

FILED
Clerk of the Superior Court

MAR 03 2009

By: R. LINDSEY-COOPER, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CALIFORNIA VALLEY MIWOK TRIBE,

Plaintiff,

v.

CALIFORNIA GAMBLING CONTROL
COMMISSION,

Defendant.

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

**ORDER SUSTAINING DEMURRER
WITHOUT LEAVE TO AMEND**

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

On December 23, 2008, this Court issued its order sustaining the demurrer of Defendant the California Gambling Control Commission ("Commission") to the complaint by Plaintiff California Valley Miwok Tribe (the "Tribe"). The Court did not, however, rule as to whether the demurrer should be sustained with or without leave to amend and sought supplemental briefing on that particular issue. Having now received and reviewed the supplemental papers, the Court rules as follows.

Plaintiff's evidentiary objection to the Commission's Exhibit 1 submitted with the supplemental brief is sustained.

All requests for judicial notice are granted.

The material judicially noticed, as well as the allegations of the complaint, demonstrate an ongoing leadership dispute within the Tribe and also that the federal government does not currently recognize a government for the Tribe. The Court does not find persuasive Plaintiff's argument that

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1 at this time it can plead around these defects. However, the Court believes at some point in time the
2 defects with the complaint may no longer exist and a claim by the Tribe against the Commission
3 possibly could be pursued.

4 In requesting supplemental papers, the Court expressed the concern it had as to whether the
5 Tribe would be prejudiced by an order sustaining the demurrer without leave to amend should the
6 Tribe ultimately have the ability to proceed with its claims. In response to that concern, the
7 Commission conceded that the only impact of such a ruling would be to preclude further litigation
8 of the Tribe's claims to RSTF funds "until such time as the BIA has acted to recognize" the Tribe's
9 government and leader.

10 Based on the allegations of the complaint, the matters judicially noticeable and all pleadings
11 filed in support of and opposition to the demurrer, the Commission's demurrer is sustained without
12 leave to amend. The action as against the Commission is hereby ordered dismissed.

13 IT IS SO ORDERED.

14
15 Dated: 3-3-09



JOAN M. LEWIS
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

Central
330 West Broadway
San Diego, CA 92101

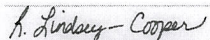
SHORT TITLE: California Valley Miwok Tribe vs. The California Gambling Control Commission

CLERK'S CERTIFICATE OF SERVICE BY MAIL

CASE NUMBER:
37-2008-00075326-CU-CO-CTL

I certify that I am not a party to this cause. I certify that a true copy of the ORDER SUSTAINING DEMURRER WITHOUT LEAVE TO AMEND was mailed following standard court practices in a sealed envelope with postage fully prepaid, addressed as indicated below. The mailing and this certification occurred at San Diego, California, on 03/04/2009.

Clerk of the Court, by:


R. Lindsey-Cooper

, Deputy

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SAN DIEGO, CA 92186-5266

☐ Additional names and address attached.