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CALIFORNIA VALLEY MIWOK TRIBE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO - CENTRAL DISTRICT**

**CALIFORNIA VALLEY MIWOK TRIBE**

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

Plaintiff,

vs.

**CALIFORNIA GAMBLING CONTROL  
COMMISSION,**

Defendant

**PLAINTIFF'S SUPPLEMENTAL  
BRIEF ON WHETHER LEAVE TO  
AMEND THE FIRST AMENDED  
COMPLAINT SHOULD BE GIVEN TO  
ALLEGE THE TRIBE HAS STANDING  
AND/OR THE CAPACITY TO BRING  
THIS ACTION**

Date: December 12, 2008

Time: 8:30 a.m.

Dept: 65

Judge: Hon. Joan M. Lewis

TABLE OF CONTENTS

Table of Authorities.....ii

**THERE IS NO PRESENT LEADERSHIP  
DISPUTE "WITHIN" THE TRIBE**.....2

**THE TRIBE HAS A RECOGNIZED GOVERNMENT**.....8

**THE FEDERAL COURT OF APPEALS NEVER  
RULED THAT BURLEY DOES NOT REPRESENT  
THE TRIBE OR THAT THE TRIBE UNDER HER  
LEADERSHIP HAS NO RECOGNIZED GOVERNMENT**.....9

**WHEN AN AMENDED PLEADING COULD BE FILED**.....14

**CONCLUSION**.....14

## TABLE OF AUTHORITIES

### State Cases

#### In re Laura

(2000) 83 CA4th 583, 590-592.....4

#### People v. Superior Court

(1990) 224 CA3d. 1405, 1409.....2

### Federal Cases

#### California Valley Miwok Tribe v.

#### The California Gambling Control Commission

(Order Re Motion for Remand).....10

#### California Valley Miwok Tribe v.

#### United States

(D.C. Cir. 2008) 515 F.3d 1262.....9-12

#### Santa Clara Pueblo v. Martinez

(1978) 436 U.S. 49, 59.....2, 7, 10

#### Williams v. Gover

(9<sup>th</sup> Cir. 2007) 490 F.3d 785, 789.....6, 7

### Federal Statutes

25 U.S.C. Section 3602(8).....3

28 U.S.C. Section 1360(c).....3

28 U.S.C. Section 1738.....3

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Plaintiff CALIFORNIA VALLEY MIWOK TRIBE ("the Tribe" or Plaintiff) submits the following Supplemental Brief on whether Plaintiff can amend the First Amended Complaint ("FAC") to show that the Tribe has standing and/or the capacity to bring this action, and to show the Tribe has a



1 recognized government. For the following reasons,  
2 Plaintiff asserts that leave to amend should be given.

3 **THERE IS NO PRESENT LEADERSHIP DISPUTE**  
4 **"WITHIN" THE TRIBE**

5 Attached hereto and marked as Exhibit "27" is a copy of  
6 a "Tribal Court Decision" in the California Valley Miwok  
7 Tribal Court, dated April 29, 2005, wherein the Tribal  
8 Court, the Tribe's judicial branch, ruled against Yakima on  
9 his challenge to Burley as the Tribal Chairperson,  
10 including his challenge to Burley as a member of the Tribe.  
11 Plaintiff asks the Court to take judicial notice of that  
12 decision. This decision is final, was never appealed, and  
13 neither the BIA nor any state or federal court can now  
14 review it. Santa Clara Pueblo v. Martinez (1978) 436 U.S.  
15 49, 59 (recognizing that "subjecting a dispute arising on  
16 the reservation among reservation Indians to a forum other  
17 than the one they have established for themselves...may  
18 undermine the authority of the tribal court...and  
19 hence...infringe on the right of the Indians to govern  
20 themselves"). Plaintiff wishes to allege that this Tribal  
21 Court Decision completely refutes the Commission's  
22 contention that there exists an ongoing "internal"  
23 leadership dispute that precludes it from distributing RSTF  
24 money to the Tribe. This Court should give the Tribal  
25 Court decision "comity" and accord it full force and effect  
26 for purposes of finding that Burley has standing and the  
27 capacity to bring this lawsuit. See People v. Superior  
28 Court (1990) 224 CA3d. 1405, 1409 (order of Navajo Court  
compelling witness attendance of Bakersfield, California,

1 resident, given full faith and credit); see generally, 25  
2 U.S.C. § 3602 (8) (Tribal justice systems as recognized by  
3 Congress means the entire judicial branch, and employees  
4 thereof, of an Indian tribe, including (but not limited to)  
5 traditional methods and forums for dispute resolution,  
6 lower courts, appellate courts (including intertribal  
7 appellate courts), alternative dispute resolution systems,  
8 and circuit rider systems, established by inherent tribal  
9 authority whether or not they constitute a court of  
10 record); see also 28 U.S.C. § 1360(c) ("any tribal  
11 ordinance or custom heretofore or hereafter adopted by an  
12 Indian tribe, band, or community in the exercise of any  
13 authority which it may possess shall, if not inconsistent  
14 with any applicable civil law of the State, be given full  
15 force and effect in the determination of civil causes of  
16 action pursuant to this section"); 28 U.S.C. Section 1738.

17 While the FAC alleges an "ongoing internal  
18 leadership dispute", as noted by the Court in its ruling,  
19 the allegations could be clarified to explain that the  
20 Tribe does not accept there is a leadership dispute and the  
21 referenced "internal" dispute pre-dated Yakima Dixie's  
22 ("Yakima") disenrollment from the Tribe on September 5,  
23 2005. Paragraphs 9, 13, 15 and 24 refer to an "internal"  
24 leadership dispute while Yakima was still a member and  
25 claiming that he, not Silvia Burley ("Burley"), should be  
26 the Tribal Chairperson. Since the Tribal Court decision  
27 and Yakima's disenrollment, however, there is currently no  
28 internal tribal leadership dispute within the presently

1 constituted Tribal Council, the governing body of the  
2 Tribe, concerning Burley's role as Tribal Chairperson or  
3 the right to bring this action.

4 Exhibit "19", attached to Burley's declaration, is a  
5 Resolution from the Tribe's "Tribal Council", its  
6 legislative branch, dated September 5, 2005, removing  
7 Yakima from the membership rolls of the Tribe, after giving  
8 him an opportunity to be heard. This Court can take  
9 judicial notice of that Resolution. See In re Laura (2000)  
10 83 CA4th 583, 590-592 (judicial notice of tribal resolution  
11 properly taken). As a result, Yakima's present objections  
12 to Burley's authority to act as Chairperson of the Tribe do  
13 not constitute an ongoing internal tribal leadership  
14 dispute. He is now only voicing his objections as an  
15 "outsider", and not as a member of the presently  
16 constituted Tribal Council. To this end, Plaintiff wishes  
17 to amend the FAC to allege that since Yakima's  
18 disenrollment as a Tribal member on September 5, 2005,  
19 there is no longer an internal tribal leadership dispute,  
20 and that the presently constituted tribal government has  
21 selected and authorized Burley to act as its Chairperson,  
22 and has further authorized the prosecution of this lawsuit  
23 against the California Gambling Control Commission ("the  
24 Commission").

25 Plaintiff wishes to further allege that the Bureau of  
26 Indian Affairs ("BIA") itself has recognized and accepted  
27 the Tribal Council's Resolutions under Burley's leadership  
28 on various matters, which conduct constitutes recognition

1 of the Tribe's government, even though the BIA has refused  
2 to accept the Tribe's constitution in accordance with  
3 Section 465(h) of the Indian Reorganization Act of 1934  
4 ("IRA"), so as to be acceptable to the BIA for purposes of  
5 awarding the Tribe federal contract funds. This is what  
6 the BIA means when it says the Tribe is "unorganized" (i.e.,  
7 the Tribe has not opted to organize itself under the IRA).  
8 For example, on May 7, 2001, the Tribe, under Burley's  
9 leadership, passed a Resolution authorizing changing the  
10 name of the Tribe from "Sheep Ranch Rancheria of Me-Wuk  
11 Indians of California" to "California Valley Miwok Tribe".  
12 (See Exhibit "20" to Burley Decl.) Plaintiff wishes to  
13 allege that upon submission, the BIA accepted this  
14 Resolution, and then in turn made the change in the  
15 "Federal Register" (where federally recognized tribes are  
16 listed). In doing so, the BIA wrote Burley on June 7,  
2001, in part, as follows:

17 "The Sheep Ranch Rancheria (Tribe) is a small tribe  
18 that does not have a tribal constitution. The Tribe  
19 has a tribal council and conducts tribal business  
20 through resolution. A tribal resolution, such as  
21 resolution No. R-1-5-07-2001, enacted by the Tribal  
22 Council on May 7, 2001, is sufficient to effect the  
tribal name change. The Tribe's new name has been  
included on the Tribal Entities List that will be  
published in the FEDERAL REGISTER later this year."

23  
24 (Exhibit "21" to Burley Decl.) (The Tribe has since adopted  
25 its own constitution). For the same reasons recognized by  
26 the BIA in this letter, the Tribal Council's Resolution  
27 voting to remove Yakima from Tribal membership "is  
28 sufficient to effect" his disenrollment.

1 The BIA has never revoked this name change or the  
2 Tribe's new name it caused to be placed on the "Federal  
3 Register" as a federally recognized tribe. Plaintiff  
4 wishes to allege that the BIA's actions in accepting the  
5 Tribal Council's Resolution for a name change, and the BIA  
6 continuously thereafter allowing the Tribe's name to appear  
7 on the "Federal Register" each year, are acts constituting  
8 recognition of the Tribe's governing body.

9 Moreover, the Tribal Council's action in removing  
10 Yakima from Tribal membership cannot be interfered with or  
11 reviewed by either the BIA or the courts. Williams v. Gover  
12 (9<sup>th</sup> Cir. 2007) 490 F.3d 785, 789.

13 The case of Williams v. Gover, supra, is controlling on  
14 this point. There, a group of sixty-five (65) Indian  
15 plaintiffs sued the BIA claiming the BIA was involved in  
16 helping the Mooretown Rancheria Tribe "squeeze [them] out  
17 of full tribal membership". 490 F.3d at 788. The  
18 Mooretown Rancheria Tribe, like the Miwok Tribe here, is a  
19 small tribe in California which organized its own tribal  
20 government and adopted its own constitution. It is  
21 therefore an "unorganized" tribe, as that term is used by  
22 the BIA. 490 F.3d at 790, fn. 11 (noting that "Mooretown  
23 Rancheria is not organized under the Indian Reorganization  
24 Act..."). The term "unorganized tribe" as it applied to  
25 the Mooretown Rancheria Tribe, and as that term should be  
26 understood here, simply meant that the Tribe had opted not  
27 to organize itself under the IRA, but chose instead to  
28 adopt its own governing constitution. Indian tribes have a

1 right to do that, and many tribes have decided not to be  
2 "organized" under the IRA, knowing full well that the BIA,  
3 as it has done with the Miwok Tribe here, may deny the  
4 tribe federal benefits. (See list of "unorganized" tribes  
5 cited in Plaintiff's P/A's in Opposition to Demurrer, page  
6 7). Accordingly, the Court held that the Mooretown  
7 Rancheria Tribe, by virtue of its own governing  
8 constitution, had the right and the power to pass a  
9 resolution deciding who is to be a member of its tribe.  
10 490 F.3d at 790.

11 Finding that the Mooretown Rancheria Tribe alone (and  
12 without any assistance from the BIA) "squeezed out"  
13 plaintiffs of their membership in the tribe, the Court  
14 affirmed the dismissal of plaintiffs' claims. In doing so,  
15 it relied upon the well-settled principle of Indian law  
16 that "an Indian tribe has the power to define membership as  
17 it chooses, subject to the plenary power of Congress." 490  
18 F.3d at 789 (citing Santa Clara Pueblo v. Martinez (1978)  
19 436 U.S. 49, 72 ["A tribe's right to define its own  
20 membership for tribal purposes has long been recognized as  
21 central to its existence as an independent political  
22 community."])).

23 For the same reasons expressed in Williams, supra, the  
24 Tribe here had the right and the power to pass a Resolution  
25 removing Yakima from membership in the Tribe. That  
26 Resolution is binding and cannot be reviewed or overturned  
27 by any court or even the BIA. Williams v. Gover, 490 F.3d  
28 at 791 (observing that because the Mooretown Rancheria Tribe

1 had the sovereign power to define its membership, "the BIA  
2 could not have defined the membership of Mooretown  
3 Rancheria, even if [it] had tried").

4 Accordingly, in light of the September 5, 2005, Tribal  
5 Resolution removing Yakima from membership in the Tribe,  
6 together with the Tribal Court Decision of April 29, 2005,  
7 rejecting Yakima's objection to Burley's chairpersonship,  
8 there cannot be any present internal Tribal leadership  
9 dispute within the presently constituted governing body of  
10 the Tribe.

#### 11 **THE TRIBE HAS A RECOGNIZED GOVERNMENT**

12 As stated, the BIA has accepted Resolutions from the  
13 Tribe's "Tribal Council" on matters of importance as  
14 changing the name of the Tribe, and removing Yakima from  
15 Tribal membership. Soon after the BIA accepted the Tribal  
16 Council's Resolution for a name change, the BIA notified  
17 the Internal Revenue Service ("IRS") of the name change,  
18 and the IRS notified the Tribe on July 16, 2001, that it  
19 would be making the change as well. (See Exhibit "22" to  
20 Burley Decl.)

21 Plaintiff wishes to allege that since accepting the  
22 Tribe's name change in 2001, the "Office of Indian Tribal  
23 Governments" within the IRS has recognized the Tribe and  
24 Burley as its Chairperson. As recently as July 1, 2008,  
25 the Office of Indian Tribal Governments within the IRS sent  
26 a letter to Burley as Chairperson for the Tribe. (Exhibit  
27 "23" to Burley Decl.) Plaintiff wishes to further allege  
28 that every year the IRS, through the Office of Indian



1 Tribal Governments, acknowledges receipt of the Tribe's  
2 federal tax payments and offers to assist the Tribe in the  
3 payment of its tax liabilities. Plaintiff wishes to allege  
4 that the IRS has never refused the Tribe's tax payments, or  
5 indicated the Tribe need not pay them, for any reason, and  
6 that the IRS's requirement that the Tribe pay federal  
7 taxes, and its receipt of those taxes, for the operation of  
8 tribal business year after year, is an acknowledgment and  
9 recognition by the federal government of the Tribal  
10 government under Burley's leadership, and evidence of an  
11 established "government-to-government" relationship between  
12 the Tribe and the federal government.

13 In addition, Plaintiff wishes to allege that the State  
14 of California continues to recognize the Tribe's governing  
15 body under Burley's leadership by requiring the Tribe to  
16 pay, and accepting the Tribe's payment of, State employment  
17 taxes annually. (See Exhibit "25" to Burley Decl.). To  
18 this end, the Tribe has a government -to-government  
19 relationship with the State of California as well.

20 **THE FEDERAL COURT OF APPEALS NEVER**  
21 **RULED THAT BURLEY DOES NOT REPRESENT THE TRIBE**  
22 **OR THAT THE TRIBE UNDER HER LEADERSHIP HAS**  
23 **NO RECOGNIZED GOVERNMENT**

24 The Commission has seriously misled the Court on the  
25 holding of the case of California Valley Miwok Tribe v.  
26 United States (D.C. Cir. 2008) 515 F.3d 1262, stating that  
27 the Court "found" that Burley "did not represent the  
28 California Valley Miwok Tribe" and that the Tribe has no



1 recognized government. (Reply, pg. 1, lines 3-4). The  
2 decision made no such rulings.

3 First of all, nowhere in the appellate decision  
4 (hereinafter "CVMT v. U.S.") is there any language denoting  
5 that Burley does not represent the Tribe. Instead, in  
6 footnote 1 of that decision, the Court, being mindful of  
7 the "ongoing leadership dispute" between Burley and Yakima,  
8 simply stated: "We [the three Circuit Judges] pass no  
9 judgment on that dispute." 515 F.3d at 1263, fn.1. As  
10 stated above, the Court would nevertheless have no  
11 jurisdiction to make such a ruling. See Santa Clara Pueblo  
12 v. Martinez (1978) 436 U.S. 49, 55-56, 72 (holding that  
13 Indian tribes remain a "separate people, with the power of  
14 regulating their internal and social relations", and "the  
15 role of courts in adjusting relations between and among  
16 tribes and their members [is] restrained"); see also  
17 California Valley Miwok Tribe v. The California Gambling  
18 Control Commission (Order Re: Motion for Remand, July 23,  
19 2008) civ. 08-984-WBS-GGH, fn. 3 (noting that it "cannot  
20 resolve plaintiff's leadership dispute because  
21 '[j]urisdiction to resolve internal tribal disputes,  
22 interpret tribal constitutions and laws, and issue tribal  
23 membership determinations lies with Indian tribes and not  
24 in the district courts.'").

25 At issue in CVMT v. U.S., supra, were the Tribe's  
26 efforts, under the leadership of Burley, to have its  
27 government declared "organized" under the IRA, so as to  
28 qualify for continued federal benefits. The Tribe argued

1 that its proposed constitution was a valid IRA Constitution  
2 under 25 U.S.C. § 476(h) that the BIA rejected. The Court  
3 of Appeals and the District Court below ruled section  
4 476(h) did not confer IRA approval on the Tribe's  
5 constitution. The Court of Appeals made no ruling, nor did  
6 it pass judgment, on the Tribe's then current governing  
7 constitution or government. If the Tribe failed (which it  
8 did) to get a ruling that Section 476(h) of the IRA  
9 conferred BIA approval of its proposed constitution, that  
10 would have no impact on the Tribe's existing government.  
11 It was not a "do or die" proposition. The Tribe still had  
12 its own recognized government and would function (which it  
13 has been doing) without an IRA constitution approved by the  
14 BIA. Thus, in reading the Court of Appeals decision in  
15 CVMT v. U.S., it is clear that all of the criticisms or so-  
16 called "disapprovals" were directed exclusively toward the  
17 Tribe's proposed "IRA" constitution, not the Tribe's then  
18 existing tribal government. In this regard, the Commission  
19 reads too much into the decision, and goes too far in  
20 arguing that the Court held that the Tribe's presently  
21 constituted government is not recognized by the federal  
22 government, or that Burley does not represent the Tribe.  
23 Nowhere in the decision did the federal Court of Appeals  
24 rule that the Tribe's present governing tribal council was  
25 not to be recognized by the federal government. Indeed,  
26 the Tribe's present governing constitution was never at  
27 issue in CVMT v. U.S., supra, either in the District Court  
28

1 below or at the Court of Appeals, and the Commission can  
2 point to nowhere in the two decisions where it was.

3 In any event, the Court of Appeals would have no  
4 jurisdiction or power to rule that the Tribe's presently  
5 constituted government is no longer federally -recognized,  
6 or pass judgment on it in any way. Congress has prohibited  
7 any authority, including the BIA or any court, from  
8 terminating an Indian Tribe's status as a federally-  
9 recognized tribe. "[A] tribe which has been recognized in  
10 one of these manners [Act of Congress, Part 83 process, or  
11 judgment by United States Court] may not be terminated  
12 except by an Act of Congress." Section 103(4) of the  
13 Federally Recognized Indian Tribe List Act of 1994.

14 Had the Tribe never decided to try and organize itself  
15 under the IRA, it would still have a recognized governing  
16 body, with Burley as the Tribe's authorized representative  
17 and/or Chairperson. Choosing not to be "organized" under  
18 the IRA would not affect the Tribe's existence as a Tribe,  
19 but would only affect the potential for receipt of federal  
20 benefits. See CVMT v. U.S., 515 F.3d at 1263 (noting that  
21 "tribes that want federal benefits must adhere to federal  
22 requirements" and that the "gateway to some of those  
23 benefits is the Indian Reorganization Act..., which  
24 requires tribes to organize their governments by adopting a  
25 constitution approved by the Secretary of the  
26 Interior..."). Plaintiff wishes to allege that the Tribe's  
27 failure to get BIA approval of its proposed IRA  
28 constitution only affected its ability to get federal

1 funding, not its existence as a federally-recognized tribe.  
2 In this regard, Plaintiffs wish to allege that Mr. Dale  
3 Risling of the BIA on March 26, 2004, wrote to Burley as  
4 the "Chairperson" of the Tribe, explaining the same thing,  
5 and saying:

6 "...[T]he BIA's Central California Agency (CCA) has a  
7 responsibility to develop and maintain a government to  
8 government relationship with each of the 54 federally  
9 recognized tribes situated within CCA's jurisdiction.  
10 This relationship includes, among other things, the  
11 responsibility of working with the person or persons  
12 from each tribe who are rightfully elected to a  
13 position of authority within the tribe or who otherwise  
14 occupy a position of authority within an unorganized  
15 tribe. To that end, the BIA has recognized you as a  
16 person of authority within the California Valley Miwok  
17 Tribe. However, the BIA does not yet view your tribe  
18 to be an "organized" Indian tribe...(Let me emphasize  
19 being an organized vis-à-vis unorganized tribe  
20 ordinarily will not impact either your tribe's day-to-  
21 day operations but could impact your tribe's continued  
22 eligibility for certain grants and services from the  
23 United States)." (page 1 of the letter).

24 (Exhibit "4" to Burley Decl.). At that time, the BIA was  
25 willing to continue awarding federal 638 contract funds to  
26 the Tribe, while the BIA and the Tribe, under Burley's  
27 leadership, worked together to draft an IRA constitution  
28 acceptable to the BIA. In this regard, Mr. Risling then  
stated in his letter: "We urge you to continue the work  
that you have begun towards formal organization of the  
California Valley Miwok Tribe." (Page 3 of the Letter).

When read in context, these statements simply refer to  
the Tribe's efforts to adopt an IRA constitution, so as to  
be eligible to receive federal funding. It did not mean

1 that if the Tribe did not do so, or did not succeed in  
2 getting its proposed IRA constitution approved by the BIA,  
3 that it would cease to exist as a federally recognized  
4 tribe, or no longer have an operating tribal government of  
5 its own. Mr. Risling's March 26, 2004 letter to  
6 "Chairperson" Burley refutes that notion.

7 **WHEN AN AMENDED PLEADING COULD BE FILED**

8 Should the Court sustain the demurrer with leave to  
9 amend, Plaintiff can have a Second Amended Complaint filed  
10 and served within ten (10) days of the date of the Court's  
11 ruling on this issue.

12 **CONCLUSION**

13 For the foregoing reasons, Plaintiff submits that leave  
14 to amend should be given to allege the facts set forth  
15 above. These facts are summarized and codified as follows:

16 1. There exists no present internal leadership  
17 dispute challenging Burley's right to be Chairperson of the  
18 Tribe or challenging her right to bring this suit on behalf  
19 of the Tribe.

20 2. On April 29, 2005, the California Valley Miwok  
21 Court ruled against Yakima on his challenge to the Tribe's  
22 recognition of Burley as Chairperson of the Tribe and her  
23 membership in the Tribe, which should be given "full faith  
24 and credit".

25 3. On September 5, 2005, the Tribal Council and  
26 governing body of the Tribe passed a resolution removing  
27 Yakima as a member of the Tribe.  
28

1       4. The presently constituted Tribal Council has  
2 selected Burley to be Chairperson of the Tribe, and has  
3 authorized this suit against the Commission.

4       5. The BIA has historically accepted resolutions  
5 passed by the Tribal Council on matters of importance such  
6 as changing the name of the Tribe.


7       6. On July 16, 2001, the IRS, Office of Indian Tribal  
8 Governments, acknowledged receipt of the name change from  
9 the BIA, and has since that date given notice of federal  
10 tax liability to the Tribe, assisted the Tribe on tax  
11 liabilities, and has annually accepted federal tax payments  
12 from the Tribe. This conduct is evidence of a government-  
13 to-government relationship between the Tribe and the  
14 federal government.

15       7. The Tribe also has a government-to-government  
16 relationship with the State of California in relationship  
17 to State employment taxes.

18       8. The BIA's acceptance of the Tribe's past  
19 Resolutions is additional evidence that the Tribe has a  
20 recognized government.

21       9. The BIA has stated in writing that to be  
22 "unorganized" only affects the Tribe's potential for  
23 receipt of federal benefits, and does not affect the right  
24 of the Tribe to continue to function as an Indian tribe.

25 Dated: January 6, 2009

26   
27 Manuel Corrales, Jr., Esq.  
28 Attorney for Plaintiff  
California Valley Miwok  
Tribe