., appeared on behalf of the Plaintiff. After having taken the matter under submission, the Court now issues the following ruling.

Preliminarily, the Court notes it has taken judicial notice where requested.

Plaintiff is the California Valley Miwok Tribe (the "Tribe"), a federally-recognized tribe. [First Amended Complaint ("FAC"), Para. 1.] Plaintiff alleges that the Tribe qualifies as a recipient of funds from the Indian Gaming Revenue Sharing Trust Fund ("RSTF"). [FAC, Para. 6.] The FAC further alleges that Defendant the California Gambling Control Commission ("Commission"), as Trustee of the RSTF, distributes the monies received into the RSTF on a quarterly basis to non-

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1 quarterly basis to non-compact Tribes, such as the Minok Tribe. [*Id.*] By way of this action, the
2 Tribe contends that the Commission has wrongfully withheld from the Tribe over \$3 million in
3 RSTF money and seeks, *inter alia*, an order compelling the Commission to discharge its duties and
4 distribute to the Tribe its share of RSTF money. [FAC, Para. 26, 30.]

5 Plaintiff asserts that the Tribe's present government has selected Silvia Burley ("Burley") to
6 be its "Tribal Chairperson" or "person of authority" to receive money from the RSTF. [Plaintiff's
7 point and authorities in opposition to the demurrer, 3:24-27.] Burley has verified the complaint as
8 the "selected spokesperson" for the Tribe. She alleges in the FAC that she "fits the definition of
9 'spokesperson' for the Tribe. . . ." and that "[u]nder the existing Tribal 'customs and traditions',
10 Burley has been 'selected' to represent the Tribe, . . ." [FAC, Paras. 24.] However, the FAC
11 acknowledges that there is an ongoing leadership dispute within the Tribe. [See FAC, Paras. 9, 13,
12 15 and 24.] See also *California Valley Miwok Tribe v. United States* (D.C.D.C. 2006) 424
13 F.Supp.2d 197 where the court noted the "ongoing leadership dispute" between Burley and former
14 tribal chairman Yakima Dixie but expressed its intent to "pass no judgment on that dispute." [*Id.*,
15 p. 1263.]

16 The Commission has demurred to the FAC raising various arguments, including that the
17 Tribe and/or Burley lack the capacity or standing to file suit on behalf of the Tribe. Specifically,
18 the Commission argues that in light of the leadership dispute and based on the fact the federal
19 government has not recognized Burley's "government," no one currently has the capacity or
20 standing to file suit on behalf of the Miwok. In this regard the Commission cited *California Valley*
21 *Miwok Tribe v. United States, supra*, where the court noted, in part, that the federal government has
22 declined to recognize the Tribe as organized.

23 In its papers and at the time of oral argument, the Tribe argued that by way of this action it
24 does not seek to have the Court make a determination regarding tribal leadership, an issue both
25 sides appear to concede this Court would lack any jurisdiction to entertain. Although the Tribe
26 may not be seeking a judicial determination of who has authority to sue on its behalf, the Tribe

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1 offered no persuasive authority that would support allowing this action to proceed when, as
2 acknowledged, there clearly is an ongoing leadership dispute within the Tribe. The Court
3 concludes that without a recognized government and leader this action cannot proceed.

4 Based on the Court's finding that the Tribe, as currently represented in this lawsuit, lacks
5 the capacity and/or standing to bring this action the demurrer is sustained.

6 Generally, the Court would grant a plaintiff leave to amend if there were any chance
7 amendment could cure the defect. In this case there is nothing to suggest that there is anything that
8 could currently be pled to cure the defect. The Court, however, is concerned of the consequences
9 to the Tribe – should its government and leader ultimately be recognized – if the demurrer is
10 sustained without leave to amend. At the hearing on this matter no argument was given as to
11 whether leave to amend should or should not be given. Because the Court did not hear argument in
12 this regard, the Court would request the parties submit supplemental briefs on the issue of whether
13 leave to amend should or should not be given. If the Tribe believes leave to amend should be
14 given, the Court would like to hear from Plaintiff's counsel (1) what facts could be pled that would
15 cure the defects noted in this ruling; and (2) when an amended pleading could be filed.

16 Any supplemental brief on this limited issue may be filed by the Tribe on or before January
17 9, 2009. Any supplemental brief on this limited issue may be filed by the Commission on or before
18 January 16, 2009.

19 IT IS SO ORDERED.

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21 Dated: 12-23-08

Joan M. Lewis
JOAN M. LEWIS
Judge of the Superior Court