

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
HALL OF JUSTICE  
TENTATIVE RULINGS - December 16, 2010**

EVENT DATE: 12/17/2010      EVENT TIME: 08:30:00 AM      DEPT.: C-62

JUDICIAL OFFICER: Ronald L. Styn

CASE NO.: 37-2008-00075326-CU-CO-CTL

CASE TITLE: CALIFORNIA VALLEY MIWOK TRIBE VS. THE CALIFORNIA GAMBLING CONTROL COMMISSION

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Contract - Other

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion for Leave to Intervene, 11/08/2010

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**The court addresses the evidentiary issues.** Plaintiff's request for judicial notice is granted as to 1-4, 10 and 15-41 and denied as to 5-9 and 11-14. Defendant California Gambling Control Commission's objections to Plaintiff's request for judicial notice 5-9 and 11-14 are sustained; objections 1-4 and 10 are overruled.

**The court then rules as follows.** Intervenor California Valley Miwok Tribe, California, Yakima K. Dixie, Velma WhiteBear, Antonia Lopez, Antone Azevedo, Michael Mendibles and Evelyn Wilson's motion for leave to intervene is granted. CCP §387(a).

The court finds this motion timely. Defendant California Gambling Control Commission, following an appeal of an order sustaining of the Commission's demurrer, filed its answer on October 15, 2010; this motion was filed on November 8, 2010.

Pursuant to CCP §387(a):

Upon timely application, any person, who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant, and is made by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the court and served upon the parties to the action or proceeding who have not appeared in the same manner as upon the commencement of an original action, and upon the attorneys of the parties who have appeared, or upon the party if he has appeared without an attorney, in the manner provided for service of summons or in the manner provided by Chapter 5 (commencing with Section 1010) Title 14 of Part 2. A party served with a complaint in intervention may within 30 days after service move, demur, or otherwise plead to the complaint in the same manner as to an original complaint.

As pled the complaint seeks, *inter alia*, an injunction, declaratory relief and a writ of mandate requiring the Commission to resume payment of RSTF monies to the Tribe "by sending RSTF checks made out to the Tribe *in care of Burley*. . ." [Cplt. ¶ 39; Prayer 1-3]. It is not disputed that the Tribe is entitled to the

RSTF monies. What is in dispute is the propriety of the Commission holding the RSTF monies in trust and, significantly for purposes of this motion, to whom the RSTF monies should be paid. Evidence before the court shows that, while previous payments were made to Sylvia Burley, there presently exists a significant Tribal leadership dispute. Such dispute is detailed in both the Court of Appeal opinion in this case *California Valley Miwok Tribe v. California Gambling Control Com'n* (Cal. Ct. App., Apr. 16, 2010, D054912) 2010 WL 1511744, the Federal court decision in *California Valley Miwok Tribe v. U.S.* (D.C. Cir. 2008) 515 F.3d 1262 and proceedings before the Bureau of Indian Affairs *California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian Affairs*, 51 IBIS 103 (1/28/10). This leadership dispute includes Burley's failed efforts to organize and form a recognized governing body for the Tribe (see, *California Valley Miwok Tribe v. U.S.* (D.C. Cir. 2008) 515 F.3d 1262, 1267). As pled, the complaint alleges Burley is the Tribe's "spokesperson as that term is defined under Section 2.19 of the Compact." The complaint seeks resumption of payments to Burley. Intervener Yakima Dixie claims his right to receive the RSTF monies as Hereditary Chief and Traditional Authority for the Tribe. While it appears the Tribe is a "Federally Recognized Indian Tribe" apparently the Bureau of Indian Affairs does not recognize anyone as the "Federally Recognized Authority for the Tribe." Interveners submit evidence of their claims to membership in the Tribe and of their exclusion from participating in Tribal affairs. The court finds evidence of the on-going Tribal leadership dispute, both Dixie and Burley's failure to involve the whole tribal community in the formation of a constitution and governing body for the Tribe, [see, *California Valley Miwok Tribe v. Pacific Regional Director, Bureau of Indian Affairs*, 51 IBIS 103 (1/28/10)] and the Bureau of Indian Affairs requirement of adoption of a Tribal government that "reflect[s] the involvement of the whole tribal community" [see, *California Valley Miwok Tribe v. U.S.* (D.C. Cir. 2008) 515 F.3d 1262, 1266], which community would necessarily include both Burley and Interveners, sufficient to establish Interveners' interest in this action. Given the relief Plaintiff seeks, absent intervention, a determination as to whom RSTF monies are to be paid would be made without affording Interveners the opportunity to protect their interests (as members of the Tribe) to the RSTF monies.

The court is not persuaded by Plaintiff's argument that Interveners' interests are adequately protected by Plaintiff/Burley. Given the on-going leadership dispute, it is apparent that Burley and Interveners have conflicting interests in this matter. Plaintiff fails to provide any authority or evidence sufficient to establish that the October 27, 2004, ruling operates as res judicata or collateral estoppel on the issue of intervention in this case.

The court does not reach the issue of whether this court has jurisdiction to make a determination as to whom the RSTF monies should be paid. Rather, the court makes this ruling only in the context of the allegations and prayer in the complaint specifically seeking an order for payment to the Tribe "in care of Burley."