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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**
10

11 **CALIFORNIA VALLEY MIWOK**

12 **TRIBE,**

13 Plaintiff,

14 v.

15 **CALIFORNIA GAMBLING CONTROL**
16 **COMMISSION, *et al.*,**

17 Defendants.

18 **CALIFORNIA VALLEY MIWOK**
19 **TRIBE, CALIFORNIA (a.k.a. SHEEP**
20 **RANCH RANCHERIA OF ME-WUK**
21 **INDIANS, CALIFORNIA), YAKIMA K.**
22 **DIXIE, VELMA WHITEBEAR,**
23 **ANTONIA LOPEZ, ANTONE**
24 **AZEVEDO, MICHAEL MENDIBLES,**
25 **AND EVELYN WILSON,**

26 Applicant Intervenors.
27

No: 37-2008-00075326-CU-CO-CTL

**[PROPOSED] COMPLAINT IN
INTERVENTION**

Law and Motion

Hearing Date: December 27, 2010
Hearing Time: 8:30 a.m.
Hearing Place: Department -62

First Amended Complaint filed August 20.
2008

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

Code of Civil Procedure §387

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2 By leave of Court, the Intervenor, California Valley Miwok Tribe, California (a.k.a.
3 Sheep Ranch Rancheria of Me-Wuk Indians, California), Yakima K. Dixie, Velma WhiteBear,
4 Antonia Lopez, Antone Azevedo, Michael Mendibles and Evelyn Wilson (collectively, the
5 “Intervenor”), submit this COMPLAINT IN INTERVENTION and join with defendants in
6 opposing plaintiff’s claims.
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8 On August 20, 2008, plaintiff, Silvia Burley, purportedly on behalf of the California
9 Valley Miwok Tribe, filed a First Amended Complaint Combined with Petition for Writ of
10 Mandate (“Complaint”) in the above-entitled action against defendants, California Gambling
11 Control Commission and DOES 1 through 50, seeking injunctive, declaratory relief and a Writ
12 of Mandate regarding distribution of certain funds from the Revenue Sharing Trust Fund
13 (“RSTF”) and the Special Distribution Fund (collectively with RSTF, the “Funds”) to Silvia
14 Burley and alleging intentional interference with prospective economic advantage against
15 certain unnamed DOES 21 through 50. Defendant California Gambling Control Commission
16 (“CGCC”) has appeared in this action and placed plaintiff’s claims at issue by filing an answer
17 denying plaintiff’s allegations and raising affirmative defenses.
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20 INTRODUCTION

21 1. Intervenor Yakima K. Dixie, is, and at all times relevant to this action was,
22 domiciled in Sheep Ranch, California. Mr. Dixie is a member, the Hereditary Chief, the tribal
23 chairman and the tribal authority of the California Valley Miwok Tribe, California, formerly
24 known as the Sheep Ranch Rancheria of Me-Wuk Indians of California (the “Tribe”). Mr.
25 Dixie inherited the position of Hereditary Chief and tribal authority of the Tribe from his
26 mother, Mabel Louise Hodge Dixie. The action is of particular interest to Mr. Dixie because of
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1 his pecuniary interest in the Funds and his fiduciary duty as the Hereditary Chief, tribal
2 chairman and tribal authority to preserve the Funds for the legitimate members of the Tribe.

3 2. Intervenor Velma WhiteBear, Antonia Lopez, Antone Azevedo, Michael
4 Mendibles, and Evelyn Wilson, (with Yakima K. Dixie the “Member Intervenor”) are lineal
5 descendants of historic members of the Tribe. Mr. Dixie and each of the Member Intervenor is
6 a lineal descendant of a historical member or members of the Tribe listed in the 1929 Indian
7 Census Roll of Calaveras County.
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9 3. The Member Intervenor recognize Mr. Dixie as the Hereditary Chief and the
10 tribal authority of the Tribe.
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12 4. Neither Mr. Dixie nor the Member Intervenor recognize Ms. Burley as any
13 authority for the Tribe. Ms. Burley alleges that she is a member of the Tribe by virtue of Mr.
14 Dixie allowing Ms. Burley, her two daughters and her granddaughter into the Tribe in 1999 to
15 obtain medical and education benefits. Soon thereafter, Ms. Burley alleged that Mr. Dixie
16 resigned as tribal chairperson and that she was elected to the position. The resignation is a
17 forgery. Mr. Dixie remains the Hereditary Chief, tribal authority, and tribal chairperson of the
18 Tribe.
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20 5. As shown by the facts alleged below, the Intervenor have the right to intervene
21 in this action under the mandatory intervention provisions of California Code of Civil Procedure
22 §387(b) because the Intervenor claim pecuniary and tribal interests in the Funds, the subject of
23 this action, and the adjudication of the parties’ claims in the Intervenor’s absence will impair or
24 impede the Intervenor’s ability to protect those interests. The Intervenor’s interests are not
25 represented by the current parties to this action.
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1 6. CGCC holds the Funds in trust for the Tribe pending its “organization” as
2 contemplated by the Bureau of Indian Affairs (the “BIA”) so that a properly constituted
3 governing body in accord with Federal Indian law and policy may accept the Funds. Therefore,
4 the rightful members of the Tribe are the beneficiaries of the Funds and the Funds may be
5 distributed only after the Tribe is “organized” so the Funds will only be paid to the legitimate
6 Tribe members. Plaintiff, Silvia Burley, and her purported tribal council, at best, represent only
7 a tiny fraction of the Tribe and consist almost exclusively of her immediate family. The BIA
8 currently does not recognize anyone as the authority for the Tribe.
9

10 7. As members of the Tribe, the Intervenor all have an interest in the Funds as the
11 intended beneficiaries of the Funds. As discussed above, as the Hereditary Chief, traditional
12 authority and the tribal chairperson of the Tribe, Mr. Dixie also has an interest and fiduciary
13 duty to protect the Funds for his tribe members.
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15 8. If this matter is adjudicated without the Intervenor and the Funds are distributed
16 to Ms. Burley, the Intervenor’s ability to protect their interests will be lost. Ms. Burley brought
17 this action to have the Funds paid to her as the alleged spokesperson or leader of the Tribe.
18 From 1999 through 2005, Ms. Burley collected substantial sums from the CGCC that were
19 meant for the Tribe. On information and belief, no legitimate member of the Tribe ever
20 received any of that money and no program was ever established for their benefit. On
21 information and belief, the only beneficiaries of the substantial gaming revenue funds and
22 federal grant monies meant for the Tribe have been Ms. Burley and her immediate family.
23 Should the Funds be distributed to Ms. Burley, the Intervenor will be unable to protect the
24 Funds for themselves and the other members of the Tribe.
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1 9. The Intervenor's interests are not adequately represented by the existing parties
2 because should the Court find for the plaintiff, the CGCC's interest in holding the Funds in trust
3 ends while the Intervenor would have an additional interest in to *whom* the Funds are
4 distributed. Furthermore, none of the existing parties to the litigation could represent the
5 Intervenor's interests. Plaintiff's interest is contrary to Intervenor's interest. The CGCC has
6 maintained that it is not in a position to defend the Intervenor's interests as it has argued that the
7 Tribe and, presumably its legitimate members, may not bring the current action.
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9 10. As shown by the facts alleged below, the Intervenor may also intervene under
10 the permissive intervention provisions of California Code of Civil Procedure §387(a) because
11 the Intervenor have direct and immediate interests in the Funds. Adjudication of the
12 Intervenor's interests will not unduly expand the trial of this action and the strong justifications
13 for intervention outweigh any opposition by the existing parties.
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15 11. The Intervenor have direct pecuniary interests in the Funds as the intended
16 beneficiaries thereof and direct tribal interests in preserving the Funds for the benefit of the
17 legitimate members of the Tribe. The interests are immediate because if the Funds are paid to
18 Ms. Burley, those Funds will be lost to them, as discussed above.
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20 12. Allowing the Intervenor to intervene would not expand the trial of this action as
21 the Intervenor seek to maintain the *status quo* by preserving the Funds under control of the
22 CGCC and, in fact, intervention would serve to clarify the facts for the Court. The significant
23 pecuniary and tribal interests of the Intervenor and the interest of ensuring that the Funds are
24 properly disbursed outweighs Ms. Burley's desire to have the Funds paid immediately to her
25 and her false claim that the Funds are needed for basic survival needs of the Tribe since, on
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1 information and belief, the Funds would not be shared with the full tribal membership should
2 the Funds be distributed to Ms. Burley.

3 13. Ms. Burley has no authority within the Tribe. Currently, there is no tribal
4 government, tribal constitution or government recognized leader of the Tribe and, therefore, the
5 CGCC maintains that no person is authorized to accept the Funds for the Tribe. Recently, the
6 BIA has proceeded to assist the Tribe in “organizing” around its members. Once the Tribe is so
7 “organized,” CGCC may release to the Funds to authorized authority. Following the BIA and
8 CGCC’s procedures will preserve the Funds for the rightful members of the Tribe and prevent
9 misuse of such substantial Funds. Any distribution of the Funds prior to the organization of the
10 Tribe is premature at best.
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13 **RESPONSE TO SPECIFIC ALLEGATIONS ASSERTED IN PLAINTIFF’S**
14 **COMPLAINT**

15 14. General Denial: To the extent that the allegations of the Complaint are not
16 expressly admitted by this Complaint in Intervention, they should be considered denied.

17 15. Intervenors admit the statement in Paragraph 1 of the Complaint that the
18 California Valley Miwok Tribe is a federally-recognized Indian tribe, but deny that the Tribe is
19 situated in Stockton, California, where Silvia Burley, who is pursuing this suit purportedly in
20 the name of the Tribe, apparently resides. The Tribe is also known as the Sheep Ranch Mi-Wuk
21 Indians of Sheep Ranch Rancheria, which is in Calaveras County, California. Intervenors deny
22 that the Tribe is currently the plaintiff and regard Silvia Burley to be the plaintiff in this action.
23

24 16. Paragraph 2 of the Complaint is admitted.

25 17. The Intervenors are without knowledge or information sufficient to form a belief
26 as to the truth or falsity of the allegations in Paragraph 3 of the Complaint, namely that plaintiff
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1 Silvia Burley is “ignorant of the true names and capacities” of certain unnamed persons, and
2 therefore deny the same.

3 18. Paragraph 4 of the Complaint regarding venue is denied.

4 19. Paragraph 5 of the Complaint is admitted.

5 20. Paragraph 6 of the Complaint is a mix of legal conclusions and factual
6 allegations. The first sentence of the paragraph is admitted. The rest of the paragraph contains
7 sentences with legal conclusions which need not be admitted or denied. The allegations of
8 Paragraph 6 are otherwise denied.
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10 21. Paragraph 7 of the Complaint consists of a series of legal conclusions which
11 need not be admitted or denied.
12

13 22. The statement in Paragraph 8 of the Complaint that the Tribe was placed on the
14 list of federally-recognized tribes in 1994 pursuant to Public Law 103-454 is admitted. The
15 allegations in Paragraph 8 are otherwise denied.

16 23. The allegations in Paragraph 9 of the Complaint are denied.

17 24. The allegations in Paragraph 10 of the Complaint are denied.

18 25. The allegations in Paragraph 11 of the Complaint are denied.

19 26. The BIA letter referred to in Paragraph 12 of the Complaint speaks for itself.
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21 The allegations in Paragraph 12 are otherwise denied.

22 27. The allegations in Paragraph 13 of the Complaint are denied.

23 28. The allegations in Paragraph 14 of the Complaint are denied.

24 29. The CGCC’s letter to Silvia Burley, referred to in Paragraph 15 of the
25 Complaint, speaks for itself. The allegations in Paragraph 15 are otherwise denied.
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27 30. The allegations in Paragraph 16 of the Complaint are denied.
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1 31. The decisions of the United States District Court for the District of Columbia in
2 *California Valley Miwok Tribe v. U.S. Department of the Interior*, No. 1:05CV00739-JR, and
3 the pleadings therein, speak for themselves. The allegations in Paragraph 17 of the Complaint
4 are otherwise denied. The Intervenor aver that on February 15, 2008, the U.S. Court of
5 Appeals rendered its decision affirming the U.S. District Court's orders, 515 F.3d 1262 (D.C.
6 Cir. 2008), and that after a petition for rehearing was denied, a mandate was issued to the U.S.
7 District Court.
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9 32. The first sentence of Paragraph 18 of the Complaint is a legal conclusion which
10 need not be admitted or denied. The Intervenor are without knowledge or information
11 sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 18 of the
12 Complaint, and therefore deny the same.
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14 33. The Intervenor respond to Paragraph 19 of the Complaint by realleging their
15 responses to the allegations in Paragraphs 1 through 18 of the Complaint.
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17 34. Paragraph 20 of the Complaint states legal conclusions which are neither
18 admitted nor denied.
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20 35. Paragraph 21 of the Complaint states legal conclusions which are neither
21 admitted nor denied.
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23 36. Paragraph 22 of the Complaint states legal conclusions which are neither
24 admitted nor denied.
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26 37. Paragraph 23 of the Complaint contains a mix of legal conclusions and factual
27 allegations. At any rate, the allegations of Paragraph 23 are denied.
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 38. The allegations in Paragraph 24 of the Complaint are denied.

1 39. Paragraph 25 of the Complaint contains a mix of legal conclusions and factual
2 allegations. Because the Intervenor's regard the plaintiff in this action to be Silvia Burley, not
3 the California Valley Miwok Tribe, they deny the allegations of Paragraph 25. The legal
4 conclusions are neither admitted nor denied.

5 40. Paragraph 26 of the Complaint states a legal conclusion which is neither
6 admitted nor denied.

7 41. Intervenor's are without knowledge or information sufficient to form a belief as to
8 the truth or falsity of the allegations in Paragraph 27 of the Complaint, and therefore deny the
9 same.
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11 42. Paragraph 28 of the Complaint states a legal conclusion which is neither
12 admitted nor denied.

13 43. Paragraph 29 of the Complaint states a legal conclusion which is neither
14 admitted nor denied.
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16 44. Paragraph 30 of the Complaint states a legal conclusion which is neither
17 admitted nor denied.
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19 45. Intervenor's respond to Paragraph 31 of the Complaint by re-alleging their
20 responses to the allegations in Paragraphs 1 through 30 of the Complaint.

21 46. Paragraph 32 of the Complaint states a number of legal conclusions which are
22 neither admitted nor denied. To the extent that a response to Paragraph 32 is required, the
23 allegations therein are denied because plaintiff Silvia Burley has no authority to speak on behalf
24 of the Tribe.
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26 47. Paragraph 33 of the Complaint states a legal conclusion which is neither
27 admitted nor denied. The Compact, which is partially quoted in Paragraph 33, speaks for itself.
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1 48. The Code provision quoted at the beginning of Paragraph 34 of the Complaint
2 speaks for itself. The rest of the paragraph is a mix of legal conclusions and argument, which
3 require no response. To the extent that a response to Paragraph 34 is required, the allegations
4 therein are denied because plaintiff Silvia Burley has no authority to speak on behalf of the
5 Tribe.

6 49. The allegations in Paragraph 35 of the Complaint are denied.
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8 50. Paragraph 36 of the Complaint states a legal conclusion which is neither
9 admitted nor denied. To the extent that a response to Paragraph 36 is required, the allegations
10 therein are denied.

11 51. The Intervenors respond to Paragraph 37 of the Complaint by realleging their
12 responses to the allegations in Paragraphs 1 through 36 of the Complaint.
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14 52. The allegations in Paragraph 38 of the Complaint are denied. Plaintiff Silvia
15 Burley has no authority to speak on behalf of the Tribe.

16 53. Paragraph 39 of the Complaint states a legal conclusion which need not be
17 admitted nor denied.
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19 54. The allegation/conclusion in Paragraph 40 of the Complaint is denied because
20 plaintiff Silvia Burley has no authority to speak on behalf of the Tribe.

21 55. The allegations in Paragraph 41 of the Complaint are denied because plaintiff
22 Silvia Burley has no authority to speak on behalf of the Tribe.
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24 56. Paragraph 42 of the Complaint states a legal conclusion which need not be
25 admitted nor denied.

26 57. Paragraph 43 of the Complaint states a legal conclusion which need not be
27 admitted nor denied. To the extent that a response to Paragraph 43 is required, the allegations
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1 therein are denied because plaintiff Silvia Burley has no authority to speak on behalf of the
2 Tribe.

3 58. Paragraph 44 of the Complaint states a legal conclusion which need not be
4 admitted nor denied.

5 59. Paragraph 45 of the Complaint states a legal conclusion which need not be
6 admitted nor denied.

7 60. Intervenor's respond to Paragraph 46 of the Complaint by realleging their
8 responses to Paragraphs 1 through 45 of the Complaint.

9 61. Paragraph 47 of the Complaint states a legal conclusion which need not be
10 admitted nor denied.

11 62. Paragraph 48 of the Complaint states a legal conclusion which need not be
12 admitted nor denied. To the extent that a response to Paragraph 48 is required, the allegations
13 are denied because plaintiff Silvia Burley has no authority to speak on behalf of the Tribe
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15 63. Intervenor's respond to Paragraph 49 of the Complaint by realleging their
16 responses to Paragraphs 1-48 of the Complaint.

17 64. The allegations in Paragraph 50 of the Complaint are denied.

18 65. The allegations in Paragraph 51 of the Complaint are denied.

19 66. The allegations in Paragraph 52 of the Complaint are denied.

20 67. Paragraph 53 of the Complaint states legal conclusions which need not be
21 admitted nor denied. To the extent that a response to Paragraph 53 is required, the allegations
22 therein are denied.
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1 68. WHEREFORE, the Intervenor's pray the Court to dismiss plaintiff's Complaint
2 in this case, and all claims therein, for the reasons set forth above and below, and for such other
3 reasons as may be correct and just.

4 **AFFIRMATIVE DEFENSES**

5 **I. First Defense for Lack of Jurisdiction Against Plaintiff**

6 As a first and separate and complete affirmative defense, Intervenor's respectfully
7 request that the Court dismiss plaintiff's Complaint in this action, and all claims therein, for
8 want of jurisdiction. In addition to the justifications for lack of jurisdiction averred by CGCC's
9 in its ANSWER AND RETURN OF CALIFORNIA GAMBLING CONTROL COMMISSION
10 TO VERIFIED FIRST AMENDED COMPLAINT COMBINED WITH PETITION FOR
11 WRIT OF MANDATE, this Court also lacks jurisdiction to adjudicate an internal tribal dispute,
12 to determine the proper spokespersons for the Tribe, to adjudicate whether the Tribe is
13 "organized," to adjudicate the identity of the Tribe or to adjudicate a matter barred by sovereign
14 immunity.

15 **II. Second Defense for Failure to State a Claim Against Plaintiff**

16 As a second and separate and complete affirmative defense, the Intervenor's respectfully
17 request that the Court dismiss plaintiff's Complaint in this action, and all claims therein,
18 because plaintiff has failed to state a claim for which the Court may grant relief.

19 **III. Third Defense for No Basis to Name DOE Defendants Against Plaintiff**

20 As a third and separate and complete affirmative defense, the Intervenor's respectfully
21 request that the Court dismiss plaintiff's Complaint in this action, and all claims therein,
22 because plaintiff has no basis under which it may name DOE defendants consistent with the
23 Rules of Court.
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As a forth and separate and complete affirmative defense, the Intervenor respectfully request that the Court dismiss plaintiff's Complaint in this action, and all claims therein, because the plaintiff has failed to exhaust its administrative and tribal remedies. The Intervenor, with the aid of the BIA, have attempted to mediate with Ms. Burley. Ms. Burley refused to cooperate with such requests until 2010, when mediation was no longer possible because there was no longer an intertribal remedy. Further, the BIA is currently reviewing the leadership dispute matter and is expected to provide a determination shortly. The essence of this action is the tribal dispute regarding the leadership of the Tribe.

In addition to the affirmative defenses above, the Intervenor joins with CGCC in asserting the following affirmative defenses already asserted in CGCC's ANSWER AND RETURN OF CALIFORNIA GAMBLING CONTROL COMMISSION TO VERIFIED FIRST AMENDED COMPLAINT COMBINED WITH PETITION FOR WRIT OF MANDATE: I. Plea In Abatement; II. No Jurisdiction (except as provided above); III. Unclean Hands; IV. Res Judicata; V. Collateral Estoppel; VI. Lack of Standing.

As the Complaint fails to provide sufficient information concerning the allegations, the facts and the identity of the DOES, the Intervenor reserve their right to assert additional affirmative defenses. The Intervenor have not asserted defenses to the plaintiff's Third Cause of Action against DOES 21-50 because no Intervenor is named a DOE.

The Intervenor respectfully request the Court enter judgment:

1. Dismissing plaintiff's Complaint in this action, and all claims therein, with prejudice;

- 1 2. Declaring that the Commission shall continue to hold the Funds in trust for the
2 Tribe until such time as the Tribe is duly organized as overseen by the BIA;
3 3. Awarding the Intervenors their costs; and granting such further relief as the
4 Court deems appropriate.

5 Respectfully submitted, October 30, 2010.

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8 Thomas Wolfrum
9 Attorney for Intervenors
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VERIFICATION

We, the undersigned Intervenor in the above-entitled action have read the foregoing Complaint in Intervention and know the contents thereof. The same is true of each of our own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, each of us believes it to be true.

Each of us declares under penalty of perjury that the foregoing is true and correct and that this declaration was executed in California.

Dated this _____ day of _____, 2010.

Yakima K. Dixie

Velma WhiteBear

Antonia Lopez

Antone Azevedo

Michael Mendibles

Evelyn Wilson