Case No. D054912
(San Diego County Superior Court Case No. 37-2008-00075326-CU-CO-CTL)

IN THE CALIFORNIA COURT OF APPEAL

FOURTH APPELLATE DISTRICT

DIVISION ONE

CALIFORNIA VALLEY MIWOK TRIBE,

Plaintiff/Appellant,

v.

CALIFORNIA GAMBLING CONTROL COMMISSION,

Defendant/Respondent.

On Appeal from the Superior Court
of the State of California, San Diego County,
Hon. Joan M. Lewis

APPELLANT'S OPENING BRIEF

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TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION ONE	Court of Appeal Case Number: D054912
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APPELLANT/PETITIONER: California Valley Miwok Tribe RESPONDENT/REAL PARTY IN INTEREST: California Gambling Control Com.	
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1. This form is being submitted on behalf of the following party (*name*): Plaintiff California Valley Miwok Tribe

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Date: April 21, 2009

Manuel Corrales, Jr., Esq.
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APPELLANT'S OPENING BRIEF

I.
INTRODUCTION

A. ISSUES TO BE DECIDED

Can the California Gambling Control Commission ("the Commission") condition payment of Revenue Sharing Trust Fund ("RSTF") money to a non-compact Tribe, otherwise eligible to receive those payments, on whether the federal Bureau of Indian Affairs ("BIA") recognizes the tribe's government for purposes of awarding federal contract funds? If the BIA will not award federal contract funds to the tribe until the tribe

organizes its constitution or government under the Indian Reorganization Act ("IRA"), can the Commission use that as a further basis to deny RSTF payments? Does a tribe under these circumstances lose its capacity to sue the Commission for non-payment of RSTF money?

The trial court below dismissed a Complaint filed by the California Valley Miwok Tribe ("the Tribe" or "Plaintiff") against the Commission on the grounds the Tribe lacked the capacity to sue. It reasoned that the BIA had decided not to recognize the Tribe's government, because the Tribe was not "organized" under the IRA. In addition, the trial court concluded that the existence of a leadership challenge by a "disenrolled" member of the Tribe left further doubt of the Tribe's capacity to sue.

The trial court's judgment of dismissal was erroneous. Payment of RSTF money to the Tribe is not conditioned on the BIA recognizing the Tribe's government or leader, or on whether the Tribe's leader is being challenged by a disenrolled tribal member. All that is required under the Tribal-State Gambling Compact ("the Compact") entered into between the State of California and various tribes, is that the non-compact tribe be "federally-recognized" and have its leader appointed under its own governing constitution or "organic documents, customs or traditions". The Tribe meets these basic, qualifying requirements.

The U.S. District Court remanded this case to the State Superior Court in San Diego County on the basis that the Tribe had a claim under CCP Section 1085 to seek and obtain a writ of mandate compelling the Commission to discharge its duties under Gov. Code Section 12012.90 to distribute RSTF money to the Tribe. It refused to dismiss the suit on lack of capacity grounds, but instead remanded to State Court for resolution. The Superior Court, however, failed to follow the instructions on remand, set forth in a well-reasoned decision by the U.S. District Court.

The Commission contends it has placed the Tribe's RSTF money in a separate, interest-bearing account, and erroneously believes the BIA's decisions over federal contract funds dictates its mandatory duties under California law to distribute RSTF

money to non-compact tribes. If the Commission's actions remain undisturbed, the Tribe will never receive its RSTF money.

B. BACKGROUND

1. Initial organization of the Tribe.

In 1994, the Tribe was placed on a list of federally-recognized tribes, under the Federally Recognized Tribe List Act of 1994. CT 143:7-11. In 1998, the Tribe established a tribal council by resolution, which provided the initial authority to begin organizing the Tribe. CT 003:12-13. In 1999, Yakima Dixie, the previous chairperson of the Tribe, resigned and Silvia Burley ("Burley") became the new chairperson. California Valley Miwok Tribe v. U.S.A. (D.D.C. 2006) 424 F.Supp.2d 197, 198 (hereinafter "CVMT I"). On June 25, 1999, the BIA recognized Burley as the Tribe's chairperson. CT 169:28, 170:1. Thereafter, Dixie challenged Burley as the Tribe's chairperson, but the BIA continued to recognize Burley as the rightful leader of the Tribe. CT 170; CVMT I at 198; CT 547-548.

In March of 2000, the Tribe ratified its constitution, then sought to organize under the IRA and requested the BIA conduct a "Secretarial Election" under IRA Section 476(c). CVMT I at 199. However, the BIA failed to act on that request within the required 180 days under IRA 25 U.S.C. Section 476(c)(1)(B). Id. The Tribe then withdrew its request for an IRA constitution, and in September 2001, the Tribe adopted a new version of its constitution and sent it to the BIA for approval. Id. However, in October of 2001, the BIA rejected the Tribe's proposed constitution. Id. at 199-200. As a result, the Tribe adopted its own constitution, outside of the IRA, which is presently based on "custom and tradition". CT 544.

2. The BIA's recognition of the Tribal government under Burley's leadership.

Even though the Tribe was not "organized" under the IRA, it continued to function under its own constitution, and the BIA engaged in various acts of recognition of the Tribe's governing body and tribal Resolutions, under Burley's leadership. CT 558-560. For example, on May 7, 2001, the Tribe, under Burley's leadership, passed a Resolution

authorizing changing the name of the Tribe from "Sheep Ranch Rancheria of Me-Wuk Indians of California" to "California Valley Miwok Tribe". CT 558, 637-638. The BIA accepted this Resolution, and on June 7, 2001, the new name was included in the "Federal Register" listing federally-recognized tribes. CT 558-559, 640. Since then, every year the BIA has placed the Tribe's new name in the "Federal Register", which the Tribe asserts constitutes repeated acts of recognition by the BIA of the Tribe's governing body. CT 494:1-8. In addition, the IRS's "Office of Indian Tribal Governments" has since the "name change" collected federal taxes from the Tribe under Burley's leadership. CT 559, 644.

In November of 2003, the BIA acknowledged the existence of a "government-to-government relationship" with the Tribe through the Tribal Council chaired by Burley. CT 170:10-12, 548. In January 2004, the BIA granted the Tribe "Mature Contract Status" with the federal government, which it has never revoked. CVMT I at 200.

3. The BIA's added requirement that the Tribe include non-members in voting on the Tribe's proposed IRA constitution.

In March of 2004, Congress passed the Native American Technical Corrections Act of 2004, which added a provision under the IRA permitting a tribe to organize itself under its own procedures and governing documents. Id. Immediately thereafter, the BIA notified the Tribe that to be organized under the IRA, and thus receive federal contract funds, the Tribe must "identify" other potential members of the Tribe in the surrounding "community", and have them vote on the Tribe's previously withdrawn, proposed constitution. Id.; CT 170:13-18. The Tribe declined. CT 171, 551.

4. Tribal Court decision rejecting Yakima Dixie's challenge to Burley's leadership and subsequent Tribal Resolution disenrolling Dixie.

On April 29, 2005, the Tribe's "Tribal Court" issued a "Decision and Order" concluding that Yakima Dixie effectively resigned as Chairperson of the Tribe, and that Burley was lawfully appointed as the succeeding Chairperson of the Tribe upon his resignation. CT 504-536. Thereafter, on September 5, 2005, the Tribe passed a

Resolution removing Yakima Dixie from the membership rolls of the Tribe. CT 557, 634-635.

5. The BIA suspends the Tribe's federal contract funds and the Commission responds by withholding RSTF money.

On July 19, 2005, the BIA unilaterally suspended the Tribe's federal contract funds, apparently believing the Tribe was not going to organize itself under the IRA. CT 551, 574-576; CVMT I at 201. In response, on August 4, 2005, the Commission notified the Tribe it would likewise be withholding RSTF payments until the Tribal leadership dispute was resolved and the BIA resumes recognition of the Tribe's government. CT 170:25-28, 171:1, 552, 578-579; CVMT I, at 201. The Commission was, however, basing its decision to distribute RSTF money to the Tribe solely on whether the BIA recognized the Tribe's governing body and awarded the Tribe federal contract funds, despite any so-called "leadership dispute". CT 579 (letter from Commission Chief Counsel to Burley and Dixie stating: "...[I]n situations involving tribal leadership disputes and or tribal organizational problems, we take our lead from the actions and positions of the BIA."). For example, earlier on October 22, 2004, the Commission filed a declaration in support of its opposition to Yakima Dixie's request for a TRO preventing the Commission from distributing RSTF money to the Tribe under Burley's leadership. CT 370. Dixie contended that Burley was not the rightful leader of the Tribe and had no authority to receive the funds on the Tribe's behalf. CT 318-319. However, the Commission asserted that it was still going to distribute RSTF money to the Tribe via Burley, despite the leadership challenge by Dixie, and despite the Tribe not being "organized" under the IRA, because the BIA still recognized Burley as a least a "person of authority" for the Tribe "with whom [the BIA] conducts government-to-government relations". CT 372:15-18 (Declaration of Gary Qualset, Deputy Director of the Licensing and Compliance Division of the Commission). The Superior Court in Sacramento denied Dixie's request for issuance of a TRO, because Dixie was asking the Court to determine whether Burley was the rightful Chairperson for the Tribe, which the Court concluded it had no jurisdiction to resolve. CT 318-319 (stating: "[Dixie's] claims [that he is] the

proper and lawfully acknowledged chief of the Tribe must be resolved either by the Tribe or the appropriate federal agency.").

6. The BIA resumes federal contract funding to the Tribe and the Commission responds by resuming RSTF payments.

On January 29, 2007, the BIA inexplicably decided to resume federal contract funding to the Tribe under Burley's leadership, with the understanding the Tribe and the BIA would work together to organize the Tribe under the IRA, and pending the appeal of CVMT I. CT 553, 584 (BIA letter to Burley dated January 29, 2007 stating: "...[U]ntil the organizational process of the Tribe is completed, I am exercising my discretion to continue to impose a quarterly payment schedule for the Tribe's FY-2007 contract..."). In response, the Commission notified the Tribe on June 4, 2007 that it was resuming RSTF payments to the Tribe via Burley. CT 554, 586-587. It stated it was doing so, because the BIA still considered Burley to be an "authorized representative" of the Tribe with whom the federal government was conducting "government-to-government" relations, "however dissatisfied the [BIA] may be with the lack of progress in organizing the Tribe" under the IRA. CT 586. The Commission explained its "discretion" to disburse RSTF money to the Tribe was dictated by the language of the Compact which "limited" the Commission's authority to only determining whether RSTF money is disbursed to non-compact tribes as defined under the Compact, and the BIA's recognition of Burley as the "person of authority" for the Tribe was enough to satisfy the Commission that RSTF payments should be resumed to the Tribe via Burley. CT 586-587.

7. The BIA reiterates its position to recognize Burley as the "person of authority" for the Tribe.

On June 19, 2007, the BIA reiterated its position to recognize Burley as the "person of authority" for the Tribe, despite the Tribe still not being organized under the IRA. CT 555, 594-596. The letter was directed to Yakima Dixie who had asked the BIA to "make an immediate determination to suspend or withdraw its recognition of Silvia Burley as spokesperson and an "authorized representative of the California Valley

Miwok Tribe ("Tribe") with whom government related business is conducted." CT 594. Dixie had made the request in response to the Commission's June 4, 2007 letter in which it advised it was going to resume RSTF payments to the Tribe via Burley. CT 594. Notably, the BIA letter to Dixie stated the BIA "recognizes Burley as a 'person of authority' in dealing with the Tribe's P.L. 93-638 contract only." CT 594.

8. The Commission again stops RSTF payments to the Tribe.

On June 26, 2007, the Commission notified the Tribe via Burley that, upon review of CVMT I (which had been decided more than a year prior [March 31, 2006]), it was changing its mind and was going to stop RSTF payments to the Tribe. CT 590-591. The Commission was not a party to that case, and the federal court did not rule on the Commission's duties relative to RSTF payments to the Tribe. Since then the Commission has not resumed RSTF payments to the Tribe, despite repeated requests for it to do so. CT 555-557, 597-632. As of July 24, 2008, the Commission has been holding over $3.8 million in RSTF money belonging to the Tribe. CT 472. Based upon the Tribe's right to receive $1.1 million in RSTF money per year, the amount of funds the Commission is withholding belonging to the Tribe, plus accrued interest, should be over $5 million as of December of 2009. CT 469-472.

II.

STATEMENT OF THE CASE

On January 8, 2008, the Tribe filed an action in the San Diego Superior Court for injunctive and declaratory relief against the Commission, requesting an order that the Commission be directed to resume payments of RSTF money the Tribe had been receiving as a non-compact tribe under the 1999 "Tribal-State Gambling Compact" ("the Compact") the State of California entered into with various tribes in California who owned and operated gambling casinos. CT 001-013. On January 22, 2008, the Commission removed the action to the U.S. District Court for the Southern District of California. CT 064-069. Thereafter, the case was transferred to the U.S. District Court, Eastern District in Sacramento.

While venued in Sacramento, the Tribe filed a motion to remand the case back to the San Diego Superior Court, the Commission filed a motion to dismiss based on "lack of capacity to sue", and Yakima Dixie filed a motion to intervene. All three motions were heard and decided on the same date. CT 142-143, 164.

On July 24, 2008, the U.S. District Court, Eastern District, remanded the case back to the San Diego Superior Court, after concluding that no federal jurisdiction exists, and that the Tribe had a potential State law claim for relief by way of a writ of mandate under CCP Section 1085, requiring the Commission to discharge its duties under Gov. Code Section 12012.90 and distribute RSTF money to the Tribe. CT 160-161, 164. The U.S. District Court declined to rule on the Commission's motion to dismiss or Dixie's motion to intervene. CT 164.

Upon remand, the Tribe immediately amended the Complaint to include relief via a writ of mandate under CCP Section 1085. CT 167 ("First Amended Complaint Combined with Petition for Writ of Mandate"). The Commission then renewed its motion to dismiss on lack of capacity grounds by way of a demurrer filed on September 2, 2008. CT 237-261. In the meantime, Dixie sought permission to file a "Brief Amicus Curiae" in support of the Commission's demurrer, which, after inviting submission of letter briefs on the matter, the trial court denied. CT 405.

On December 23, 2008, the Superior Court sustained the Commission's demurrer on the grounds the Tribe "lacks the capacity and/or standing to bring this action". CT 484:4-5. The trial court reached this conclusion because "there clearly is an ongoing leadership dispute within the Tribe" and that the federal government does not recognize the Tribe as "organized". CT 484:1-3. It, however, asked the parties to submit supplemental briefs on whether leave to amend should be granted. CT 484.

On March 3, 2009, after the supplemental briefs were submitted, the Superior Court issued a written ruling sustaining the Commission's demurrer without leave to amend. CT 767-768. It ruled that the Tribe could not plead around the defects in the Complaint that "demonstrate an ongoing leadership dispute within the Tribe and also that

the federal government does not currently recognize a government for the Tribe." CT 767-768.

The Tribe timely appealed on April 8, 2009. CT 794.

III.

STATEMENT OF APPEALABILITY

This appeal is taken from a final judgment that resolves all of the issues between the parties. CCP Section 304.1(a)(1).

IV.

SCOPE OF REVIEW

Matters presenting pure questions of law, not involving the resolution of disputed facts, are subject to the appellate court's independent ("de novo") review, i.e., the appellate court gives no deference to the trial court's ruling or the reasons for its ruling, but instead decides the matter anew. Gihirado v. Antonioli (1994) 8 CA4th 791, 799. Here, this Court may independently determine whether the Tribe has the capacity to sue the Commission against claims that there is an alleged leadership dispute by a former Tribal member, and that the BIA will not recognize the Tribal government under Burley's leadership, and if the Tribe can sue, whether the Tribe's eligibility to receive RSTF money may be conditioned on the Tribe's eligibility to receive federal contract funds awarded by the BIA to tribes "organized" under the IRA.

Also, in reviewing a judgment of dismissal after a demurrer is sustained without leave to amend, the Court of Appeal assumes the truth of all facts properly pleaded by the plaintiff/appellant. Blank v. Kiwan (1989) 39 Cal.3d 311, 318. Likewise, the reviewing court accepts as true all facts that may be implied or inferred from those expressly alleged in the complaint. Marshall v. Gibson, Dunn & Crutcher (1995) 37 CA4th 1397, 1403.

A denial of leave to amend is reviewed under an abuse of discretion standard.

V.

LEGAL DISCUSSION

A. THE TRIAL COURT ERRED AND ABUSED ITS DISCRETION IN DISMISSING THE FIRST AMENDED COMPLAINT AGAINST THE COMMISSION FOR "LACK OF CAPACITY", BECAUSE THE BUREAU OF INDIAN AFFAIRS PURPORTEDLY DOES NOT RECOGNIZE THE TRIBE'S GOVERNMENT OR ITS LEADER, AND BECAUSE OF THE EXISTENCE OF A SO-CALLED "TRIBAL LEADERSHIP DISPUTE"

1. The Tribe's eligibility to receive RSTF money is not conditioned on its eligibility to receive federal contract funds awarded by the BIA to Tribes "organized" under the IRA.

A resolution of whether the Tribe has the capacity or "standing" to sue the Commission for RSTF money is dependent upon whether the Commission is correct in conditioning payment on the Tribe's eligibility to receive federal contract funds awarded by the BIA to tribes "organized" under the IRA. The Commission's reasoning on these two issues is the same.

By history, the Commission erroneously conditioned payment of RSTF money to the Tribe on the BIA's "on again and off again" decisions to award federal contract funds to the Tribe, during the time the BIA was insisting the Tribe "organize" its Tribal government under the IRA. The Tribe asserts there is no relationship between the two, as is evident from the language in the Compact. The Commission's duty to distribute RSTF money to the Tribe is not controlled by the BIA's actions or decisions toward the Tribe. Nor can the Commission withhold payment because a former "disenrolled" Tribal member challenges the present Tribal leader's authority. (See Section 4.3.2.1(b) of the Compact).

The trial court's ruling adopts this same erroneous reasoning as a basis for dismissing the Tribe's claims against the Commission.

The language in the Compact is very clear on a non-compact tribe's "eligibility" to receive RSTF money. All that is required is that: (1) the tribe is federally-recognized (Section 2.21 of the Compact); and (2) the tribe must have an authorized "spokesperson"

under its own government to receive payments for the tribe (Section 2.19 of the Compact). There is no requirement that the non-compact tribe's government be "organized" under the IRA. The Tribe here meets these basic requirements, and, under Section 4.3.2.1(b) of the Compact, the Commission is prohibited from creating other requirements or "conditions" of payment not called for under the Compact. CT 023 (Section 4.3.2.1(b) states in part: "The Commission shall have no discretion with respect to the use or disbursement of the trust funds. Its sole authority shall be to serve as a depository of the trust funds and to disburse them on a quarterly basis to Non-Compact Tribes."). Nowhere in the Compact is there any provision conditioning payment of RSTF money on the non-compact tribe being first qualified to receive federal contract funds from the BIA.

a. What it means to be an "organized" tribe.

The trial court confused the term "organized tribe" with a tribe's right to exist and operate under its own organic documents, customs or traditions. To be organized only means that a tribe has chosen to organize its constitution or government under the IRA, which enables the tribe to receive federal grants and benefits, including federal contract funds under P.L. 93-638. As noted by the Court of Appeals in California Valley Miwok Tribe v. U.S.A. (D.C. Cir. 2008) 515 F.3d 1262 (hereinafter "CVMT II"):

> ...[T]ribes that want federal benefits must adhere to federal requirements. The gateway to some of those benefits is the Indian Reorganization Act of 1934 ("the Act"), which requires tribes to organize their governments by adopting a constitution approved by the Secretary of the Interior ("Secretary").

515 F.3d at 1263.

The BIA required that the Tribe be "organized" under the IRA as a condition of payment of federal contract funds. For example, Dale Risling of the BIA told Burley in a letter dated March 26, 2004, the following:

> "...[T]he BIA's Central California Agency (CCA) has a responsibility to develop and maintain a government-to-government relationship with each of the 54 federally-recognized tribes situated within CCA's jurisdiction. This relationship includes, among other things, the responsibility of working with the person or persons from each tribe who are either rightfully elected to a position of authority

within the tribe or who otherwise occupy a position of authority within an unorganized tribe. To that end, the BIA recognizes you as a person of authority within the California Valley Miwok Tribe. However, the BIA does not yet view your tribe to be an "organized" Indian tribe...(Let me emphasize that being an organized vis-à-vis unorganized tribe ordinarily will not impact either your tribe's day-to-day operations but could impact your tribe's continued eligibility for certain grants and services from the United States)."

CT 569. While the Tribe worked with the BIA to get organized under the IRA, the BIA "exercised its discretion" and awarded federal contract funds to the Tribe with the expectation that the Tribe would be eventually "organized". It wrote Burley on January 29, 2007 as follows:

***

"The Bureau of Indian Affairs' (Bureau) current position is that the Tribe lacks a governing body duly recognized by the Bureau and that you are recognized as a "person of authority" within the Tribe. Furthermore, the Superintendent, Central California Agency and his staff have implemented a plan to assist the Tribe with its organizational efforts. I believe that it is essential for both the Tribe and the Bureau that this organizational process be completed.

Therefore, until the organizational process of the Tribe is completed, I am exercising my discretion to continue to impose a quarterly payment schedule for the Tribe's FY-2007 contract as expressly authorized by P.L. 93-638 (25 U.S.C. Section 450j(b) and Section 450l(b))."

CT 584.

When the BIA insisted that the Tribe must include "potential" members, i.e., persons who are not enrolled members of the Tribe, to participate in voting for a proposed constitution under the IRA, a dispute arose between the Tribe and the BIA. CVMT I, supra. The U.S. Court of Appeals in Washington, D.C., sanctioned the BIA's decision to force upon the Tribe 250 "potential members" who are not enrolled in the Tribe, and have not applied for membership, to participate in organizing the Tribe under the IRA. CVMT II, supra at 1268.

The Tribe's position is fully supported by well-settled Indian law. The Court in CVMT I and the Court in CVMT II both erred in blurring the crucial distinction between

an enrolled tribal member and non-members or "potential members" who have no rights in the Tribe. For example, the Court in CVMT II failed to grasp the legal significance between the rights of an adult tribal member, who is an enrolled member of the Tribe, and individuals who would like to become enrolled tribal members ("greater tribal community"). The Court incorrectly used theses terms interchangeably when the two terms are separate and distinct and thus not interchangeable. The Court erred when it agreed with the BIA's interpretation of the IRA allowing it to reject any proposed constitution which does not "reflect the involvement of the whole tribal community". CVMT II at 1266. In reality, the provisions of the IRA, specifically 25 U.S.C. Sections 476(a)(1) and 478, make no mention of a "greater tribal community". Instead, these provisions require only that a majority of "adult members of the Tribe" ratify a constitution under the IRA.

It is undisputed that there are only five (5) enrolled members of the Tribe. As the gold standard of tribal citizenship, only tribal adult members may participate in tribal government. The BIA may not make membership determinations for the Tribe by forcing the 5 enrolled members to yield membership and voting rights to an estimated 250 unidentified, non-members who have not applied for membership in the Tribe. See Martinez v. Southern Ute Tribe (10th Cir. 1957) 249 F.2d 915, 920-921 (holding that "tribes, not the federal government, retain authority to determine tribal membership").

The Commission's refusal to distribute RSTF money to the Tribe is also based on its erroneous conclusion that the Tribe under Burley's leadership does not "constitute full membership of the Tribe". CT 619, 622. Thus, the Commission's reliance on the decisions in CVMT I and CVMT II is misplaced for at least two reasons. First, those decisions dealt exclusively with the issue of whether the BIA can require a tribe to organize under the IRA as a condition of receipt of federal contract funds. Second, the requirement that a tribe wishing to organize under the IRA include non-members or "potential members" in the "greater tribal community" is erroneous, and nevertheless does not, nor can it, apply to the Commission's duty to disburse State RSTF to non-compact tribes. The Commission's decision runs afoul of the Tribe's right to determine

its own membership, and the Commission cannot insist the Tribe "organize" under the IRA with participation by non-members, before it will distribute RSTF money to the Tribe. The Compact does not provide for that.

Rather than go forward with organizing its government under the IRA, the Tribe has elected to rely upon its own organic constitution to function as a tribe, knowing that the BIA would still challenge its right to receive federal contract funds.

However, the Tribe's decision not to be "organized" under the IRA does not mean that it does not exist as a tribe and qualify for RSTF money. Moreover, the BIA's decision not to recognize the Tribe's government only means the BIA will not recognize the Tribe's existing, non-IRA constitution for purposes of awarding federal contract funds. CT 594 (BIA letter to Dixie dated June 19, 2007 stating: "Currently, the [BIA] recognizes Ms. Burley as a 'person of authority' in dealing with the Tribe's P.L. 93-638 contract only."). It has no effect on the Tribe's right to exist and to function as a federally-recognized tribe.

b. The Tribe as presently constituted is a legitimate tribe having the capacity to sue and receive RSTF payments.

The Commission suggests that the Tribe, with its currently enrolled five (5) members, is not "legitimate" and therefore does not qualify to receive RSTF benefits. It points to language in CVMT II, supra, holding that the 5 member Tribe's insistence on its right to define its own membership is an "anti-majoritarian gambit that does not deserve the stamp of approval of the Secretary" (515 F.3d at 1267), and argues that the federal court has ruled the tribe under Burley's leadership does not legally exist without BIA recognition. CT 251-252, 462-463. This contention is without merit.

First of all, the Court's holding in CVMT II, supra, conflicts with the holdings of at least four other Circuits, including the 9th Circuit, and is contrary to the U.S. Supreme Court's holding in Santa Clara Pueblo v. Martinez (1978) 436 U.S. 49 (holding that a tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community); see Lewis v. Norton (9th Cir. 2005) 424 F.3d 959 ("Following Santa Clara, we have recognized that the tribal self-

government exception is designed to except purely intramural matters such as conditions of tribal membership from the general rule that otherwise applicable statutes apply to Indian tribes."); see also Adams v. Morton (9th Cir. 1978) 581 F.2d 1313, 1320 (holding "unless limited by treaty or statute, a tribe has the power to determine tribal membership"); Apodaca v. Silvas (5th Cir. 1994) 19 F.3d 1015 (per curiam) (observing: "The considerations of Indian sovereignty mentioned in Santa Clara Pueblo control this case. The Pueblo have the right to control their membership roster, and any federal litigation on that subject would disrupt the conduct of intra-tribal affairs, an area that the federal government has left to the tribe itself."); Smith v. Babbitt (8th Cir. 1996) 100 F.3d 556 (stating: "[A] sovereign tribe's ability to determine its own membership lies at the very core of tribal self-determination; indeed, there is perhaps no greater intrusion upon tribal sovereignty than for a federal court to interfere with a sovereign tribe's membership determinations. The great weight of authority holds that tribes have exclusive authority to determine membership issues."); Ordinance 59 Assn. v. U.S. Dept. of the Interior (10th Cir. 1998) 163 F.3d 1150 (stating: "The Association is asking this Court to step in and tell a tribal government what to do in a membership dispute. Whether federal intervention would be right, wrong, or well-intentioned, that intervention is exactly the kind of interference in tribal self-determination prohibited by Santa Clara.").

Second, the BIA's actions in not recognizing the Tribe under Burley's leadership has no effect on the Tribe's legitimate existence under its own constitution, i.e., not being "organized" under the IRA. The BIA's actions cannot be interpreted as terminating the Tribe's right to exist and function under its own government. Santa Clara Pueblo, supra.

Indian tribes, including tribes functioning outside the IRA, are "distinct, independent political communities, retaining their original natural rights" in matters of local self-government. Santa Clara Pueblo supra at 55. "[Tribes] remain a 'separate people with the power of regulating their internal and social relation relationships'" Id. "[Tribes] have power to make their own substantive law in internal matters, [citation omitted], and to enforce that law in their own forums." Id. (citation omitted).

An understanding of the doctrine of tribal sovereignty is crucial in understanding the Tribe's right to function outside the IRA. As explained by the leading scholar on Indian law:

> "Perhaps the most basic principle of all Indian law, supported by a host of decisions...is the principle that **those powers lawfully vested in an Indian tribe are not, in general, delegated powers granted by express acts of Congress, but rather inherent powers of a limited sovereignty which has never been extinguished.** Each tribe begins its relationship with the federal government as a sovereign power, recognized as such in treaty and legislation. (Emphasis in the original).

F. Cohen, HANDBOOK OF FEDERAL INDIAN LAW 122 (1942); see United States v. Winans (1905) 198 U.S. 371. The power to establish a form of government is a basic element of sovereignty. Federal law recognizes that Indian tribes may adopt whatever form of government best suits their own practical, cultural, or religious needs. See Santa Clara Pueblo, supra; see also Pueblo of Santa Rosa v. Fall (1927) 273 U.S. 315. "Tribes are not required to adopt governments patterned after the United States government." Charles Wilkinson, INDIAN TRIBES AS SOVEREIGN GOVERNMENTS, 2d ed., 2004, page 33. As explained further in Wilkinson's treatise:

> "The constitutions adopted by the majority of tribes following passage of the Indian Reorganization Act (IRA) were based on sample governing documents developed by the Bureau of Indian Affairs. It has been held consistently that the exercise of these powers pursuant to IRA constitutions is founded not on delegated authority, but on a tribe's inherent power of sovereignty. (citing 55 INTERIOR DEPARTMENT 14 (1934)). Other tribes have organized their formal governments pursuant to their inherent sovereignty, outside the IRA framework, and the courts have upheld the validity of such governments, whether or not a written constitution has been developed." (citing Kerr-McGee Corp v. Navajo Tribe of Indians (1985) 471 U.S. 195).

Id. at page 33; see also Washington v. Confederated Tribes of the Coville Indian Reservation (1980) 447 U.S. 134, 152-154.

The BIA's decision not to recognize the Tribe's government under Burley's leadership can only mean that the BIA does not recognize the Tribe's present government for purposes of awarding the Tribe federal contract funds. It does not mean there can be

no government-to-government relationship, despite what the BIA may say. For example, the U.S. government deals on a government-to-government basis with other Indian tribes which do not have constitutions approved by the BIA, or who are not "organized" under the IRA, or who do not a constitution at all. These include, for example, the Mooretown Rancheria Tribe, the Oneida Nation, the Cayuga Nation, most of the Pueblos, the Navajo Nation, and for many years the St. Regis Band of Mohawk, the Choctaw Nation of Oklahoma and the Eastern Band of Cherokee Indians. CT 422 (citing website information on "unorganized" tribes); see Kerr-McGee Corporation v. Navajo Tribe of Indians (9th Cir. 1984) 731 F.2d 597, 603-604 (noting that the Navajo Tribe never adopted a constitution and that the choice of government is, itself, an act of self-government), affirmed, 471 U.S. 195, 105 S.Ct. 1900 (1985). Also, the St. Regis Mohawk Tribe had no constitution until 1995, yet it was still a recognized tribe. See Seminole Nation of Oklahoma (D.D.C. 2002) 223 F.Supp.2d 122, 135; see also Williams v. Gover (9th Cir. 2007) 490 F.3d 785, 789-791, fn. 11 (noting that the Mooretown Rancheria Tribe in California is not organized under the IRA, and yet had the power to define its own membership without BIA approval).

In addition, Congress has provided that: "The term 'Indian Tribe' means any Indian or Alaska Native Tribe, band, nation, pueblo, village or community that the Secretary acknowledges to exist as an Indian Tribe." Section 102(2) of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. Section 479a(2).

Upon the Tribe's request, the Superior Court took judicial notice of documents (CT 467) showing that other agencies of the U.S. government have a government-to-government relationship with the Tribe under Burley's leadership, despite the BIA's recent changed position. CT 558-560 (government-to-government relationship with U.S. Treasury, IRS). In any event, the Superior Court incorrectly concluded that the BIA somehow had the power and authority to terminate the Tribe's existence as a legitimate tribe, simply because the Tribe, after several attempts, decided not to organize itself under the IRA. The BIA has no such power.

Congress has prohibited any authority, including the BIA, from terminating an Indian tribe's status as a federally-recognized tribe: "[A] tribe which has been recognized in one of these manners [Act of Congress, Part 83 process, or judgment by United States Court] may not be terminated except by an Act of Congress." Section 103(4) of the Federally Recognized Indian Tribe List Act of 1994; see note following 25 U.S.C Section 479a. The same prohibition applies to the BIA's actions toward the Tribe in refusing to acknowledge its tribal government under Burley's leadership. It cannot prevent the Tribe from existing as a federally-recognized tribe, or prevent Tribal members from receiving other direct federal benefits, or even California State benefits in the form of RSTF distributions. For example, American Indian Graduate Center scholarships using funds from the U.S. Department of Education requires enrollment in a federally recognized tribe (see www.aigcs.org/scholarships/accenture/graduates2006.asp), but if the BIA decides not to recognize the scholarship applicant's tribal government, scholarship funds are still available to the applicant Also, Indian employment preference is available only to enrolled members of federally-recognized tribes (e.g., Quair v. Sisco (E.D.Cal. 2007, May 18, 2007) 1:02-CV-5891-DFL), but if the BIA will not recognize the tribe, the preference will still be accorded. The key is membership in a federally-recognized tribe, not recognition or "acceptance" of the tribal government by the BIA for federal contract funding purposes. To be eligible to live in federally funded Indian housing an applicant must be an enrolled member of a federally-recognized tribe (see Salish and Kootenai Housing Authority, www.skha.org/SKHA%Services.html), but if the BIA decides not to recognize the applicant's tribal government, housing will still be available to the applicant. Also, Indian health care benefits are for members of a federally-recognized tribe (www.ihs.gov/GeneralWeb/HelpCenter/CustomerServices/FAQ), but benefits will still be provided even if the BIA will not recognize the tribal government and leader, unless the source of those benefits comes from P.L. 93-638 contract funding, in which case benefits are available until funds paying for them are exhausted. Members of federally-recognized Indian Tribes are allowed to obtain eagle permits from the U.S. Fish

& Wildlife Service (www.fws.gov/faq/featherfaq.html), but those permits cannot be denied, because the BIA refuses to recognize the tribe for purposes of awarding federal contract funds. Thus, the BIA's refusal to "recognize" the Tribe's government under Burley's leadership should have no effect on the Tribal member's right to receive RSTF payments due to them as members of a non-compact, federally-recognized tribe. The Commission's decision to follow the BIA's lead on this issue is erroneous and a breach of its fiduciary duties toward the Tribe and its members.

On the other hand, the power the BIA wields against the Tribe on federal contract funding is enormous. It's decision not to provide federal contract funds to the Tribe, unless and until the Tribe organizes its government under the IRA, has the effect of terminating the Tribe's day-to-day operations and ultimate existence, especially where the Commission is withholding RSTF money on the same basis. Without these funds, the Tribe cannot provide the benefits summarized above. Circumstantial evidence shows the BIA is coordinating with the Commission to further ensure the Tribe under Burley's leadership receives no funding from any other source, in the hopes that the Tribe "dies on the vine". CT 578-579, 619-624. However, the BIA cannot do indirectly what Congress has prohibited it from doing directly, i.e., terminate the Tribe, and the Commission has no business participating in that effort.

The question here is whether the BIA can decide if Burley has the right to act for the Tribe under the Tribe's present constitution, and whether the Commission can refuse to distribute RSTF money to the Tribe under Burley's leadership solely on the grounds the BIA will not recognize the Tribe's government and leadership. See CT 768:7-9 (trial court noting that "the Commission conceded that the only impact of [the court's ruling] would be to preclude further litigation of the Tribe's claims to RSTF funds 'until such time as the BIA has acted to recognize' the Tribe's government and leader"). The leadership dispute turns on whether the Tribe had the right to disenroll Dixie under its present Tribal government.

These issues are all resolved against the Commission under the authority of Williams v. Gover (9th Cir. 2007) 490 F.3d 785. There, a group of sixty-five (65) Indian

plaintiffs sued the BIA claiming the BIA was involved in helping the Mooretown Rancheria Tribe, an "unorganized" tribe, "squeeze [them] out of full tribal membership." 490 F.3d at 788. The Mooretown Rancheria Tribe, like the Miwok Tribe here, is a small tribe in California which organized its own tribal government and adopted its own constitution outside the IRA. 490 F.3d at 788 ("According to the Constitution, tribal membership consisted of the four people to whom Mooretown Rancheria was distributed upon termination in 1959, their dependents, and lineal descendents, etc"), 790, fn. 11 (noting that "Mooretown Rancheria is not organized under the Indian Reorganization Act..."). Concluding that the BIA had no power to interfere with the Rancheria Tribe's "unorganized" tribal government, the Court in Williams v. Gover, supra, held that the Mooretown Rancheria Tribe, by virtue of its own governing constitution, had the right and the power to pass a resolution deciding who is to be a member of its tribe. 490 F.3d at 790. It stated:

> Santa Clara Pueblo and its predecessors establish that "[a] tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community." For this reason, the BIA could not have defined the membership of Mooretown Rancheria, even if it had tried

490 F.3d at 491.

Finding that the Mooretown Rancheria Tribe alone (and without the assistance from the BIA) "squeezed out" plaintiffs of their membership in the tribe, and did so with full authority under its own constitution, the Court of Appeals affirmed the dismissal of plaintiffs' claims against the BIA. Id. In doing so, it affirmed the tribe's right to decide internal matters without the interference of the BIA.

Williams v. Gover, supra, is further compelling because the Mooretown Rancheria Tribe is also listed on the Commission's Quarterly Report as a "compact tribe" that makes payments into the RSTF for ultimate distribution to non-compact tribes. CT 473, 606 (Tribe No. 32 on the list). Apparently, the Mooretown Rancheria Tribe operates a gambling casino on its property. The Commission accepts payments from the Mooretown Rancheria Tribe, knowing that it is an "unorganized" tribe, yet it denies

distribution to the Miwok Tribe here, an otherwise eligible non-compact tribe, on the grounds the Tribe is "unorganized". The Commission's actions are contradictory and smack of hypocrisy. See CVMT I, supra at 203, fn. 7 (quoting H.L. Mencken as saying: "When someone says it's not about the money, it's about the money.").

For the same reasons, the Tribe here had the right and power under its own constitution to convene a Tribal Court hearing which on April 29, 2005 rejected Yakima Dixie's objections to Burley's Chairpersonship of the Tribe. CT 511-536. It had the further right and power under its constitution to pass a Resolution on September 5, 2005 removing Yakima Dixie from tribal membership. CT 557, 634-635; Williams v. Gover, supra.

The BIA's refusal to recognize the Tribal Court action affirming Burley's leadership (CT 750, last paragraph of letter dated February 11, 2005), and its likely refusal to recognize the Tribe's Resolution removing Dixie as a Tribal member, have no force and effect. Williams v. Gover, supra; Lewis v. Norton, supra. Moreover, the BIA's other actions contradict its position that it does not recognize the Tribe's government under Burley's leadership. For example, on May 1, 2001, the Tribe, under Burley's leadership, passed a Resolution authorizing changing the name of the Tribe from "Sheep Ranch Rancheria of Me-Wuk Indians of California" to "California Valley Miwok Tribe." CT 558, 637-638. The BIA accepted this Resolution and then made the change in the FEDERAL REGISTER. CT 640. It wrote Burley on June 7, 2001 about this as follows:

> "The Sheep Ranch Rancheria (Tribe) is a small tribe that does not have a tribal constitution. The Tribe has a tribal council and conducts tribal business through resolution. A tribal resolution, such as resolution No. R-1-5-07-2001, enacted by the Tribal 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."

CT 640. The BIA never revoked this action for any reason, including its present claim that the Tribe under Burley's leadership purportedly has no authority to pass resolutions. It cannot "pick and choose" which resolutions it wants to honor or which actions by the Tribe it will recognize, including actions taken against Yakima Dixie.

In any event, the action taken by the BIA in effecting a name change for the Tribe trumps the Commission's argument that the Tribe under Burley's leadership has no authority and thus no capacity to sue. It was the same Tribal Council that passed the Resolution effecting a name change which the BIA accepted, which later authorized the filing and prosecution of this lawsuit. CT 546 ("Tribal Authority to Bring This Action"). Indeed, the Commission has itself ratified the Tribe's Resolution effecting the name change. Its own Quarterly Reports list the Tribe "California Valley Miwok Tribe". CT 470, 603 (Tribe No. 12 on list). It also has been depositing RSTF in a separate, interest-bearing accounting pending resolution of this dispute under the same name. CT 249:13-14 ("The Commission, thus, has distributed RSTF money funds from the RSTF into an account in which the Miwok [California Valley Miwok Tribe] is the beneficiary."); 469, 472. Thus, by its own actions, the Commission also recognizes the Tribe's government under Burley's leadership.

In addition, as observed by the Court in CVMT I, supra, in January 2004, the BIA "granted the Tribe 'Mature Contract Status' with the federal government". 424 F.Supp.2d at 200. 25 U.S.C. Section 450b(1), dealing with federal contract funding for Indian Tribes, defines the term "tribal organization" to include "the recognized governing body of any Indian tribe". 25 U.S.C. Section 450b(h) then specifically provides:

> "Mature Contract" means a self-determination contract that has been continuously operated by a tribal organization for three or more years... (Emphasis added).

Thus, by granting the Tribe "mature status" in January 2004, the BIA has by operation of law made the Tribe a "tribal organization" under the federal statute, and thus has legally recognized the Tribe's existing government under Burley's leadership. It has never rescinded that action. Accordingly, as long as the Tribe possesses "mature status", it is still "recognized" by the BIA, despite the BIA's self-serving statements to the contrary.

The trial court, therefore, erred in concluding that the Tribe, under Burley's leadership, had no "capacity" or standing to sue, and that it had no right to claim entitlement to unpaid RSTF money "'until such time as the BIA has acted to recognize' the Tribe's government and leader." CT 768.

2. There is no "internal" leadership dispute that prevents the Tribe from filing suit.

The Tribe demonstrated below that there is no basis for the Commission to claim, or for the trial court to have concluded, that a "leadership dispute" exists within the Tribe. The Commission advances that as an additional reason to deny RSTF money to the Tribe, even though it previously "paid out" RSTF distributions to the Tribe in the midst of Dixie's challenges to Burley's leadership. CT 372:13-18. Likewise, the trial court concluded that Dixie's existing leadership challenge was an additional reason for it to question Burley's right to sue on behalf of the Tribe. CT 767-768.

Based on the authority and reasoning expressed above, there cannot be a leadership dispute "within" the Tribe. If the Court accepts the Tribe's right to pass resolutions and convene a tribal court on Dixie's challenges to Burley's leadership and the Tribe's right to remove him from the membership rolls, then there is no "leadership dispute" within the presently constituted Tribal Council that would prevent the prosecution of this case. Dixie is no longer a member of the Tribe. CT 634-635. He was "disenrolled" by Resolution by the same Tribal Council that passed a Resolution changing the name of the Tribe, which the BIA accepted. His objections are "external". No one on the present Tribal Council disputes Burley's right to bring this action on behalf of the Tribe.

The Tribe proposed to clarify this allegation if allowed to amend. CT 492:15-18 ("To this end, Plaintiff wishes to amend the FAC to allege that since Yakima's disenrollment as a Tribal member on September 5, 2005, there is no longer an internal tribal leadership dispute..."). The trial court refused that request, and further refused to allow the Tribe to amend to allege facts supporting its claim that a government-to-government relationship exists between the Tribe and the federal government. CT 503, 467-468. Such refusal was an abuse of discretion.

B. AS A NON-COMPACT TRIBE, PLAINTIFF IS NOT REQUIRED TO BE "ORGANIZED" UNDER THE IRA IN ORDER TO RECEIVE RSTF MONEY

As stated, nowhere in the Compact is there a requirement that non-compact tribes need to be "organized" under the IRA in order to receive RSTF money. While the BIA may wish to impose that requirement upon tribes who want federal contract funds, the Commission cannot "write" that into the Compact for distribution of state RSTF money.

All that a non-compact tribe needs to show to be eligible for RSTF money is that it is a federally-recognized tribe and that it has an authorized representative capable of receiving those funds for the Tribe. (See Section 2.19, 2.21, and 4.3.2(a)(i) of the Compact; CT 020-022). The Commission concedes the Tribe is a federally-recognized tribe for purposes of receiving RSTF money. CT 367:27-28. And the Tribe has selected Burley as its "authorized representative" to receive the RSTF payments. CT 544. The Commission's additional requirements, including conditioning payment on the BIA's decision to award federal contract funds, are therefore wrong and contrary to the terms of the Compact.

C. THE U.S. DISTRICT COURT'S "ORDER OF REMAND" IS THE "LAW OF THE CASE"

Notably, the U.S. District Court did not dismiss the Tribe's suit for lack of capacity, even though it could have done so. The Commission had filed a motion to dismiss the Tribe's case in federal court, claiming the Burley did not have "standing" to sue on behalf of the Tribe. Without ruling on the Commission's motion, the U.S. District Court instead remanded the case back to the San Diego County Superior Court, with directions that the Tribe be given an opportunity to seek a writ of mandate with respect to the Commission's obligations to distribute RSTF money to the Tribe. CT 788:25-27, 789-790.

The U.S. District Court would not have remanded, had it believed the Tribe could not proceed with its suit for lack of capacity/standing.

D. THE TRIBE HAS A VALID, VIABLE CLAIM FOR WRIT OF MANDATE RELIEF UNDER CCP SECTION 1085

As the U.S. District Court explained, the Tribe can proceed to obtain a writ of mandate under CCP Section 1085(a). The source of the mandamus claim is Gov. Code Section 12012.90(a)(2) which provides that the Commission "shall make quarterly payments from the Indian Gaming Revenue Sharing Trust Fund to each eligible recipient Indian Tribe within 45 days of the end of each fiscal quarter." (Emphasis added).

As alleged, the Commission had made payments to the Tribe under Burley's leadership, but stopped payments because the BIA would no longer recognize the Tribe's government or Burley as its leader for purposes of awarding federal contract funds. The Tribe here seeks to compel the Commission to resume those payments and obtain a judicial declaration that the Commission's reasons for withholding payments are legally wrong. Specifically, the Commission concedes it must distribute RSTF money to the Tribe, bur errs in concluding that the BIA's decisions over federal contract funds dictates the Commission's mandatory duties under California law.

E. THE COMMISSION IS BARRED BY JUDICIAL ESTOPPEL FROM ARGUING THAT A "LEADERSHIP DISPUTE" PREVENTS IT FROM DISTRIBUTING RSTF MONEY TO THE TRIBE UNDER BURLEY'S LEADERSHIP

One of the points urged by the Commission in justifying withholding RSTF money to the Tribe under Burley's leadership is the existence of a so-called "leadership dispute" between Yakima Dixie and Burley over Burley's right to be Chairman of the Tribe. CT 469, 605 (noting in Commission's 2007 and 2008 Quarterly Reports that disbursements to California Valley Miwok Tribe "withheld pending resolution of tribal leadership dispute"); CT 619-620 (letter from Commissioner Dean Shelton explaining funds withheld in part because Tribe has no recognized tribal leadership). Indeed, the Commission argued that point below and thereby convinced the trial court that the existence of the leadership dispute prevents this case from going forward and the Tribe's entitlement to RSTF money under Burley's leadership. CT 663, 482-483, 767-768.

However, as the Tribe argued below, the Commission should be barred from arguing the existence of a leadership dispute prevents it from distributing RSTF money to the Tribe under Burley's leadership, when the Commission previously succeeded in convincing another State Superior Court in Sacramento that the subject leadership dispute should not prevent it from making the distribution payments. CT 365-373, 318-319. Under the circumstances, the doctrine of judicial estoppels prevents the Commission from taking the opposite position in this case with respect to its claim that a leadership dispute prevents it from making RSTF payments to the Tribe under Burley's leadership. Jackson v. County of Los Angeles (1997) 60 CA4th 171, 181; see also Scripps Clinic v. San Diego County Superior Court (2003) 108 CA4th 917, 943.

VI.

CONCLUSION

For the foregoing reasons, the Superior Court of San Diego County erred and abused its discretion in sustaining without leave to amend defendant Commission's demurrer to the First Amended Complaint and thereby dismissing the Tribe's case. The Superior Court's ruling that the Tribe lacks the capacity to bring this action because the BIA does not recognize the Tribe's government and leader, and because of a purported "internal" leadership dispute, is erroneous.

The judgment of dismissal should be reversed.

Dated: August 22, 2009.

Respectfully submitted,

Manuel Corrales, Jr., Esq.
Attorney for Plaintiff/Appellant
California Valley Miwok Tribe

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 14(c)(1))

The text of this Appellant's Opening Brief consists of 8,833 words as counted by Microsoft Office Word processing program used to generate this appeal.

I certify that the above is true and correct.

Dated: August 22, 2009.

Manuel Corrales, Jr., Esq.
Attorney for Plaintiff/Appellant
California Valley Miwok Tribe

POS-030

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address):*	*FOR COURT USE ONLY*
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 W. Broadway MAILING ADDRESS: 330 W. Broadway CITY AND ZIP CODE: San Diego, California BRANCH NAME: Central District	
PETITIONER/PLAINTIFF: California Valley Miwok Tribe RESPONDENT/DEFENDANT: California Gambling Control Commission	
PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL	CASE NUMBER: 37-2008-00075326-CU-CO-CTL

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Date: August 22, 2009

Manuel Corrales, Jr., Esq.
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SHORT TITLE: California Valley Miwok Tribe v. California Gambling Control Commission	CASE NUMBER: 37-2008-00075326-CU-CO-CTL

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Name of Person Served	Address *(number, street, city, and zip code)*
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