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Yakima K. Dixie and DOES 1-579
5

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

7 **IN AND FOR THE COUNTY OF SAN DIEGO**
8

9 **CALIFORNIA VALLEY MIWOK TRIBE,**) **No: 37-2008-00075326-CU-CO-CTL**

10 Plaintiff,

) **APPLICANT INTERVENORS REPLY IN**
) **INTERVENTION**

11 vs.

12 **CALIFORNIA GAMBLING CONTROL**

) Date: December 17, 2010

) Time: 8:30 a.m.

13 **COMMISSION, et al.,**

) Dept: C-62

) Judge: The Hon. Ronald L. Styn

14 Defendants,

15 And

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

Applicant Intervenors.
21

22 Applicant Intervenors request permission to intervene in this case for two reasons: 1) to
23 contend the funds held in the Revenue Sharing Trust Fund (trust funds) for benefit of the
24

1 California Valley Miwok Tribe (the Tribe) may be only be distributed to a Federally Recognized
2 Authority for the Tribe and 2) if the court finds the trust funds are to be distributed without a
3 Federally Recognized Authority for the Tribe, to participate in the court's decision to whom the
4 funds are distributed.

5 Plaintiff seeks payment to Silvia Burley of approximately \$1.1 million per year of
6 "revenue sharing" payable to the Tribe under various of California's gaming compacts (see First
7 Am. Comp., paras. 8-10 and Pl. Oppos., pg. 1, lines 21-24) for the past several years. The
8 payments arise under various of the gaming compacts between the State of California and Indian
9 Tribes (hereafter "Compacts"). The terms of many, but not all, of the Compacts conform to the
10 language appended to Plaintiff's First Amended Complaint, but all affected Compacts include
11 the requirement that recipient tribes be Federally recognized. However, while the Tribe, as an
12 entity, is Federally recognized pursuant to the Federally Recognized Tribes List Act (25 U.S.C.
13 § 479a-1), the Secretary of the Interior, and his delegates for the conduct of relations with
14 Indian Tribes in the Bureau of Indian Affairs, no longer recognizes any leadership for the Tribe.¹
15 See *California Valley Miwok Tribe v. United States* (D.C.D.C. 2006) 424 F.Supp.2d 197, 198,
16 201, affd. 515 F.3d 1262 (D.C. Cir. 2008). Recognition of tribal leadership is a matter strictly
17 within the exclusive purview of these Federal officials. *Miami Nation of Indians of Indiana,*
18 *Inc. v. U.S. Dept. of Interior* (7th Cir. 2001) 255 F.3d 342, 346). Applicant Intervenors contend
19

20
21 ¹ The California Valley Miwok Tribe is the changed name of the Indian tribe that occupied the former Sheep
22 Ranch Rancheria located in the County of Calaveras. Rancherias are unique to California and were established by
23 the Federal Government to provide homelands for homeless Indians. The rancherias, including the former Sheep
24 Ranch Rancheria, were generally not restricted to any particular group or village of Indians, so that membership in a
rancheria tribe was dependent upon occupancy of the rancheria. Each of the Applicant Intervenors has supplied a
declaration with their Motion to Intervene citing direct descent from one or more ancestors who are recognized by
official records of the Federal Government to have been occupants of the Sheep Ranch Rancheria and, therefore,
members of the Tribe.

1 Plaintiff, Silvia Burley does not represent for any purpose, much less the purpose of receiving
2 several millions of trust fund dollars, any of them or the community of Tribal members, which
3 may be several hundred individuals, many of whom are children,

4 Plaintiff opposes intervention as untimely, Applicant Intervenors do not have an interest
5 in the Trust Funds, if they have an interest in the Trust Funds, she can adequately represent their
6 interests, and if she represents their interest, they will not be irreparably damaged. In support of
7 her position, Plaintiff makes *ad hominem* arguments and extraneous allegations that are
8 irrelevant to the decision to permit or deny Applicant Intervenors' Motion. Applicant Intervenors
9 disagree with Plaintiff as pointed out below. Applicant Intervenors point out Plaintiff's *ad*
10 *hominem* attacks are irrelevant to granting or denying intervention.

11 Plaintiff argues intervention is untimely because Applicant Intervenors had to file for
12 intervention at an earlier time, specifically during consideration of the demurrer of the California
13 Gambling Control Commission (hereafter "commission"). The demurrer raised only issues
14 concerning the legal adequacy of the pleadings in Plaintiff's original Complaint. After the trial
15 court granted the Commission's demurrer without leave to amend, the trial court's decision was
16 reversed on appeal, and in late July of 2010, the Plaintiff filed a First Amended Complaint. The
17 Commission's Answer and Return to the amended Complaint was filed October 14, 2010, and,
18 less than 30 days thereafter, on November 8, 2010, Applicant Intervenors filed their Motion to
19 Intervene. The court's granting the Motion to Intervene will not prejudice the current parties
20 nor the court's processes. To the contrary, permitting intervention will enhance the evidentiary
21 basis for court's consideration and the pursuit of justice in this matter by allowing individuals
22 with a stake in the Trust Funds to have a day in court.

23 Plaintiff argues Applicant Intervenors other than Yakima Dixie, may not intervene
24 because none is a member of the California Valley Miwok Tribe and, therefore have no interest

1 in the outcome of this action. Plaintiff claims that the Applicant Intervenor are members only
2 of a fictitious Indian tribe. It is unnecessary for the court to adjudicate Applicant Intervenor's
3 tribal membership to grant leave to intervene. For purposes of deciding the motion, Applicant
4 Intervenor's declarations establish the required interest in the litigation.

5 Based on the undisputed facts stated in their individual declarations, Velma WhiteBear,
6 Antonia Lopez, Antone Azevedo, Michael Mendibles, and Evelyn Wilson each have a direct
7 personal claim to Tribal membership based on residency on the Tribal reservation or by lineal
8 descent of ancestral people who were tied to that reservation. Each Co-Intervenor is a member
9 of a Tribal Council established on criteria suggested by the BIA - mostly their direct relationship
10 to the rancheria at Sheep Ranch, California. Silvia Burley has no such claim. Based on the
11 evidence, the Applicant Intervenor have the requisite interest in the trust funds for the court to
12 grant intervention.

13 Plaintiff admits Yakima Dixie is a member of the California Valley Miwok Tribe, but
14 claims that Silvia Burley represents his interests in this action. In his declaration, Yakima Dixie
15 contests Plaintiff can represent him. The dispute itself establishes Plaintiff does not and cannot
16 represent Yakima Dixie's interest in this litigation. Based on the evidence, Applicant Intervenor
17 Yakima Dixie has the requisite interest in the trust funds for the court to grant intervention.

18 Plaintiff concedes that Applicant Intervenor Dixie is a member of the Tribe, but claims
19 that his interests are represented by Silvia Burley. Based on the acknowledged disputed of
20 Yakima Dixie and Sylvia Burley or Tribal leadership dispute it has been established Sylvia
21 Burley cannot represent Yakima Dixie's interest any more than Yakima Dixie can represent
22 Sylvia Burley's interest in the trust funds.

23 Plaintiff opposes intervention on the basis she can represent Yakima Dixie's interest.

24 Plaintiff characterizes Yakima Dixie as a member of the Tribe as constituted by the Plaintiff,

1 Silvia Burley, and claims that Yakima Dixie's dispute over her usurpation of the authority for the
2 Tribe was resolved by an intra-tribal, administrative court, that his complaint was dismissed by
3 that tribal court and therefore, his interests are adequately represented by the Plaintiff. All such
4 assertions are wrong and are denied. Yakima Dixie is not a Member of a Tribe as constituted
5 under the authority of the Plaintiff (Silvia Burley) and the interests of Yakima Dixie and the
6 other Intervenors are in direct opposition to the interests of the Plaintiff, Silvia Burley. As such
7 Yakima Dixie's and the other Applicant Intervenors' interests cannot be represented by Plaintiff.
8 The jurisdiction of Plaintiff's "tribal court" was explicitly abrogated by the BIA in the Olsen
9 Determination & Mandate of February 11, 2005 - See Exhibit "F" in "Motion to Intervene"
10 which is incorporated herein by reference. Because of they are in opposition to each other,
11 Applicant Intervenors' interest in the trust funds will be irreparably damaged if distributed to
12 Plaintiff in a judicial proceeding in which they were prevented from appearing. For example,
13 Plaintiff, Sylvia Burley contends she "dis-enrolled" Mr. Dixie from his own tribe on September
14 5, 2005. See Exhibit "H" in "Motion to Intervene", incorporated herein by reference.
15 Accordingly, Sylvia Burley's claim she represents Yakima Dixie's interests is not supported by
16 the facts.

17 As members of the California Valley Miwok Tribe, an Indian tribe that presently lacks
18 any leadership selected by the membership or otherwise recognized by the Federal Government,
19 each of the Applicant Intervenors has a direct financial interest in preserving the Tribe's
20 considerable assets against defalcation and misappropriation for non-tribal purposes. Because the
21 Tribe has no leadership, each tribal member's interest has parity, and, accordingly, Applicant
22 Intervenors are indispensable parties to this action and entitled to mandatory intervention. As
23 mentioned above, they also have a financial stake in the Tribe's revenue sharing funds and,
24 therefore, meet the criteria for permissive intervention.

1 Plaintiff alleges the Motion to Intervene is an attempt to "re-litigate" Tribal membership.

2 The fact is there is no Federally Recognized Authority for the Tribe. Until the Tribe is
3 recognized the federal government as "organized" membership cannot be litigated as until then
4 there is no Tribe and membership cannot be litigated nor "re-litigated."

5 Plaintiff pays considerable attention in her opposition to intervention to Chadd Everone
6 whom she characterizes as the agent behind the Intervention and a covert Intervenor. Mr.

7 Everone is not an Applicant Intervenor in this Action; and his Declaration is only to verify that
8 he compiled the chart of litigations in Exhibit "E" of "Applicant Intervenor's Memorandum of
9 Points and Authorities in Support of Motion to Intervene, November 8, 2010", which is
10 incorporated herein by reference. Thus, the Plaintiff's comments and allegations regarding
11 Everone are irrelevant to the issue before the Court. The characterization of Chadd Everone as
12 claiming the "leadership" of the California Valley Miwok Tribe, creating a new Indian tribe
13 called the "Everone Tribe", and being associated with a "wealthy land developer [to] one day
14 build a casino in the name of the Tribe" are all denied, in addition to those allegations being
15 irrelevant to the Motion to Intervene. All business agreements which the Tribe makes with any
16 outside group are subject to scrutiny and/or approval by the BIA, the Secretary of the Interior,
17 and the National Indian Gaming Commission. Thus, no one will be able to take improper
18 advantage of the Tribe. Mr. Everone has served as Deputy to Yakima Dixie, the Hereditary
19 Chief, since 2003 and to the Tribal Council, which was established by Yakima Dixie, as well as
20 to the broader Putative Member Class (some 160 adults plus over 300 children); and he actively
21 promulgates their interests. Everone has never claimed to be a member of the Tribe, nor to be an
22 Indian, nor to be an attorney.

23 Plaintiff ignores the important distinction between an "Unorganized Tribe" and a
24 "Federally Recognized Tribe without a Federally Recognized Authority". A "Federally

1 Recognized Indian Tribe" is a tribe listed in the most current Federal Register by the
2 Department of the Interior - Bureau of Indian Affairs as being among the "Indian Entities
3 Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs".
4 Plaintiff, "California Valley Miwok Tribe" is so listed (as "California Valley Miwok Tribe,
5 California"). Being Federally Recognized, this Tribe is qualified to receive the distributions
6 from the Revenue Sharing Trust Fund of the California Gambling Control Commission - the
7 subject of this litigation. The Federal government may identify a "Federally Recognized
8 Authority for a Federally Recognized Indian Tribe". The Federal government may change or, as
9 in this case remove and not identify a successor Federally Recognized Authority for a tribe. The
10 California Valley Miwok Tribe, California is a Federally Recognized tribe but is a tribe without a
11 Federally Recognized Authority. That is the Olsen Determination & Mandate, cited above,
12 which has been vetted in U.S. District Court, the U.S. Court of Appeals and the Interior Board of
13 Indian Appeal in which the Federal government, BIA, defended its right to help the Tribe
14 become organized so that it may have a Federally Recognized Authority; and they successfully
15 did so against the Opposition of this Plaintiff, Silvia Burley.

16 Sylvia Burley is not a Federally Recognized Authority for the Tribe. The Plaintiff's
17 attempt to clothe Sylvia Burley's leadership with alleged implicit continuing approbation by the
18 Bureau of Indian Affairs is contradicted by the explicit positions of the Bureau in opposing Ms.
19 Burley's proposed constitution, the litigation following, and the termination of her Indian Self-
20 Determination contract under P.L. 93-638. One has only to look at the latest ruling by the
21 Interior Board of Indian Appeals to see that the Bureau continues to dispute Ms. Burley's claims
22 to leadership of the Tribe. The history was recently summarized in the decision of the *Interior*
23 *Board of Indian Appeals in California Valley Miwok Tribe v. Pacific Regional Director, Bureau*
24 *of Indian Affairs*, 51 IBIA 103 (1/28/2010). Sylvia Burley's previous attempt through a

1 proposed tribal constitution to limit the Tribe's membership and its assets to her immediate
2 family dispel any notion that this litigation is about anything other than hijacking the Tribe's
3 assets for individual, personal gain. And, Sylvia Burley's attacks on the Applicant Intervenors
4 and Yakima Dixie's deputy, Chadd Everone, are just a smokescreen to keep this court from the
5 truth.

6 Plaintiff misconstrues Applicant Intervenors' argument that Defendant Commission
7 should hold the revenue sharing funds until the Tribe is organized. Applicants do not argue that
8 the Tribe must be organized pursuant to a constitution adopted under the Indian Reorganization
9 Act. What is required under Federal law, however, is that the Tribe be organized, so as to select
10 its leadership democratically, without the anti-majoritarian gambits attempted by the Burley
11 family to exclude as many as several hundreds of tribal members. See *California Valley Miwok*
12 *Tribe v. United States* (D.C. Cir. 2008) *supra*, 1267.

13 Plaintiff argues in her opposition at pages 13 and 14 of her opposition that the denial of a
14 temporary restraining order in 2004 is res judicata and collaterally estops Applicant Intervenors
15 from intervening in the present action. Plaintiff cites no authority for the proposition that a
16 ruling on a temporary restraining order, an ex parte proceeding, can have a preclusive effect with
17 respect to an action on the merits. Such authority does not exist for the undoubted reason that a
18 TRO is not a ruling on the merits and, therefore, cannot be res judicata or collateral estoppel.

19 Based on the facts and law, Applicant Intervenors must be granted leave to be Parties
20 Defendant in this suit as their application is timely, each has a substantive interest in the subject
21 of the litigation, those interests can be irreparably damaged by the out-come of this litigation,
22 and neither Plaintiff nor the Defendant can adequately represent their interests.

23 Respectfully submitted December 10, 2010.

24 
Thomas W. Wolfrum, Attorney for Applicant Intervenors

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Thomas W. Wolfrum 54837 1333 N. California Blvd. Suite 150 Walnut Creek, CA 94596 TELEPHONE NO.: (925) 930-5645 FAX NO. (Optional): (925) 930-6208 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Applicant Intervenor	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 220 West Broadway MAILING ADDRESS: CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central Division	CASE NUMBER: 37-2008-00075326-CU-CO-CTL JUDGE: Hon. Ronald L. Styn DEPT.: D-62
PLAINTIFF/PETITIONER: California Valley Miwok Tribe DEFENDANT/RESPONDENT: California Gaming Control Commission,	
PROOF OF SERVICE-CIVIL Check method of service (only one): <input type="checkbox"/> By Personal Service <input type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax <input checked="" type="checkbox"/> By Electronic Service	

(Do not use this proof of service to show service of a Summons and complaint.)

1. At the time of service I was over 18 years of age and not a party to this action.
 2. My residence or business address is:
1333 North California Blvd., Suite 150
Walnut Creek, CA 94596
 3. ☒ The fax number or electronic notification address from which I served the documents is (complete if service was by fax or electronic service): **twolfrum@wolfrumlaw.com**
 4. On (date): **December 10, 2010** I served the following documents (specify):
APPLICANT INTERVENORS REPLY IN INTERVENTION
- ☐ The documents are listed in the Attachment to Proof of Service-Civil (Documents Served) (form POS-040(D)).
5. I served the documents on the person or persons below, as follows:
 - a. Name of person served: **Sylvia Cates, Office of the Attorney General**
 - b. ☐ (Complete if service was by personal service, mail, overnight delivery, or messenger service.)
 Business or residential address where person was served:
 - c. ☒ (Complete if service was by fax or electronic service.)
 - (1) Fax number or electronic notification address where person was served:
Sylvia.Cates@doj.ca.gov
 - (2) Time of service:
 - ☐ The names, addresses, and other applicable information about persons served is on the Attachment to Proof of Service-Civil (Persons Served) (form POS-040(P)).
 6. The documents were served by the following means (specify):
 - a. ☐ By personal service. I personally delivered the documents to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

(Continued on next page)

CASE NAME

CVWT vs. CGCC

CASE NUMBER:

37-2008-00075326-CU-CO-CTL

6. b. ☐ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and *(specify one)*:
- (1) ☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
- (2) ☐ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at *(city and state)*:
- c. ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. ☐ **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. *(A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.)*
- e. ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- f. ☒ **By electronic service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed in item 5.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: **December 10, 2010**

Thomas W. Wolfrum

(TYPE OR PRINT NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

- ☐ **By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package, which was clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on *(date)*:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(NAME OF DECLARANT)

(SIGNATURE OF DECLARANT)