

1 EDMUND G. BROWN JR.
Attorney General of California
2 SARA J. DRAKE
Senior Assistant Attorney General
3 RANDALL A. PINAL
Deputy Attorney General
4 SYLVIA A. CATES
Deputy Attorney General
5 State Bar No. 111408
1300 I Street, Suite 125
6 P.O. Box 944255
Sacramento, CA 94244-2550
7 Telephone: (916) 327-5484
Fax: (916) 327-2319
8 E-mail: Sylvia.Cates@doj.ca.gov
Attorneys for Defendant
9 *California Gambling Control Commission*

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF SAN DIEGO

12 CENTRAL BRANCH

13
14 **CALIFORNIA VALLEY MIWOK TRIBE,**
15 Plaintiff,
16
17 **v.**
18 **THE CALIFORNIA GAMBLING**
19 **CONTROL COMMISSION; and DOES 1**
20 **THROUGH 50, Inclusive,**
21 Defendants.

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

**ANSWER AND RETURN OF
CALIFORNIA GAMBLING CONTROL
COMMISSION TO VERIFIED FIRST
AMENDED COMPLAINT COMBINED
WITH PETITION FOR WRIT OF
MANDATE**

Dept: C-62
Judge: Hon. Ronald L. Styn
Trial Date: May 13, 2011

22 COMES NOW defendant California Gambling Control Commission (Commission), a State
23 agency, and for its answer and return to plaintiff California Valley Miwok Tribe's verified First
24 Amended Complaint Combined with Petition for Writ of Mandate dated July 28, 2008, and filed
25 on August 20, 2008 (FAC), defendant hereby admits, denies, and affirmatively alleges as follows:

26 1. In answer to paragraph one of the FAC, the Commission admits that an entity named
27 the California Valley Miwok Tribe is included on a list of Indian entities published in the Federal
28

1 Register, recognized as eligible to receive services from the Bureau of Indian Affairs. Except as
2 expressly admitted herein, the Commission denies each and every allegation set forth in
3 paragraph one of the FAC.

4 2. In answer to paragraph two of the FAC, the Commission admits that it is the trustee
5 of the Revenue Sharing Trust Fund (RSTF). Further answering paragraph two, the Commission
6 avers that Senate Bill No. 8 (1997-1998 Reg. Sess.) and the Gambling Control Act (Bus. & Prof.
7 Code, § 19800 et seq.) speak for themselves and require no admission or denial with respect to
8 the allegation of their meaning set forth in paragraph two. The Commission lacks information or
9 belief sufficient to answer the remaining allegations of paragraph two and on that basis denies
10 each and every said allegation. Except as expressly admitted herein, the Commission denies each
11 and every allegation set forth in paragraph two of the FAC.

12 3. In answer to paragraph three of the FAC, the Commission lacks sufficient
13 information or belief to either admit or deny the allegations contained therein and, on that basis,
14 denies each and every allegation set forth in paragraph three of the FAC.

15 4. In answer to paragraph four of the FAC, the Commission avers that Business and
16 Professions Code section 19807 speaks for itself and requires no admission or denial with respect
17 to the allegation of its meaning set forth in paragraph four. Except as expressly admitted herein,
18 the Commission denies each and every allegation set forth in paragraph four of the FAC.

19 5. In answer to paragraph five of the FAC, the Commission admits that in 1999 and
20 2000, the State of California (State) entered into separate bilateral Tribal-State Gaming Compacts
21 with various federally recognized Indian tribes in California (collectively referred to herein as the
22 1999 Compact). Further answering paragraph five, the Commission avers that the 1999 Compact
23 speaks for itself and requires no admission or denial with respect to the allegation of its meaning
24 set forth in paragraph five. Except as expressly admitted herein, the Commission denies each and
25 every allegation set forth in paragraph five of the FAC.

26 6. In answer to paragraph six of the FAC, the Commission admits that it is the trustee of
27 the RSTF and it makes distributions from the RSTF on a quarterly basis to “Non-Compact
28 Tribes” as such are defined in the 1999 Compact. Further answering paragraph six, the

1 Commission avers that the 1999 Compact and Government Code section 12012.90, subdivision
2 (d) speak for themselves and require no admission or denial with respect to the allegation of their
3 meaning set forth in paragraph six. The Commission lacks information or belief sufficient to
4 answer the remaining allegations of paragraph six and on that basis denies each and every said
5 allegation. Except as expressly admitted herein, the Commission denies each and every
6 allegation set forth in paragraph six of the FAC.

7 7. In answer to paragraph seven of the FAC, the Commission avers that Government
8 Code sections 12012.75 and 12012.90, and section 4.3.2.1(a) of the 1999 Compact speak for
9 themselves and require no admission or denial with respect to the allegation of their meaning set
10 forth in paragraph seven. Except as expressly averred herein, the Commission denies each and
11 every allegation set forth in paragraph seven of the FAC.

12 8. In answer to paragraph eight of the FAC, the Commission admits that Congress
13 enacted the Federally Recognized Indian Tribe List Act of 1994 (Pub.L. No. 103-454 (Nov. 2,
14 1994) 108 Stat. 4791 (List Act) in 1994). Further answering paragraph eight, the Commission
15 avers that the Federally Recognized Indian Tribe List Act of 1994 speaks for itself and requires
16 no admission or denial with respect to the allegation of its meaning set forth in paragraph eight.
17 The Commission lacks information or belief sufficient to answer the remaining allegations of
18 paragraph eight of the FAC and on that basis denies each and every said allegation. Except as
19 expressly admitted herein, the Commission denies each and every allegation set forth in
20 paragraph eight of the FAC.

21 9. In answer to paragraph nine of the FAC, the Commission lacks sufficient information
22 or belief to either admit or deny the allegations contained therein and, on that basis, denies each
23 and every allegation set forth in paragraph nine of the FAC.

24 10. In answer to paragraph ten of the FAC, the Commission lacks sufficient information
25 or belief to either admit or deny the allegations contained therein and, on that basis, denies each
26 and every allegation set forth in paragraph ten of the FAC.

1 11. In answer to paragraph eleven of the FAC, the Commission lacks sufficient
2 information or belief to either admit or deny the allegations contained therein and, on that basis,
3 denies each and every allegation set forth in paragraph eleven of the FAC.

4 12. In answer to paragraph twelve of the FAC, the Commission avers that the Bureau of
5 Indian Affairs' letter referenced in paragraph twelve speaks for itself and requires no admission
6 or denial with respect to the allegation of its meaning set forth in paragraph twelve of the FAC.
7 Further answering paragraph twelve, the Commission lacks information or belief sufficient to
8 answer the remaining allegations of paragraph twelve and on that basis denies each and every said
9 allegation. Except as expressly averred herein, the Commission denies each and every allegation
10 set forth in paragraph twelve of the FAC.

11 13. In answer to paragraph thirteen of the FAC, the Commission lacks sufficient
12 information or belief to either admit or deny the allegations contained therein and, on that basis,
13 denies each and every allegation set forth in paragraph thirteen of the FAC.

14 14. In answer to paragraph fourteen of the FAC, the Commission lacks sufficient
15 information or belief to either admit or deny the allegations contained therein and, on that basis,
16 denies each and every allegation set forth in paragraph fourteen of the FAC.

17 15. In answer to paragraph fifteen of the FAC, the Commission admits that on August 4,
18 2005, the Commission's Chief Counsel sent a letter regarding RSTF distributions to Ms. Silvia
19 Burley and to Mr. Yakima Dixie. Further answering paragraph fifteen, the Commission avers
20 that the Commission's letter to Ms. Burley and Mr. Dixie speaks for itself and requires no
21 admission or denial with respect to the allegation of its meaning set forth in paragraph fifteen.
22 The Commission lacks information or belief sufficient to answer the remaining allegations of
23 paragraph fifteen and on that basis denies each and every said allegation. Except as expressly
24 admitted herein, the Commission denies each and every allegation set forth in paragraph fifteen of
25 the FAC.

26 16. In answer to paragraph sixteen of the FAC, the Commission denies each and every
27 allegation set forth in paragraph sixteen of the FAC.
28

1 17. In answer to paragraph seventeen of the FAC, the Commission avers that the
2 decisions of the United States District Court for the District of Columbia in *California Valley*
3 *Miwok Tribe v. United States* (D.D.C., No. 1:05CV00739), and the pleadings filed therein, speak
4 for themselves and require no admission or denial with respect to the allegation of their meaning
5 set forth in paragraph seventeen. Except as expressly averred herein, the Commission denies
6 each and every allegation set forth in paragraph seventeen of the FAC.

7 18. In answer to paragraph eighteen of the FAC, the Commission avers that Government
8 Code sections 12012.75 and 12012.90, subdivision (e), and section 4.3.2.1(b) of the 1999
9 Compact speak for themselves and require no admission or denial with respect to the allegation of
10 their meaning set forth in paragraph eighteen of the FAC. Except as expressly averred herein, the
11 Commission denies each and every allegation set forth in paragraph eighteen of the FAC.

12 19. In answer to paragraph nineteen of the FAC, the Commission incorporates by this
13 reference its responses to paragraphs one through eighteen, above, as though set forth here in full.

14 20. In answer to paragraph twenty of the FAC, the Commission avers that Government
15 Code sections 12012.75 and 12012.90, subdivision (e), speak for themselves and require no
16 admission or denial with respect to the allegation of their meaning set forth in paragraph twenty.
17 Except as expressly averred herein, the Commission denies each and every allegation set forth in
18 paragraph twenty of the FAC.

19 21. In answer to paragraph twenty-one of the FAC, the Commission avers that section
20 4.3.2.1 (a) of the 1999 Compact and Government Code section 12012.90, subdivision (d), speak
21 for themselves and require no admission or denial with respect to the allegation of their meaning
22 set forth in paragraph twenty-one of the FAC. Except as expressly averred herein, the
23 Commission denies each and every allegation set forth in paragraph twenty-one of the FAC.

24 22. In answer to paragraph twenty-two of the FAC, the Commission avers that section
25 4.3.2.1 (b) of the 1999 Compact and Government Code section 12012.90, subdivision (e), speak
26 for themselves and require no admission or denial with respect to the allegation of their meaning
27 set forth in paragraph twenty-two of the FAC. Except as expressly averred herein, the
28 Commission denies each and every allegation set forth in paragraph twenty-two of the FAC.

1 23. In answer to paragraph twenty-three of the FAC, the Commission admits that it has
2 withheld certain RSTF payments to an entity named the California Valley Miwok Tribe. Further
3 answering paragraph twenty-three of the FAC, the Commission avers that sections 2.12 and
4 4.3.2.1(b) of the 1999 Compact speak for themselves and require no admission or denial with
5 respect to the allegation of their meaning set forth in paragraph twenty-three of the FAC. Except
6 as expressly admitted herein, the Commission denies each and every allegation set forth in
7 paragraph twenty-three of the FAC.

8 24. In answer to paragraph twenty-four of the FAC, the Commission avers that sections
9 2.19 and 2.21 of the 1999 Compact speak for themselves and require no admission or denial with
10 respect to the allegation of their meaning set forth in paragraph twenty-four of the FAC. The
11 Commission lacks information or belief sufficient to answer the remaining allegations of
12 paragraph twenty-four and on that basis denies each and every said allegation. Except as
13 expressly averred herein, the Commission denies each and every allegation set forth in paragraph
14 twenty-four of the FAC.

15 25. In answer to paragraph twenty-five of the FAC, the Commission admits that it was
16 not a party to *California Valley Miwok Tribe v. United States* (D.D.C. 2006) 424 F.Supp.2d 197.
17 Except as expressly admitted herein, the Commission denies each and every allegation set forth in
18 paragraph twenty-five of the FAC.

19 26. In answer to paragraph twenty-six of the FAC, the Commission denies each and every
20 allegation set forth in paragraph twenty-six of the FAC.

21 27. Answering paragraph twenty-seven of the FAC, the Commission avers that Silvia
22 Burley, purportedly acting on behalf of an entity named the California Valley Miwok Tribe, has
23 requested the distribution of certain monies to said entity by the Commission and that the
24 Commission has refused to make such distributions. Except as expressly averred herein, the
25 Commission denies each and every allegation set forth in paragraph twenty-seven of the FAC

26 28. In answer to paragraph twenty-eight of the FAC, the Commission denies each and
27 every allegation set forth in paragraph twenty-eight of the FAC.
28

1 29. In answer to paragraph twenty-nine of the FAC, the Commission avers that section
2 4.3.2.1(b) of the 1999 Compact and Code of Civil Procedure section 526, subdivision (a)(7) speak
3 for themselves and require no admission or denial with respect to the allegation of their meaning
4 set forth in paragraph twenty-nine of the FAC. Except as expressly averred herein, the
5 Commission denies each and every allegation set forth in paragraph twenty-nine of the FAC.

6 30. In answer to paragraph thirty of the FAC, the Commission avers that section 2.19 of
7 the 1999 Compact speaks for itself and requires no admission or denial with respect to the
8 allegation of their meaning set forth in paragraph thirty of the FAC. Except as expressly averred
9 herein, the Commission denies each and every allegation set forth in paragraph thirty of the FAC.

10 31. In answer to paragraph thirty-one of the FAC, the Commission incorporates by this
11 reference its responses to paragraphs one through thirty, above, as though set forth here in full.

12 32. In answer to paragraph thirty-two of the FAC, the Commission admits that an actual
13 controversy has arisen and now exists between the plaintiff in this action and the Commission
14 concerning the distribution of monies to an entity named the California Valley Miwok Tribe from
15 the RSTF. Further answering paragraph thirty-two of the FAC, the Commission avers that
16 Government Code sections 12012.75 and 12012.90, subdivisions (d) and (e), Code of Civil
17 Procedure section 1060, and section 2.19 of the 1999 Compact speak for themselves and require
18 no admission or denial with respect to the allegation of their meaning set forth in paragraph
19 thirty-two of the FAC. The Commission lacks information or belief sufficient to answer the
20 remaining allegations of paragraph thirty-two and on that basis denies each and every said
21 allegation. Except as expressly admitted herein, the Commission denies each and every
22 allegation set forth in paragraph thirty-two of the FAC.

23 33. In answer to paragraph thirty-three of the FAC, the Commission avers that section
24 4.3.2.1(a)(1) of the 1999 Compact speaks for itself and requires no admission or denial with
25 respect to the allegation of its meaning set forth in paragraph thirty-three of the FAC. The
26 Commission lacks information or belief sufficient to answer the remaining allegations of
27 paragraph thirty-three and on that basis denies each and every said allegation. Except as
28

1 expressly admitted herein, the Commission denies each and every allegation set forth in
2 paragraph thirty-three of the FAC.

3 34. In answer to paragraph thirty-four of the FAC, the Commission admits that the 1999
4 Compact is a written compact between sovereign entities. Further answering paragraph thirty-
5 four of the FAC, the Commission avers that Code of Civil Procedure section 1060, sections 2.19,
6 2.21 and 4.3.2.1 of the 1999 Compact, and the decisions and pleadings in *California Valley*
7 *Miwok Tribe v. United States* (D.D.C., No. 1:05CV00739), speak for themselves and require no
8 admission or denial with respect to the allegations of their meaning set forth in paragraph thirty-
9 four of the FAC. The Commission lacks information or belief sufficient to answer the remaining
10 allegations of paragraph thirty-four and on that basis denies each and every said allegation.
11 Except as expressly admitted herein, the Commission denies each and every allegation set forth in
12 paragraph thirty-four of the FAC.

13 35. In answer to paragraph thirty-five of the FAC, the Commission denies each and every
14 allegation set forth in paragraph thirty-five of the FAC.

15 36. In answer to paragraph thirty-six of the FAC, the Commission denies each and every
16 allegation set forth in paragraph thirty-six of the FAC.

17 37. In answer to paragraph thirty-seven of the FAC, the Commission incorporates by this
18 reference its responses to paragraphs one through thirty-six, above, as though set forth here in
19 full.

20 38. In answer to paragraph thirty-eight of the FAC, the Commission lacks sufficient
21 information or belief to either admit or deny said allegations, and, on that basis, denies each and
22 every allegation set forth in paragraph thirty-eight of the FAC.

23 39. In answer to paragraph thirty-nine of the FAC, the Commission lacks sufficient
24 information or belief to either admit or deny said allegations, and, on that basis, denies each and
25 every allegation set forth in paragraph thirty-nine of the FAC.

26 40. In answer to paragraph forty of the FAC, the Commission lacks sufficient information
27 or belief to either admit or deny said allegations, and, on that basis, denies each and every
28 allegation set forth in paragraph forty of the FAC.

1 41. In answer to paragraph forty-one of the FAC, the Commission lacks sufficient
2 information or belief to either admit or deny said allegations, and, on that basis, denies each and
3 every allegation set forth in paragraph forty-one of the FAC.

4 42. In answer to paragraph forty-two of the FAC, the Commission incorporates by this
5 reference its responses to paragraphs one through forty-one, above, as though set forth here in
6 full.

7 43. In answer to paragraph forty-three of the FAC, the Commission avers that
8 Government Code sections 12012.75 and 12012.90, subdivision (e)(2), and the 1999 Compact
9 speak for themselves and require no admission or denial with respect to the allegation of their
10 meaning set forth in paragraph forty-three of the FAC. Except as expressly admitted herein, the
11 Commission denies each and every allegation set forth in paragraph forty-three of the FAC.

12 44. In answer to paragraph forty-four of the FAC, the Commission denies each and every
13 allegation set forth in paragraph forty-four of the FAC.

14 45. In answer to paragraph forty-five of the FAC, the Commission denies each and every
15 allegation set forth in paragraph forty-five of the FAC.

16 46. In answer to paragraph forty-six of the FAC, the Commission denies each and every
17 allegation set forth in paragraph forty-six of the FAC.

18 **AFFIRMATIVE DEFENSES**

19 **I. Plea In Abatement**

20 As a first separate and complete affirmative defense to the FAC and to each cause of action
21 thereof, the Commission avers that the claims made in the FAC are barred and should be
22 dismissed because plaintiff has failed to join parties necessary to a full and complete adjudication
23 of the rights and duties of the parties herein.

24 **II. No Jurisdiction**

25 As a second separate and complete affirmative defense to the FAC and to each cause of
26 action thereof, the Commission avers that the claims made in the FAC are barred and should be
27 dismissed because the Court lacks jurisdiction to adjudicate whether this plaintiff is a federally
28 recognized Indian tribe, to adjudicate the identity of the members of the entity known as the

1 California Valley Miwok Tribe, or to adjudicate the identity of the person(s) authorized to act on
2 behalf of, or to receive and administer funds on behalf of the entity known as the California
3 Valley Miwok Tribe.

4 **III. Unclean Hands**

5 As a third separate and complete affirmative defense to the FAC and to each cause of action
6 thereof, the Commission avers that the claims made in the FAC are barred and should be
7 dismissed under the doctrine of unclean hands because plaintiff has acted inequitably in and about
8 the matters alleged in the FAC.

9 **IV. Res Judicata**

10 As a fourth separate and complete affirmative defense to the FAC and to each cause of
11 action thereof, the Commission avers that the claims made in the FAC are barred by res judicata.

12 **V. Collateral Estoppel**

13 As a fifth separate and complete affirmative defense to the FAC and to each cause of action
14 thereof, the Commission avers that the claims made in the FAC are barred by collateral estoppel.

15 **VI. Lack of Standing**

16 As a sixth separate and complete affirmative defense to the FAC and to each cause of action
17 thereof, the Commission avers that the FAC and each cause of action thereof is barred and should
18 be dismissed because plaintiff, as constituted in this action, lacks standing to bring any claim on
19 behalf of the entity known as the California Valley Miwok Tribe that appears on a list of Indian
20 entities, published in the Federal Register, recognized as eligible to receive services from the
21 Bureau of Indian Affairs.

22 Because the FAC is couched in conclusory terms, the Commission cannot anticipate fully
23 all affirmative defenses that may be applicable to this matter. Accordingly, the Commission
24 reserves the right to assert additional affirmative defenses, if and to the extent such affirmative
25 defenses are applicable and may hereafter be rendered discernable.

26 WHEREFORE, the Commission prays for relief as follows:

- 27 1. That the California Valley Miwok Tribe take nothing by its pursuit of the FAC;
- 28 2. That the FAC be dismissed with prejudice;

1 3. That this Court enter judgment on the FAC in favor of the Commission and against
2 the California Valley Miwok Tribe;

3 4. That the Commission be awarded its costs of suit herein; and

4 5. That this Court grant such other and further relief as it may deem appropriate.
5

6 Dated: October 14, 2010

Respectfully Submitted,

7 EDMUND G. BROWN JR.
8 Attorney General of California
9 SARA J. DRAKE
10 Senior Assistant Attorney General
11 RANDALL A. PINAL
12 Deputy Attorney General



12 SYLVIA A. CATES
13 Deputy Attorney General
14 *Attorneys for Defendant*
15 *California Gambling Control Commission*

15 SA2008300115
16 31120197.doc
17
18
19
20
21
22
23
24
25
26
27
28