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

11 **CALIFORNIA VALLEY MIWOK**
12 **TRIBE,**

13 Plaintiff,

14 v.

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

17 Defendants,

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

Applicant Intervenors.

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

APPLICANT INTERVENORS'
MEMORANDUM OF POINTS AND
AUTHORITIES SUPPORTING MOTION
TO INTERVENE

Law and Motion

Hearing Date: December 17, 2010

Hearing Time: 8:30 a.m.

Hearing Place: C-62

Trial

Trial Date: May 13, 2011

Trial Dept: C-62

Trial Judge: The Hon. Ronald L. Styn

Filing Date First Amended Complaint: August
29, 2008

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1 The Intervenors, Yakima K. Dixie, Velma WhiteBear, Antonia Lopez, Antone Azevedo,
2 Michael Mendibles and Evelyn Wilson hereby submit the following Memorandum of Points
3 and Authorities in support of their MOTION TO INTERVENE AS DEFENDANTS, pursuant to
4 California Code of Civil Procedure §387.

5 **I. STATEMENT OF FACTS**

6 This matter concerns Plaintiff's, Silvia Burley's, attempt to compel the California
7 Gambling Control Commission ("CGCC") to distribute millions of dollars from the Revenue
8 Sharing Trust Fund ("RSTF") and the Special Distribution Fund (collectively with RSTF, the
9 "Funds") to her.
10

11 The rightful beneficiaries of the Funds are the people of the California Valley Miwok
12 Tribe, California, formerly known as the Sheep Ranch Rancheria of Me-Wuk Indians of
13 California (the "Tribe").
14

15 Yakima K. Dixie, Velma WhiteBear, Antonia Lopez, Antone Azevedo, Michael
16 Mendibles, and Evelyn Wilson (the "Intervenors") seek leave of Court to intervene to protect
17 the pecuniary interest of the Tribe and its full membership in the Funds.
18

19 As discussed below, Mr. Dixie is a member, the Hereditary Chief, tribal chairman, and
20 traditional authority of the Tribe.

21 In 1915, the federal government settled a small band of Miwok Indians on a small parcel
22 of Calaveras County referred to as Sheep Ranch Rancheria. See **Exhibit A**, August 13, 1915
23 Letter to the Commissioner of Indian Affairs from the Special Indian Agent and Census of the
24 Indians attached thereto. The Sheep Ranch Rancheria was held in trust for the Tribe until 1966,
25 when the land was distributed to Mr. Dixie's mother, Mabel Louise Hodge Dixie, as the "head"
26 of the "Indians of Sheep Ranch Rancheria" pursuant to the California Rancheria Termination
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1 Act of 1958, as amended. California Rancheria Termination Act, Pub. L. No. 85-671, 72 Stat.
2 619 (1958), *amended by* Pub. L. No. 88-419, 78 Stat. 390 (1964); *See also* **Exhibit B**, Bureau of
3 Indian Affairs (“BIA”) documents from 1965 and 1966 (describing distribution of the Rancheria
4 to Mrs. Dixie). That transfer was nullified and the federal government then held the Rancheria
5 in trust for Mrs. Dixie. By Miwok tradition, Mr. Dixie inherited his mother’s trust interest in
6 the Rancheria and became Hereditary Chief of the Tribe. *See* **Exhibit C**, excerpt from the
7 Handbook of California Indians (explaining the “well-defined and hereditary affair” of Miwok
8 chieftainship); *See also* Declaration of Yakima Dixie, filed separately, in support of intervention
9 (explaining the history and the Dixie family relationships).
10

11 All the Intervenors submitted genealogies in response to the BIA April 11, 2007 public
12 notice discussed below to prove their tribal membership by descent from one or more persons
13 whom the Bureau of Indian Affairs (“BIA”) acknowledged as early member(s) of the Tribe by
14 virtue of their identification in official United States government records as an Indian or Indians
15 residing at the former Sheep Ranch Rancheria. *See* Declarations of Members/Intervenors
16 Yakima K. Dixie, Velma Whitebear, Michael Mendibles, Evelyn Wilson, Antone Acevedo, and
17 Antonia Lopez filed separately from this Memorandum of Points and Authorities in support of
18 their motion to intervene. Accordingly, each Intervenor is a legitimate member of the Tribe. *Id.*
19
20

21 In 1996, Mr. Dixie provided assistance to Ms. Burley, and her children, allowing them
22 into the Tribe so that they could obtain medical and education benefits. *See Mr. Dixie’s*
23 *separately filed declaration supporting intervention.* In 1999, without Mr. Dixie’s permission,
24 Ms. Burley began to represent herself to be the chairperson of the Tribe, relying on a document
25 purportedly showing Mr. Dixie’s resignation as tribal chairman. That document is a forgery.
26 *See Mr. Dixie’s separately filed declaration.* Ms. Burley also set up a purported tribal
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28

1 government, consisting of herself and her two daughters. Mr. Dixie and Ms. Burley have
2 participated in extensive litigation and administrative actions regarding Ms. Burley's false
3 claims to Tribe leadership. See **Exhibit E**, List of Litigation and Administrative Appeals. The
4 BIA does not currently recognize, and has not recognized since 2005 anyone, including Ms.
5 Burley, to be the leader of the Tribe:

7 "Your appeal of the BIA's recognition of Ms. Burley as tribal
8 Chairman has been rendered moot by the BIA's decision of March 26,
9 2004, a copy of which is enclosed rejecting the Tribe's proposed
10 constitution. In that letter, the BIA made clear that the Federal
11 government did not recognize Ms. Burley as the tribal Chairman.
12 Rather, the BIA would recognize her as "a person of authority within
13 the California Valley Miwok Tribe." Until such time as the Tribe has
14 organized, the Federal government can recognize no one, including
15 yourself, as the tribal Chairman. I encourage you, either in
16 conjunction with Ms. Burley, other tribal members, or potential tribal
17 members, to continue your efforts to organize the Tribe along the lines
18 outlined in the March 26, 2004, letter so that the Tribe can become
19 organized and enjoy the full benefits of Federal recognition. The first
20 step in organizing the Tribe is identifying putative tribal members. If
21 you need guidance or assistance, Ray Fry, (916) 930-3794, of the
22 Central California Agency of the BIA can advise you how to go about
23 doing this."¹ **Exhibit F**, February 11, 2005 Correspondence to Mr.
24 Dixie from BIA Interior Department Assistant Secretary Michael D.
25 Olsen.

19 From 1999 to 2005, while holding herself out to be the leader of the Tribe, Ms. Burley
20 collected millions of dollars of the Tribe's RSTF funds from the CGCC. On information and
21 belief, no legitimate member of the Tribe has received any of the RSTF funds paid to Ms.
22 Burley, and Ms. Burley has yet to establish any program for the benefit of the members of the
23 Tribe. See *Mr. Dixie's, Ms. WhiteBear's, Ms. Lopez's, Mr. Azevedos, Mr. Mendibles, Ms.*
24 *Wilson's, separately filed declarations supporting intervention.* On information and belief, the
25

27 ¹ After this letter the BIA withdrew its characterization of Sylvia Burley as a person of
28 authority for the Tribe.

1 only beneficiaries of these substantial RSTF funds have been Ms. Burley herself, her two
2 daughters and their immediate family. *See Id.* On information and belief, Ms. Burley used
3 RSTF monies she received, among other things, to purchase a house, on which she subsequently
4 took out an approximately \$500,000 line of credit. *See Mr. Dixie's separately filed declaration*
5 *supporting intervention.*

6
7 From 1999 to 2005, Ms. Burley simultaneously collected federal benefits meant for the
8 Tribe under the Indian Self-Determination and Education Assistance Act (the "ISDEAA").
9 Pub.L. No. 93-638, § 2 (1975) 88 Stat. 2203. In 2004, the BIA admonished Ms. Burley that for
10 "continued eligibility for certain grants and services from the United States," the Tribe would
11 need to be "organized." **Exhibit G**, March 26, 2004 Correspondence to Ms. Burley from BIA
12 Superintendent Dale Risling, Sr., ¶2. Ms. Burley submitted a "tribal constitution" to the BIA
13 "in an attempt to demonstrate that it is an 'organized' tribe." *Id.* at ¶1. The BIA responded:

15 "[The] BIA also has a responsibility to determine that the
16 organizational efforts reflect the involvement of the whole tribal
17 community. *We have not seen evidence that such general*
18 *involvement was attempted* or has occurred with the purported
19 organization of your tribe. For example, we have not been made
20 aware of any efforts to reach out to the Indian communities in and
21 around the Sheep Ranch Rancheria...*To our knowledge, the only*
22 *persons of Indian decent involved in the tribe's organization efforts*
23 *were you and your two daughters.*" *Id.* at ¶¶1, 3. (Emphasis added).

24 In February 2005, the BIA stated that the BIA still regarded the Tribe as "not an
25 organized tribe," namely one for which no tribal government, including that claimed by Ms.
26 Burley, had been recognized and that "the first step in organizing the Tribe is identifying
27 putative tribal members." **Exhibit F and G**. In July 2005, the BIA halted ISDEAA payments
28 to Ms. Burley. In August 2005, the CGCC also stopped RSTF payments to Ms. Burley and
instead began placing the Tribe's RSTF payments in trust, citing that the CGCC takes its

1 lead from the BIA in situations involving a tribal leadership dispute. Therefore, although the
2 Tribe remains a federally recognized and meets the criteria of a “noncompact” tribe entitled to
3 RSTF funds, no person may accept the funds on behalf of the Tribe until the Tribe’s leadership
4 is determined by a process that provides a means by which the majority of the Tribe’s
5 membership may express their wishes in accordance with Federal Indian law and policy.

6
7 In 2005, Ms. Burley brought an action challenging the BIA’s refusal to accept her
8 constitution in the U.S. District Court for the District of Columbia. *California Valley Miwok*
9 *Tribe v. U.S. Department of the Interior*, 424 F.Supp.2d 197 (D.D.C. 2006). Her suit was
10 dismissed for failure to state a claim, and the dismissal was affirmed *de novo* on appeal. *Id.*;
11 *California Valley Miwok Tribe v. U.S. Department of the Interior*, 515 F.3d 1262 (D.C.Cir.
12 2008). In dismissing Ms. Burley’s action, the U.S. District Court for the District of Columbia
13 held that the BIA’s refusal to accept Ms. Burley’s constitution was lawful, stating that although
14 the Tribe “has a potential membership of 250, only Burley and her small group of supporters
15 had a hand in adopting her proposed constitution.” *Id.* at 1267.

16
17 In September 2005, while the U.S. District Court litigation was pending, Ms. Burley and
18 her two daughters, acting as the alleged “tribal council,” purported to “disenroll” Mr. Dixie
19 from the Tribe on the spurious ground that he had enrolled in another tribe, namely the Sheep
20 Ranch Me-Wuk Indians of Sheep Ranch Rancheria, simply the Tribe’s former name. *See*
21 **Exhibit H**, Resolution of September 5, 2005.

22
23 In 2007, to assist the Tribe in its efforts to organize, the BIA identified 14 early
24 members of the Tribe identified in official U.S. government records and issued a public notice
25 requesting documentation from persons believing themselves to be lineal descendants of those
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1 members of the Tribe. **Exhibit I**, Ledger Dispatch dated April 11, 2007 by the BIA. Hundreds
2 of persons asserting their claims to tribal membership, including Mr. Dixie, submitted their
3 genealogies to the BIA in response to the public notice. Mr. Dixie's mother, Mable Hodge
4 Dixie, was listed by the BIA as an early member of the Tribe and, therefore, Mr. Dixie is also a
5 member. On information and belief, neither Ms. Burley nor her daughters claim to be lineal
6 descendants of any of the members named in the April 11, 2007 public notice. On information
7 and belief, Ms. Burley did not file her genealogy with the BIA in response to the April 11, 2007
8 public notice. More recently, the BIA has proceeded to assist the Tribe in drafting and adopting
9 an organic charter. Ms. Burley has not cooperated in this effort, and has sought to preempt such
10 through administrative appeals. See **Exhibit E**.

11
12
13 In the instant action, Ms. Burley, claiming to act on behalf of the Tribe, filed a
14 Complaint in this Court on January 8, 2008. The action was transferred to Federal Court on
15 May 6, 2008. Mr. Dixie filed a motion to intervene in the federal action. However, that action
16 was subsequently remanded to this Court for lack of subject matter jurisdiction, rendering Mr.
17 Dixie's motion to intervene in Federal Court moot.

18
19 On August 20, 2008, Ms. Burley claiming to act on behalf of the Tribe, filed a First
20 Amended Complaint Combined with Petition for Writ of Mandate.

21 March 3, 2009, this Court dismissed Ms. Burley's action for lack of capacity or
22 standing. The dismissal was reversed on appeal, and the action has once again been remanded
23 to this Court. The CGCC filed its answer following remand on October 15, 2010. The trial date
24 for this action following remand has been set for May 13, 2011.

25 26 27 **II. ARGUMENT**

28 Intervenor seek to intervene as defendants to protect their direct and immediate

1 pecuniary and tribal interests in the Funds as tribal members and, with respect to Mr. Dixie, as
2 the Hereditary Chief, tribal chairman and traditional authority of the Tribe. Intervenor are
3 indispensable parties if the Court determines that the CGCC must distribute the Funds to the
4 Tribe and must make a proper determination as to whom the Funds should be distributed.

5 California Code of Civil Procedure §387 provides two grounds for intervention,
6 permissive and mandatory. Intervention in this action is mandatory and, absent such mandate,
7 intervention is permissive as Intervenor show ample good cause for intervention.
8

9 Code of Civil Procedure §387(a) governs permissive intervention and provides, in
10 pertinent part:

11 Upon timely application, any person, who has an *interest in the*
12 *matter in litigation, or in the success of either of the parties*, or an
13 interest against both, *may intervene* in the action or proceeding. An
14 intervention takes place when a third person is permitted to become
15 a party to an action or proceeding between other persons, ... by
16 uniting with the defendant in resisting the claims of the plaintiff, or
by demanding anything adversely to both the plaintiff and the
defendant...(Emphasis added.)

17 Code of Civil Procedure §387(b) governs mandatory intervention and provides, in
18 pertinent part:

19 If ... the person seeking intervention claims an *interest* relating to
20 the property to transaction which is the subject of the action and
21 that person is so situated that the disposition of the action *may as a*
22 *practical matter impair or impede that person's ability to protect*
that interest, *unless that person's interest is adequately represented*
23 *by existing parties*, the court *shall*, upon timely application, permit
that person to intervene. (Emphasis added.)

24 Code of Civil Procedure §387 is to be liberally construed in favor of intervention.
25 *Simpson Redwood Co. v. State of Calif.* (1987) 196 Cal. App. 3d 1192, 1200; *Lindelli v. Town of*
26 *San Anselmo* (2006) 139 Cal.App.4th 1499, 1505.

1 **A. Intervenor’s Motion is Timely**

2 The threshold requirement under Code of Civil Procedure §387 is timeliness. The
3 statute formerly limited intervention to “[a]t any time before trial,” but was amended in 1977 to
4 remove this limitation and instead to allow intervention “[u]pon timely application.” *Mallick v.*
5 *Sup.Ct. (County of Marin)* (1979) 89 Cal. App. 3d 434, 437. “Thus intervention is possible, if
6 otherwise appropriate, at any time, even after judgment.” *Id.* As discussed above, although
7 filed in 2008, this matter before the Court is still in its early stages. The action was removed to
8 Federal Court, remanded to this Court, dismissed, then appealed and remanded to this Court on
9 April 16, 2010. Mr. Dixie petitioned to intervene in the federal action but, the remand rendered
10 Mr. Dixie’s federal motion to intervene moot. The CGCC filed its answer before the Court
11 recently on October 15, 2010. Trial is set for May 13, 2011. Therefore, the motion to intervene
12 is timely.
13
14

15 **B. Intervention is Supported by the Legislative Intent of**
16 **Preventing Multiplicity and Delay**

17 The intent of Code of Civil Procedure §387 is to protect the interests of non-parties to an
18 action, and to prevent multiplicity and delay. *People v. Superior Court (Good)* (1976) 17
19 Cal.3d 732, 736. Intervenor’s intervention would protect their pecuniary and tribal interests and
20 would prevent multiplicity and delay. Distribution of the Funds before the Tribe is organized
21 would subject the CGCC to multiple and inconsistent claims for the Funds. Based on the
22 response to the BIA’s April 11, 2007 public notice, there may be hundreds of members of the
23 Tribe, each of whom would have a claim to a portion of the Funds. By holding the Funds in
24 trust until the Tribe is “organized” with election of tribal leaders through a process permitting
25 participation by the Tribe’s full membership, the CGCC acts within its fiduciary duty to ensure
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1 that the Funds are properly dispersed for the benefit of the Tribe. Requiring the CGCC to
2 disperse the Funds to an individual who is not a legitimate recognized leader of the Tribe and
3 who represents only a tiny fraction of the Tribe's full membership would require the
4 Commission to violate its fiduciary duty under California's class 3 gaming compacts with
5 Indian tribes that provide for distribution of the RSTF funds.

6 **C. Intervenor's Intervention is Mandatory**

7
8 Intervenor's intervention is mandatory because "disposition of the action may as a
9 practical matter impair or impede [Intervenor's] ability to protect [their] interest. . ." and their
10 "interest is not adequately represented by existing parties. . ." Code Civ. Proc. §387(b).

11 **1. Disposition of the Matter Will Impair and Impede Intervenor's** 12 **Ability to Protect the Funds for the Tribe and its Members,** 13 **Including Themselves**

14 Intervenor must be allowed to intervene because their ability to protect their pecuniary
15 and tribal interests in the Funds will not only be impaired or impeded if the Funds are
16 distributed to Plaintiff via Ms. Burley but, lost to them and the other members of the Tribe.
17 Should the Funds be released to Ms. Burley, Intervenor would have no way to even voice an
18 opinion as to how the substantial Funds may be spent. The standard is not whether
19 Intervenor's interest will be destroyed but, rather, whether disposition of the action will as a
20 practical matter impair or impede Intervenor's ability to protect that interest. *Hodge v.*
21 *Kirkpatrick Development, Inc.* (2005) 130 Cal. App. 4th 540, 554. Intervenor clearly meet this
22 lesser standard.
23

24 **2. Intervenor's Interests Are Not Adequately Represented by the** 25 **Current Parties**

26
27 Intervenor's interests are not adequately represented by the CGCC because should this
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1 Court determine that the CGCC must distribute the Funds, the CGCC's interests in preserving
2 the Funds ends, whereas Intervenors have a substantial interest in *to whom* the Funds are
3 distributed. All members of the Tribe are the rightful and intended beneficiaries of the Funds.
4 The plaintiff's First Amended Complaint alleges that Ms. Burley is a "spokesperson" of the
5 Tribe and, therefore, RSTF money should be paid as "checks made out to the Tribe *in care of*
6 *Burley*." First Amended Complaint Combined with Petition for Writ of Mandate ("FAC") ¶30
7 (Emphasis added). It should not be enough to deem oneself a "spokesperson" to receive the
8 substantial Funds without a properly organized Tribe, as required by the BIA and CGCC. To
9 support Ms. Burley's allegation that she is a "spokesperson," the FAC argues that "[u]nder the
10 existing Tribal 'customs and traditions', Burley has been 'selected' to represent the Tribe."
11 FAC ¶ 24. Ms. Burley's unfounded claims of authority for the Tribe do not involve any
12 customs or traditions of the Miwok. In fact, as discussed above, under Miwok custom and
13 tradition, Mr. Dixie is Hereditary Chief and, therefore, the only person to whom Funds may be
14 distributed should this Court determine such Funds must be distributed at present and before the
15 BIA declares the Tribe "organized" by its members. Moreover, the BIA recognizes the current
16 leadership dispute within the Tribe and does not recognize Ms. Burley as a tribal leader or
17 representative for any purpose.

21 Furthermore, the CGCC cannot adequately present tribal facts to the Court or represent
22 the interests of the members of the Tribe. Neither current party to this action, Ms. Burley or the
23 CGCC, could adequately represent Intervenors' interests.

25 In arguing that the other parties to the Tribe's leadership dispute are necessary parties to
26 this action, the CGCC acknowledged that it "cannot protect the individual's interest because it
27 has taken the position that the Tribe is not entitled to file suit to compel distribution of [the
28

1 Funds].” See Memorandum of Points and Authorities in Support of California Gambling
2 Control CGCC’s Demurrer to the First Amended Complaint Combined with Petition for Writ of
3 Mandate, p. 16.

4
5 **D. Absent Mandatory Intervention, Intervenor Still Meet the**
6 **Requirements for Permissive Intervention**

7 With permissive intervention, a person may intervene if the person has an interest in the
8 matter in litigation, or in the success of either of the parties, or an interest against both. Code
9 Civ. Proc. § 387(a).

10 Whether permissive intervention should be allowed in a particular case “is best
11 determined by a consideration of the facts of that case” and that decision is ordinarily left to the
12 sound discretion of the trial court. *Fireman's Fund Ins. Co. v. Gerlach* (1976) 56 Cal. App. 3d
13 299. A court may use its discretion to permit a non-party to intervene where: 1) the intervenor
14 has a direct interest in the litigation; 2) intervention will not enlarge the issues raised by the
15 original parties; and 3) the reasons for intervention outweigh any opposition by the existing
16 parties. *Lindelli v. Town of San Anselmo* (2006) 139 Cal.App.4th 1499, 1504; *People ex rel.*
17 *Rominger v. County of Trinity* (1983) 147 Cal. App. 3d 655, 660-61. Intervenor clearly meet
18 each of these requirements.
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21
22 **1. Intervenor’s Interests in the Funds are Direct and Immediate**

23 Under the first prong, the interest must be direct and immediate, not merely
24 consequential. *Truck Ins. Exch. v. Superior Court (Transco Syndicate #1)* (1997) 60 Cal. App.
25 4th 342. Courts have held that to qualify for intervention under Code of Civil Procedure §387,
26 the intervenor’s interest must be “...of such *direct and immediate* character that the intervener
27 *will either gain or lose by the direct legal operation and effect of the judgment...*” *Allen v.*
28

1 *California Water & Tel. Co.* (1947) 31 Cal.2d 104, 109 (Emphasis added). Intervenor's
2 pecuniary interests in the Funds are direct. The members of the Tribe, including Intervenor,
3 are the proper and intended beneficiaries of the Funds, because Plaintiff and her purported tribal
4 council represent only a tiny fraction of the Tribe's membership, as recognized in the previous
5 litigation above-described. Mr. Dixie, as current Hereditary Chief, also has a direct interest and
6 feels a particular fiduciary duty and tribal interest in preserving the Funds for the benefit of the
7 Tribe and its full membership.
8

9 Intervenor's interests in the Funds are also immediate. They would lose the Funds for
10 themselves and for the Tribe at large should the withheld Funds be distributed to Ms. Burley
11 and should the payment of additional Funds be resumed as sought by the Plaintiff. On
12 information and belief, when Ms. Burley received previous distributions of gaming revenue
13 funds from the CGCC, Intervenor and the other rightful members of the Tribe did not receive
14 any of that money or any benefit from that money. On information and belief, all such money
15 benefited Mrs. Burley, her husband and her children.
16

17 Intervenor also have a direct and immediate interest in keeping the Court from
18 determining the Tribal members who are entitled to receive the Funds. The BIA is currently
19 working to help the Tribe organize around its membership. Once the Tribe is organized, the
20 proper authority for the Tribe will be clear and the disbursements of Funds may resume.
21

22 **2. Intervention Will Not Enlarge the Issues**

23
24 Intervention will not enlarge the issues raised by the original parties because Intervenor
25 seek to maintain the *status quo* and preserve the Funds under control of the CGCC until the
26 Tribe is duly "organized." Despite Ms. Burley's allegations, Ms. Burley is not recognized by
27 the BIA as a person of authority for the Tribe, does not act for the Tribe and, based on past
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1 experience, if Funds are distributed to Ms. Burley the vast majority of the membership of the
2 Tribe will never see any of the Funds or any benefit therefrom. No authority currently exists for
3 the Tribe sufficient to accept the Funds and until the Tribe is organized and legitimate
4 leadership selected, no Funds should be distributed. In fact, Intervenor's intervention would
5 serve to clarify the issues before the Court, provide context and a complete picture of the
6 consequences of distributing the Funds to Plaintiff, while not enlarging the underlying issues.
7

8 **3. Intervention Outweighs any Opposition by the Existing Parties.**

9 Intervenor's reasons for intervention outweigh any opposition by Plaintiff because
10 Ms. Burley is not the authorized representative of the Tribe (in fact, there is none at present) and
11 the Tribe is not yet organized, so there is no process to ensure the proper distribution of the
12 Funds. Moreover, the "original parties' interest in litigating this case on their own terms does
13 not outweigh the interests" of Intervenor in intervening. *People ex rel. Rominger v. County of*
14 *Trinity* (1983) 147 Cal. App. 3d 655, 655. Intervenor as members of the Tribe, are proper
15 beneficiaries of the Funds and, therefore, the outcome of this action will affect Intervenor's
16 direct pecuniary interests. Ms. Burley alleges that plaintiff needs the Funds for "education,
17 medical care and other basic survival needs of the Tribe." FAC ¶45. As discussed above, on
18 information and belief, the previous RSTF monies were not spent on any such tribal needs, and
19 the Funds presumably would not be spent on the Tribe either. Therefore, Intervenor's
20 substantial interest in preserving the Funds under control of the CGCC for the benefit of the
21 Tribe members until the Tribe is duly organized and ensuring proper distribution of the Funds
22 outweighs the Plaintiff's interest in having the Funds distributed immediately in care of Ms.
23 Burley.
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III. CONCLUSION

For the foregoing reasons, the Court must grant Intervenor's motion for leave to intervene as Defendants.

Respectfully submitted October 30, 2010.

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