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CALIFORNIA VALLEY MIWOK TRIBE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO - CENTRAL DISTRICT**

CALIFORNIA VALLEY MIWOK TRIBE Case No. 37-2008-00075326-CU-CO-CTL

Plaintiff,

vs.

**CALIFORNIA GAMBLING CONTROL
COMMISSION,**

Defendant.

**NOTICE OF HEARING AND MOTION
FOR JUDGMENT ON THE PLEADINGS
AS AGAINST DEFENDANT
CALIFORNIA GAMBLING CONTROL
COMMISSION RE: ANSWER TO
FIRST AMENDED COMPLAINT**

Date: April 26, 2013

Time: 2:00 p.m.

Dept: 62

Judge: Hon. Ronald Styn

Trial Date: June 4, 2013

1 TO DEFENDANT CALIFORNIA GAMBLING CONTROL COMMISSION,
2 AND ITS ATTORNEY OF RECORD, THE CALIFORNIA ATTORNEY
3 GENERAL'S OFFICE, AND TO ALL INTERESTED PARTIES:

4 PLEASE TAKE NOTICE that on April 19, 2013, at 2:00
5 p.m., or as soon thereafter as the matter can be heard in
6 Department 62 of the above-entitled court located at 330
7 West Broadway, San Diego, California 92101, Plaintiff
8 CALIFORNIA VALLEY MIWOK TRIBE ("the Tribe" or "Plaintiff")
9 will, and hereby does, move this court pursuant to CCP
10 Section 438 and under non-statutory case law, on behalf of
11 itself, for judgment on the pleadings in favor of Plaintiff
12 as to the entire Answer as a whole, and as to each of the
13 defenses asserted therein, as more specifically set forth
14 below, on the grounds that the First Amended Complaint
15 ("FAC") states facts sufficient to constitute a cause of
16 action against Defendant CALIFORNIA GAMBLING CONTROL
17 COMMISSION ("the Commission" or Defendant") and "the answer
18 does not state facts sufficient to constitute a defense to
19 the complaint" (CCP Section 438(c)), based on matters that
20 are judicially noticeable. CCP Section 438(d); Ev.C.
21 Section 452(c).


22 This motion is made on the ground that the FAC states
23 facts sufficient to constitute a cause or causes of action
24 against the defendant and the answer does not state facts
25 sufficient to constitute a defense to the FAC, based on
26 judicially noticeable facts. CCP Section 438(c). In
27 addition to being directed at the answer as a whole, this
28

1 motion is directed to each of the following affirmative
2 defenses set forth in the Defendant's answer:

- 3 1. Plea in Abatement.
- 4 2. No Jurisdiction.
- 5 3. Unclean Hands.
- 6 4. Res Judicata.
- 7 5. Collateral Estoppel.
- 8 6. Lack of Standing.

9 This motion will be based upon this notice, the Answer
10 to the FAC, the Memorandum of Points and Authorities
11 attached hereto, the Request for Judicial Notice attached
12 hereto, the complete files and records of this action, and
13 such other oral and documentary evidence as may be
14 presented at the time of hearing.

15
16
17 Dated: February 18, 2013


Manuel Corrales, Jr., Esq.
Attorney for Plaintiff
CALIFORNIA VALLEY MIWOK
TRIBE

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CALIFORNIA VALLEY MIWOK TRIBE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO - CENTRAL DISTRICT**

CALIFORNIA VALLEY MIWOK TRIBE

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

Plaintiff,

vs.

**CALIFORNIA GAMBLING CONTROL
COMMISSION,**

Defendant.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR JUDGMENT ON THE
PLEADINGS BY PLAINTIFF AS
AGAINST DEFENDANT RE: ANSWER
TO FIRST AMENDED COMPLAINT**

Date: April 26, 2013

Time: 2:00 p.m.

Dept: 62

Judge: Hon. Ronald Styn

Trial Date: May 13, 2011

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TRIBAL ORDINANCE

Miwok Resolution #GC-98-01.....4, 11

1 Plaintiff CALIFORNIA VALLEY MIWOK TRIBE ("the Tribe" or
2 "Miwok Tribe" or "Plaintiff") submits the following
3 Memorandum of Points and Authorities in Support of Motion
4 for Judgment on the Pleadings as against Defendant
5 CALIFORNIA GAMBLING CONTROL COMMISSION ("the Commission" or
6 "Defendant").

7 I. INTRODUCTION

8 The Court of Appeal granted Plaintiff California Valley
9 Miwok Tribe's ("Miwok Tribe") petition for a writ of
10 mandate directing the trial court to lift its stay of these
11 proceedings, so as to allow the parties to file dispositive
12 motions and, if necessary, proceed to trial.

13 The trial court previously granted the Plaintiff's
14 motion for judgment on the pleadings against the California
15 Gambling Control Commission ("the Commission") which was
16 based exclusively on a December 22, 2010 decision from the
17 Assistant Secretary of Interior ("ASI"), which concluded
18 that the Miwok Tribe is a federally-recognized tribe
19 consisting of five members with a recognized governing body
20 established under a 1998 Tribal Resolution. The ASI
21 further ruled that the U.S. Bureau of Indian Affairs
22 ("BIA") could not require the Tribe to expand its
23 membership against its will.

24 Prior to entry of judgment on that order, the ASI set
25 aside its decision to allow for further briefing on the
26 issues, which caused the trial court in this case to hold
27 off on entering judgment. When the ASI issued its final
28

1 decision on August 31, 2011, affirming its December 22,
2 2010, decision, this court stayed all further proceedings
3 in this case, except for discovery, pending resolution of a
4 challenge to the ASI's August 31, 2011 decision by the
5 Intervenor in this case, Yakima Dixie ("Dixie") and his
6 followers.

7 In granting the Plaintiff's petition, the Court of
8 Appeal ordered that the trial court need only *acknowledge*
9 that the federal dispute is ongoing, but is to decide
10 independently whether the Commission is justified in
11 withholding the subject Revenue Sharing Trust Fund ("RSTF")
12 payments from the Miwok Tribe for all of the reasons stated
13 by the Commission, which includes: (1) There is a Tribal
14 leadership dispute calling into question who is authorized
15 to receive the RSTF for the Tribe; (2) The Tribe's
16 governing body is not recognized by the BIA for purposes of
17 receiving federal contract funding; (3) The Tribe's
18 membership does not consist of Indians in the surrounding
19 area; (4) The Tribe must first qualify for federal contract
20 funding to be eligible to receive RSTF payments; and (4)
21 the Tribe must wait until the pending federal litigation is
22 concluded.

23 Judicially noticeable facts establish the Commission's
24 Answer denying it is required to distribute the subject
25 RSTF to the Plaintiff Miwok Tribe "does not state facts
26 sufficient to constitute a defense to the [First Amended
27 Complaint]" thereby entitling Plaintiff to judgment
28

1 "forthwith." CCP §438(h)(3). This is based on the recent
2 deposition testimony of Dixie admitting that he resigned
3 from the Tribe in 1999 and that he acknowledged Burley as
4 the Tribal leader, a BIA approved January 2011 Tribal
5 election, and the language of the 1999 tribal-state gaming
6 compacts ("Compacts") limiting the Commission's discretion
7 on RSTF distributions to Non-Compact tribes.

8 **II. ARGUMENT**

9 **A. BASED ON JUDICIALLY NOTICEABLE FACTS, THE COMMISSION** 10 **HAS NO DEFENSE TO THE FIRST AMENDED COMPLAINT**

11 A motion for judgment on the pleadings by the plaintiff
12 can be made on the ground "that the complaint states facts
13 sufficient to constitute a cause or causes of action
14 against the defendant and the answer does not state facts
15 sufficient to constitute a defense to the complaint." CCP
16 Section 438(c). Grounds for the motion may be based on
17 facts which the court may judicially notice in connection
18 with motions by plaintiff seeking declaratory relief. CCP
19 Section 438(d); Sebago, Inc. v. City of Alameda (1989) 211
20 CA3d 1372 (Court of Appeal took judicial notice of written
21 discovery responses to affirm order granting plaintiff's
22 motion for judgment on the pleadings seeking declaratory
23 relief).

24 **1. Plaintiff's First Amended Complaint states facts** 25 **sufficient to constitute a cause of action against** 26 **the Commission.**

27 The elements of Plaintiff's case as alleged in the
28 First Amended Complaint ("FAC") are as follows:

1 1. Plaintiff Miwok Tribe is a federally-recognized
2 tribe. (Para 8 FAC).

3 2. Under the Compacts, Non-Compact tribes are
4 entitled to receive \$1.1 million a year paid on a quarterly
5 basis. These payments are from license fees paid to the
6 Commission by Compact tribes for distribution to qualifying
7 Non-Compact tribes. However, the only requirement for
8 eligibility for receipt of RSTF payments is that the Non-
9 Compact tribe be a federally-recognized tribe and operate
10 less than 350 gaming devices. (Para 6 FAC) (§4.3.2 of
11 Compacts)

12 3. Plaintiff Miwok Tribe is a Non-Compact tribe under
13 the Compacts. It operates no gaming devices. (Para 7 FAC)

14 4. While not a requirement, Plaintiff Miwok Tribe
15 operates under a resolution form of government which was
16 established tribal Resolution No. GC-98-01. (Para 8 FAC)

17 5. In 2005, the Commission suspended its quarterly
18 payments to the Miwok Tribe and decided to hold the funds
19 indefinitely for later distribution, citing "the lack of a
20 recognized tribal government or leadership," and because
21 the Miwok Tribe is not "organized" under the Indian
22 Reorganization Act of 1934 ("IRA"). The Commission further
23 pointed to a Tribal leadership dispute between Burley and
24 Dixie, where Dixie claimed he, not Burley, is the rightful
25 Tribal leader. (Para 15 FAC).

26 6. The Commission has explained that "in situations
27 involving tribal leadership disputes," it takes its lead"
28 from the BIA, and because the BIA has suspended the Miwok

1 Tribe's federal contract funding, the Commission has
2 decided to do likewise with respect to the Tribe's RSTF
3 payments. (Para 44 FAC).

4 7. These reasons are not supported by the language of
5 the Compacts and are contrary to the express provisions in
6 the Compacts limiting the Commission's discretion to
7 serving as a mere depository of the RSTF.

8 (§4.3.2.1(b)) ("no discretion with respect to the use or
9 disbursement of the trust funds"). (Para 22 FAC).

10 8. Because the Commission has been withholding the
11 Miwok Tribe's RSTF payments since 2005, it is not in
12 compliance with Gov. Code § 12012.90(e)(2) directing that
13 the Commission "make quarterly payment...to each eligible
14 recipient Indian Tribe within 45 days of the end of each
15 fiscal quarter," thereby entitling Plaintiff to declaratory
16 and injunctive relief. CCP§1060.

17 **2. The Commission's Answer does not state facts**
18 **sufficient to constitute a defense to the First**
19 **Amended Complaint.**

20 In its Answer to the FAC, the Commission denied that
21 the Tribe "was and is eligible to receive funds from the
22 RSTF." (Para. "9"). It also denied that "[i]n 1998, the
23 Miwok Tribe established a tribal council, by Resolution No.
24 GC-98-01." (Para. "8"). It denied that the Compact does
25 not require the Tribe to be "organized" under the IRA in
26 order to be entitled to RSTF distribution payments. (Para.
27 "23"). The Commission denied that it "violated its legal
28 duties by withholding Plaintiff's entitled share to RSTF
money and by refusing to distribute such funds to

1 Plaintiff, for the reasons alleged [in the FAC], and until
2 Plaintiff settles its ongoing leadership dispute..." (Para.
3 "44").

4 The grounds for these denials are summarized in
5 judicially noticeable letters the Commission wrote to the
6 Tribe, which clarify that it suspended RSTF payments
7 because: (1) the Tribe has no recognized governing body;
8 (2) the Tribe has no recognized leader; (3) the Tribe fails
9 to include or protect the interests of a significant number
10 of potential members; and (4) there is an ongoing
11 leadership dispute. (RJN, Ex. "6", letter from Commissioner
12 Shelton, dated June 26, 2007). These assertions form the
13 basis for the Commission's following affirmative defenses:
14 (1) Plea in Abatement; (2) No Jurisdiction; (3) Unclean
15 Hands; (4) Res Judicata; (5) Collateral Estoppel; (6) Lack
16 of Standing.

17 In addition, the Commission explained its affirmative
18 defenses in its recent answers to interrogatories as
19 follows: "The California Valley Miwok Tribe is unorganized
20 and its membership, i.e., the body politic which comprises
21 the California Valley Miwok Tribe and which may select its
22 government, is currently unknown. Thus, no one has
23 authority to represent the California Valley Miwok Tribe,
24 and there is no authorized tribal government." (RJN No.
25 "8", Response to Interrogatory No. 12). Responses to
26 written discovery are proper subjects of judicial notice,
27 especially if they are part of the court record. Sebago,
28 Inc. v. City of Alameda (1989) 211 CA3d 1372, 1380-1381;

1 Stencel Aero Engineering Corp. v. Superior Court (1976) 56
2 CA3d 978, 987, fn. 6 (responses authenticated by counsel
3 under oath and filed with court). These discovery
4 responses are part of the Superior Court and Court of
5 Appeal record.

6 Accordingly, because none of these affirmative defenses
7 finds any support in the language of the Compacts, the
8 Commission's Answer fails to state a defense to the FAC.

9 **C. THE COMMISSION IS NO LONGER JUSTIFIED IN WITHHOLDING
10 RSTF MONEY FROM THE MIWOK TRIBE**

- 11 1. Dixie's deposition testimony refutes the
12 Commission's defense that a tribal leadership
13 dispute prevents it from distributing RSTF
14 money to the tribe

15 Dixie admitted in his deposition that he had resigned
16 as Tribal Chairman in 1999 and that his signature on his
17 notice of resignation was not a forgery as he had
18 previously claimed. (RJN, Ex. "21" and "22"). This
19 admission opens the door for the Commission to release the
20 RSTF money to an authorized representative for the Tribe,
21 and removes any claim of a competing tribe or a competing
22 Tribal representative vying for the same funds. Indeed,
23 the Complaint-in-Intervention specifically alleges that,
24 "the essence of this action is the tribal dispute regarding
25 the leadership of the Tribe." (RJN, Ex. "20", Page 13,
26 lines 10-11).

27 In October 2010, Dixie signed a declaration under
28 penalty of perjury in support of his motion for leave to
intervene, stating: "The document allegedly showing my

1 resignation as Tribal Chairman is a forgery." (Emphasis
2 added). (RJN, Ex. "19", page 2, lines 20-25). This
3 declaration was proven to be false. Dixie testified in a
4 subsequent deposition, under the examination of his own
5 counsel, that he in fact resigned as Tribal Chairman, and
6 that the signature appearing on a document notifying of his
7 resignation he had earlier claimed to be a forgery was
8 genuinely his. (RJN, Ex. "21"). He further testified that
9 his signature appeared on a document confirming Burley as
10 the new Tribal Chairperson. (RJN, Ex. "21").

11 In fact, in 2004 the Commission had previously taken
12 the position that Burley was the authorized representative
13 for the Tribe for purposes of receiving the Tribe's RSTF
14 payments, against Dixie's claim that he was the rightful
15 Chairman, since the BIA had at that time recognized Burley
16 as a "person of authority." It stated:

17 "The Commission has been faced on more than one
18 occasion with the prospect of making a RSTF
19 disbursement to a tribe in the midst of a leadership
20 dispute. In the past, it has been the practice of
21 the Commission to refrain from disbursing the RSTF
22 funds until the resolution of the tribal leadership
23 dispute, in order to ensure that the funds were
24 submitted to the proper party and address. [citation
25 omitted]. However, the Commission has recently
26 determined that it should change this practice, in
27 conformity with the practice of the Bureau of Indian
28 Affairs, by disbursing funds to the tribal
representative with which the federal government
carries on its government-to-government relationship
with the tribe. [citation omitted]. **It appears to the
State that the tribe's representative for such purposes
remains Silvia Burley ("Burley"), notwithstanding what**

1 **may or may not be a meritorious challenge to her**
2 **leadership."** (Emphasis added).

3 (RJN, Ex. "9"). While such a policy set a bad precedent,
4 since nothing in the Compact requires that the Commission
5 condition RSTF payments on actions taken by the BIA, the
6 point is that the Commission asserted in court documents
7 that the existence of a leadership dispute should not
8 prevent it from distributing RSTF to a Non-Compact tribe,
9 so long as the Commission is able to identify an
10 appropriate Tribal representative.

11 The Commission's contention that the BIA or the ASI
12 must decide the Tribal leadership dispute is ill-conceived
13 and misleading. It is a "bedrock principle of federal
14 Indian law that every tribe is 'capable of managing its own
15 affairs and governing itself.'" Timbisha Shoshone Tribe
16 v. Salazar (D.C. Cir. 2012) 678 F.3d 935, 938; see also
17 Santa Clara Pueblo v. Martinez (1978) 436 U.S. 49, 62. To
18 this end, resolutions of tribal leadership disputes are
19 internal tribal matters that must be decided by the tribe,
20 not the BIA, the federal government or any court. Timbisha
21 Shoshone Tribe, *supra*.

22 **2. As a result of the December 22, 2010 ASI Decision,**
23 **the Tribe resolved its internal leadership dispute**
24 **which the BIA acknowledged.**

25 In early January 2011, after the ASI's December 2, 2010
26 decision was issued, the Miwok Tribe conducted an election,
27 with full notice to Dixie, and re-elected Burley as the
28 Chairperson of the Tribe. Troy Burdick of the BIA,

1 pursuant to the authority of the recent ASI decision, then
2 wrote a letter dated January 12, 2011 to Chairperson Burley
3 acknowledging the election results and congratulating all
4 elected officials. (RJN, Ex. "32"). Although the ASI
5 later set aside his December 22, 2010 decision solely to
6 allow further briefing on the issue, he never reversed that
7 decision, but in fact ultimately affirmed it. Accordingly,
8 at the time the December 22, 2010 ASI decision was in full
9 force and effect, the Tribe conducted an election resolving
10 the internal leadership dispute with Dixie, which was
11 accepted and acknowledged by the BIA. Troy Burdick never
12 recalled or set aside his January 12, 2011 letter of
13 acknowledgment.

14 Thus, despite Dixie's pending federal court challenge
15 to the ASI's August 31, 2011 decision affirming the
16 December 22, 2010 decision, the Tribal Council's election
17 results of January 2011 was, as still is, recognized by the
18 ASI by final agency action. Timbisha Shoshone Tribe, supra
19 at 938 (holding that the ASI Echo Hawk letter acknowledged
20 the Timbisha Shoshone resolved their own leadership dispute
21 through a valid internal tribal process, despite the losing
22 faction challenging Echo Hawk's decision in federal court).

23 **3. The Compacts do not require that the BIA recognize**
24 **a Non-Compact Tribe's governing body as a**
25 **condition of RSTF payments.**

26 The Commission claims it is further prevented from
27 releasing the RSTF money to the Tribe, because the BIA does
28 not "recognize" the Tribe's governing body. Aside from the
ASI's decision that it does, i.e., that it is (and always

1 has been since 1998) governed by a resolution form of
2 government established under Resolution #GC-98-01, the
3 trial court has jurisdiction to determine whether the
4 language of the Compact permits the Commission to withhold
5 RSTF money from a Non-Compact tribe because it purportedly
6 has no recognized governing body. (12/18/2012 Ct. App.
7 Dec., RJN, Ex. "23," page 16) A review of the Compact
8 shows that no such requirement exists, most likely because,
9 under Indian law, an Indian tribe pursuant to its inherent
10 power of self-government, may establish any form of
11 government that best suits its own practical, cultural, or
12 religious needs, outside the IRA framework, and without any
13 written constitution at all. Santa Clara Pueblo v.
14 Martinez (1978) 436 U.S. 49, 62-63; Pueblo of Santa Rosa v.
15 Fall (1927) 273 U.S. 315. Thus, whether Dixie is
16 purportedly challenging #GC-98-01 in federal court is
17 irrelevant, since the Tribe may operate under no written
18 constitution at all.

18 In order for a Non-Compact tribe to be eligible to
19 receive RSTF payments, all that the Compact requires is
20 that the Non-Compact tribe be a federally-recognized tribe,
21 i.e., that it be on the list of federally-recognized tribes
22 in the FEDERAL REGISTER. It is undisputed that the Tribe
23 meets this minimum requirement. (RJN, Ex. "12" and "28")

24 Since establishing a resolution form of government in
25 1998, the Tribe, under Burley's leadership, has passed and
26 adopted numerous resolutions in connection with the
27 operation of the Tribe, including the resolution changing
28

1 the name of the Tribe to the present name of the California
2 Valley Miwok Tribe, which the BIA accepted and then made
3 the change in the Federal Register. (RJN, Ex. "16" and
4 "17"). Even the Commission itself has issued checks to the
5 California Valley Miwok Tribe, and has purportedly "set
6 aside" RSTF payments on behalf of the California Valley
7 Miwok Tribe, and thus by its own actions has indirectly
8 recognized the very same Tribal Council that changed the
9 Tribe's name. (RJN, Ex. "12"). Significantly, the
10 Commission refused to answer written interrogatories asking
11 if it contends that the Tribe had no authority to make that
12 name change. (RJN, Ex. "8," Spec. Interrogatory No. 20).

13 As the Court of Appeal in this case observed:

14 "[A] tribe may choose not to organize under the IRA,
15 and many tribes have accordingly adopted constitutions
16 using procedures not set forth in the IRA, and
several tribes exist without any written constitution.
(citations omitted)." (Emphasis added).

17 (RJN, Ex. "24," Ct. of App. Dec., 4/16/2010, page 8).

18 Thus, for purposes of being eligible for receipt of RSTF
19 payments, it is irrelevant whether the Tribe's current
20 resolution form of government is "recognized" by the BIA,
21 since, under well-settled Indian law, an Indian tribe may
22 function and operate without a written constitution at all.

23 **4. The Compacts do not require that a Non-Compact**
24 **Tribe satisfy any membership criteria in order to**
25 **be eligible for RSTF payments.**

26 Contrary to the Commission's assertions, the Compacts
27 do not require that a Non-Compact tribe demonstrate certain
28 membership criteria in order to qualify for RSTF

1 distribution payments. In fact, the Compacts specify that
2 RSTF payments are to be made only to a Non-Compact tribe,
3 not to any of its individual members. (4.3.2.1 of
4 Compacts). Thus, the Commission has no duty to "potential"
5 members of a Non-Compact tribe, and the Compacts do not
6 require that the Commission withhold RSTF payments for the
7 benefit of any "potential" members of a Non-Compact tribe.

8 Membership enrollment is to be decided solely by an
9 Indian tribe under well-settled Indian law, as recognized
10 by the Court of Appeal in this case. (Ct. of App. Dec.
11 4/16/2010, footnote 9, page 8, citing Santa Clara Pueblo v.
12 Martinez (1978) 436 U.S. 49, 72, fn. 32, for the
13 proposition that "[a] tribe's right to define its own
14 membership for tribal purposes has long been recognized as
15 central to its existence as an independent political
16 community...", and Williams v. Gover (9th Cir. 2007) 490
17 F.3d 785, 789, for the proposition that "[a]n Indian tribe
18 has the power to define membership as it chooses, subject
19 to the plenary power of Congress").

20 **5. The Compacts do not provide that a Non-Compact**
21 **tribe must qualify for P.L. 638 federal contract**
22 **funding through the BIA as a condition for receipt**
23 **of RSTF payments.**

24 Lastly, contrary to the Commission's assertions, a Non-
25 Compact tribe's right to receive RSTF payments is not
26 contingent upon it qualifying for federal contract funding
27 with the BIA. There could be a number of reasons why
28 federal contract funding would not be available to a
particular federally-recognized tribe that would have

1 nothing to do with eligibility to receive RSTF payments.
2 There is no relationship between the two sources of revenue
3 payments, and the Commission's position that it is required
4 to withhold RSTF from the tribe on this ground is wrong,
5 and thus the trial court has jurisdiction to determine
6 whether that policy is consistent with the language of the
7 Compacts.

8 Accordingly, each of the reasons given by the
9 Commission for withholding the Miwok Tribe's RSTF payments
10 since 2005 are erroneous and find no support in the
11 language of the Compacts. Indeed, they are contrary to the
12 express provisions in the Compacts limiting the
13 Commission's discretion to serving as a mere depository.
14 (§4.3.2.1(b)). It has no discretion on how the funds are
15 to be used or whether it should withhold those funds for
16 any reasons not set out in the Compacts. (§4.3.2.1
17 (b)) ("no discretion with respect to the use or disbursement
18 of the trust funds").

19 **6. The Commission's policy decision to withhold the**
20 **subject RSTF money pending resolution the federal**
21 **litigation is likewise erroneous.**

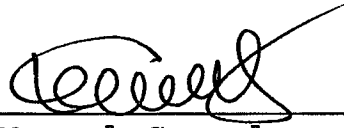
22 As the Court of Appeal recently ruled: "[T]he
23 fundamental issue presented to the trial court for
24 resolution on the merits is whether the current uncertainty
25 in the federal government's relationship to the Miwok
26 Tribe—including the pendency of the *Salazar* case—
27 constitutes a legally sufficient basis for the Commission,
28 as trustee of the RSTF, to withhold the RSTF funds from the
Miwok Tribe...The trial court need only *acknowledge* that

1 the federal dispute is ongoing, and based on that factual
2 predicate, determine whether the Commission has a legally
3 sufficient basis for withholding the RSTF funds." (Page 17
4 of Ct. App. Dec., 12/18/12). There is nothing in the
5 pending federal litigation that would justify withholding
6 these funds from the Tribe, largely because the
7 Commission's duties and responsibilities with respect to
8 disbursement of RSTF payments to the Tribe, and the Miwok
9 Tribe's entitlement to RSTF payments, are not being
10 litigated in the federal case. Neither is the Commission
11 subject to the jurisdiction of the BIA or the Department of
12 Interior ("DOI") with respect to the RSTF funds at issue
13 here.

14 III. CONCLUSION

15 Accordingly, Plaintiff's motion for judgment on the
16 pleadings should be granted, without leave to amend.

17
18 Dated: February 18, 2013

19 
20 Manuel Corrales, Jr., Esq.
21 Attorney for Plaintiff
22 CALIFORNIA VALLEY MIWOK
23 TRIBE
24
25
26
27
28

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Manuel Corrales, Jr., Esq. 17140 Bernardo Center Drive, Suite 370 San Diego, California 92128 TELEPHONE NO.: (858) 521 - 0634 FAX NO. (Optional): (858) 521 - 0633 E-MAIL ADDRESS (Optional): mannycorrales@yahoo.com ATTORNEY FOR (Name): Plaintiff California Valley Miwok Tribe	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 330 West Broadway MAILING ADDRESS: 330 West Broadway CITY AND ZIP CODE: San Diego, California 92101 BRANCH NAME: Central District	
PETITIONER/PLAINTIFF: California Valley Miwok Tribe RESPONDENT/DEFENDANT: California Gambling Control Commission	
PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL	CASE NUMBER: 37-2008-00075326-CU-CO-CTL

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- I am over 18 years of age and not a party to this action. I am a resident of or employed in the county where the mailing took place.
- My residence or business address is:
17140 Bernardo Center Drive, Suite 370
San Diego, California 92128
- On (date): **February 21, 2013** I mailed from (city and state): **San Diego, California**
 the following documents (specify):

☒ The documents are listed in the Attachment to Proof of Service by First-Class Mail—Civil (Documents Served) (form POS-030(D)).

- I served the documents by enclosing them in an envelope and (check one):
 - ☒ depositing the sealed envelope with the United States Postal Service with the postage fully prepaid.
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- The envelope was addressed and mailed as follows:
 - Name of person served:
 - Address of person served:

☒ The name and address of each person to whom I mailed the documents is listed in the Attachment to Proof of Service by First-Class Mail—Civil (Persons Served) (POS-030(P)).

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

Date: **February 21, 2013**

Heather Turner

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



(SIGNATURE OF PERSON COMPLETING THIS FORM)

SHORT TITLE: CVMT v. CGCC

CASE NUMBER:
37-2008-00075326-CU-CO-CTL**ATTACHMENT TO PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL (DOCUMENTS SERVED)***(This Attachment is for use with form POS-030)*The documents that were personally served by first-class mail are as follows *(describe each document specifically)*:

Notice of Hearing and Motion for Judgment on the Pleadings as Against Defendant California Gambling Control Commission re: Answer to First Amended Complaint

Memorandum of Points and Authorities in Support of Motion for Judgment on the Pleadings by Plaintiff as Against Defendant re: Answer to First Amended Complaint

Plaintiff's Request for Judicial Notice Re: Plaintiff's Motion for Judgment on the Pleadings and Motion Lifting Stay Re Order Denying Intervention; Declaration of Manuel Corrales, Jr.

SHORT TITLE: CVMT v. CGCC	CASE NUMBER: 37-2008-00075326-CU-CO-CTL
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ATTACHMENT TO PROOF OF SERVICE BY FIRST-CLASS MAIL—CIVIL (PERSONS SERVED)

(This Attachment is for use with form POS-030)

NAME AND ADDRESS OF EACH PERSON SERVED BY MAIL:

<u>Name of Person Served</u>	<u>Address (number, street, city, and zip code)</u>
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