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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN DIEGO
12

13 CALIFORNIA VALLEY MIWOK
14 TRIBE,

15 Plaintiff,
16 v.

16 CALIFORNIA GAMBLING CONTROL
COMMISSION, et al.,

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

24 Intervenors.
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No: 37-2008-00075326-CU-CO-CTL

INTERVENORS' SEPARATE
STATEMENT OF UNDISPUTED FACTS
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT OR
SUMMARY ADJUDICATION

Date: April 26, 2013

Time: 2:00 p.m.

Dept.: C-62

Judge: The Hon. Ronald L. Styn

Pursuant to section 437c, subdivision (b) of the California Code of Civil Procedure and Rule 3.1350, subdivision (h) of the California Rules of Court, Intervenor California Valley Miwok Tribe, California (A.K.A. Sheep Ranch Rancheria Of Me-Wuk Indians, California), Yakima K. Dixie, Velma Whitebear, Antonia Lopez, Antone Azevedo, Michael Mendibles, and Evelyn Wilson (collectively "Intervenor") submit this separate statement of undisputed material facts, together with references to supporting evidence, in support of their motion for summary judgment or summary adjudication of Plaintiff's Complaint.

ISSUE NO. 1

PLAINTIFF'S FIRST CAUSE OF ACTION FOR INJUNCTIVE RELIEF HAS NO MERIT

<u>Undisputed Material Facts:</u>	<u>Supporting Evidence:</u>
1. Plaintiff's first cause of action for injunctive relief seeks an order compelling defendant California Gambling Control Commission ("Commission") to immediately disburse Revenue Sharing Trust Funds held in trust for the California Valley Miwok Tribe to Plaintiff in care of Silvia Burley.	First Amended Complaint ("FAC"), ¶ 30; <i>California Valley Miwok Tribe v. California Gambling Control Commission</i> , No. D061811 (December 18, 2012), pp. 5, 17.
2. Intervenor filed a Complaint in Intervention in which they joined in with the Commission in opposition to Plaintiff's FAC.	Complaint in Intervention.
3. In 1999, California entered into a Tribal-State Gaming Compact ("Compact") with various Indian tribes authorized to conduct gaming in California.	FAC, ¶ 5; <i>Cates v. Chiang</i> , 154 Cal.App.4th 1302, 1305 (2007).
4. Under the Compact, a Non-Compact tribe is a federally recognized Indian tribe in California that operates fewer than 350 gaming devices.	Ex.2, Compact § 4.3.2(a)(i); <i>California Valley Miwok Tribe v. California Gambling Control Commission</i> , 2010 WL 1511744, *2 (4th Dist. 2010) (unpublished) (" <i>Miwok III</i> ").
5. Under the Compact, each eligible Non-Compact tribe is entitled to \$1.1 million per year from the Revenue Sharing Trust Fund ("RSTF").	FAC, ¶¶ 6-7; Ex. 2, Compact § 4.3.2.1; <i>Miwok III</i> at *2.
6. The Commission serves as the trustee of the	FAC, ¶¶ 6, 22, 29, 34; Ex. 2, Compact § 4.3.2.1(b); <i>Miwok</i>

1	RSTF.	<i>III</i> at *3.
2	7. As a trustee, the Commission owes a fiduciary	FAC, ¶¶ 6, 25, 30, 34; <i>Miwok</i>
3	duty to the Non-Compact tribes with respect to	<i>III</i> at *9-10.
4	8. The California Valley Miwok Tribe (the	FAC, ¶¶ 6-7; <i>Miwok III</i> at *2.
5	“Tribe”) is a Non-Compact tribe.	
6	9. Plaintiff contends that the Tribe consists of four	Ex. 3, Burley Declaration at ¶ 3;
7	adult members (Silvia Burley, her two daughters	FAC, ¶¶ 8-9 and Verification at
8	Rashel Reznor and Anjelica Paulk, and	p. 14 of FAC.
9	Intervenor Yakima Dixie) and that Silvia Burley	
10	is the “selected spokesperson” for the Tribe.	
11	10. Intervenor contend that: (1) the Tribe consists	WhiteBear Decl., ¶¶ 1-8:
12	of more than 200 adult members and their	Complaint in Intervention, ¶¶ 4,
13	children; (2) the Tribe is governed by a Tribal	8, 13, 15, 22.
14	council consisting of seven members; and (3)	
15	Silvia Burley is neither a Tribal official, Tribal	
16	representative nor member of the Tribal	
17	government.	
18	11. Commencing in February 2005, BIA issued a	Exhibits 4, 5, 29, 30, 31; FAC,
19	series of decisions in which it stated that there	¶¶ 12-17.
20	was no recognized government or governing	
21	body of the Tribe. BIA further stated that it	
22	would assist the Tribe in identifying its full	
23	membership and forming a valid Tribal	
24	government.	
25	12. Commencing in July 2005, BIA issued a series	Exhibits 6, 7; FAC, ¶¶ 15-17;
26	of decisions in which it denied funding to	25 U.S.C. § 450 et seq.;
27	Plaintiff and Silvia Burley under Public Law 93-	<i>California Valley Miwok Tribe</i>
28	638 (“PL-638”), the Indian Self-Determination	<i>v. Central California</i>
	and Education Assistance Act, through which	<i>Superintendent</i> , 47 IBIA 91
	the BIA supports recognized tribal governments	(June 10, 2008).
	in providing services to their members. Burley	
	challenged those decisions, and the Interior	
	Board of Indian Appeals upheld the decision.	
	13. Plaintiff filed a federal lawsuit in 2005	<i>California Valley Miwok Tribe</i>
	challenging the BIA’s refusal to recognize its	<i>v. USA</i> , 424 F.Supp.2d 197,
	tribal government. The district court dismissed	197, 202 (D.D.C. 2006);
	its complaint in 2006, finding that the Burley	<i>California Valley Miwok Tribe</i>
	government was not entitled to recognition	<i>v. United States</i> , 515 F.3d 1262,
	because it did not “reflect the will of a majority	1267 (D.C. Cir. 2008).
	of the tribal community.” The Court of Appeals	
	for the District of Columbia Circuit affirmed in	
	2008, holding that Burley’s “antimajoritarian	
	gambit deserves no stamp of approval from the	
	Secretary.”	
	14. On December 22, 2010, the AS-IA issued a	Exhibit 8.
	decision in response to a federal administrative	

1	appeal that Silvia Burley had filed before the Interior Board of Indian Appeals.	
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3	15. Intervenors filed an administrative appeal with the BIA on February 9, 2011. As of today, BIA's Regional Director has never responded to this appeal.	Exhibit 11; Uram Decl., ¶ 2.
4		
5	16. Intervenors filed suit in federal district court for the District of Columbia, challenging the December 22 Decision.	Uram Decl., ¶ 4; <i>California Valley Miwok Tribe v. Salazar</i> , No. 1:11-cv-00160-RWR (Jan. 24, 2011).
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7	17. The AS-IA rescinded the December 22 Decision and announced that he would issue a new decision after briefing by both parties.	Exhibit 12.
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9	18. On August 31, 2011, the AS-IA issued a new decision. However, the AS-IA specifically stayed the implementation of his decision pending resolution of Intervenors' federal lawsuit.	Exhibit 13, p. 8; <i>see also</i> Exhibits 14, 15, 16; <i>California Valley Miwok Tribe v. California Gambling Control Commission</i> , No. D061811, p. 9 (12/18/12) (unpublished) ("The implementation of the August 31, 2011 decision was stayed.").
10		
11	19. Intervenors filed an amended complaint in the federal litigation, and Plaintiff intervened.	Exhibits 17, 19; Uram Decl., ¶¶ 5-6.
12		
13	20. Intervenors' federal lawsuit directly challenges the AS-IA's findings regarding the membership and leadership of the Tribe, including the validity of Ms. Burley's general council and the governing documents it is based on. If the federal court grants Intervenors' motion for summary judgment, it will invalidate the August 31 Decision, and the prior BIA decisions denying recognition of any Tribal government would remain in effect.	Exhibits 18-19; Uram Decl., ¶¶ 6, 8.
14		
15	21. Intervenors, Plaintiff, and the BIA each have filed dispositive motions and await the district court's ruling.	Exhibit 17; Uram Decl., ¶ 7.
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17	22. In 2005, in response to the ongoing Tribal dispute and the BIA's determination that the Tribe did not have a recognized Tribal government, the Commission suspended RSTF payments to the Tribe. The Commission stated that "our trustee status under the Compact demands that we ensure the RSTF distributions go to the Tribe for the benefit of the Tribe and not merely to an individual member," and therefore it could no longer release RSTF money to Ms. Burley. The Commission informed Ms.	Exhibit 20; Exhibit 32 at ¶ 14; FAC, ¶¶ 15-17.
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1	Burley and Mr. Dixie that the withheld funds	
2	would be forwarded to the Tribe, with interest,	
3	when the BIA acknowledged a Tribal	
	government and reestablished government-to-	
	government relations with the Tribe.	
4	23. Because the membership and leadership of the	Exhibits 4, 5, 6, 7, 11, 12, 14,
5	Tribe remains in dispute pending the outcome of	19, 20, 21, 22, 23, 24, 25, 29,
6	<u>CVMT v. Salazar</u> , the Commission continues to	30, 31, 33, and 34 (California
7	hold the Tribe's RSTF money in trust and	Gambling Control Commission
8	refuses payment to Plaintiff.	Response to CVMT Form
9		Interrogatories, Set Two,
10		Response to Requests for
11		Admission Nos. 86, 97, 98, 101,
12		102, 106, 112-114, 119, 121);
13		FAC, ¶¶ 15-17; <i>see also</i> <i>Miwok</i>
14		<i>III</i> at *2, *8 ("The Commission
15		contends that because it has a
16		fiduciary duty as trustee of the
17		RSTF, the current uncertainties
		regarding the Miwok Tribe's
		government and membership
		require it to withhold the RSTF
		funds and hold them in trust
		until it can be assured that the
		funds, if released, will be going
		to the proper parties.");
		<i>California Valley Miwok Tribe</i>
		<i>v. USA</i> , 424 F.Supp.2d 197,
		197, 202 (D.D.C. 2006);
		<i>California Valley Miwok Tribe</i>
		<i>v. United States</i> , 515 F.3d 1262,
		1267 (D.C. Cir. 2008).
18	24. In 2005, after suspending RSTF payments to the	Exhibits 26-28.
19	Tribe, the Commission filed an interpleader	
20	action in state court, asking the court to	
21	determine to whom the Commission should	
22	release the Tribe's RSTF money. Silvia Burley	
	successfully opposed that action, arguing that	
	neither the court nor the Commission had any	
	authority to determine the proper representative	
	of the Tribe for purposes of RSTF distribution.	

ISSUE NO. 2

**PLAINTIFF'S SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF
HAS NO MERIT**

<u>Undisputed Material Facts:</u>	<u>Supporting Evidence:</u>
25. Plaintiff's second cause of action for declaratory relief seeks an order declaring that defendant California Gambling Control Commission ("Commission") has a duty to immediately disburse Revenue Sharing Trust Funds held in trust for the California Valley Miwok Tribe to Plaintiff in care of Silvia Burley.	First Amended Complaint ("FAC"), ¶ 35; <i>California Valley Miwok Tribe v. California Gambling Control Commission</i> , No. D061811 (December 18, 2012), pp. 5, 17.
26. Intervenor filed a Complaint in Intervention in which they joined in with the Commission in opposition to Plaintiff's FAC.	Complaint in Intervention.
27. In 1999, California entered into a Tribal-State Gaming Compact ("Compact") with various Indian tribes authorized to conduct gaming in California.	FAC, ¶ 5; <i>Cates v. Chiang</i> , 154 Cal.App.4th 1302, 1305 (2007).
28. Under the Compact, a Non-Compact tribe is a federally recognized Indian tribe in California that operates fewer than 350 gaming devices.	Ex.2, Compact § 4.3.2(a)(i); <i>California Valley Miwok Tribe v. California Gambling Control Commission</i> , 2010 WL 1511744, *2 (4th Dist. 2010) (unpublished) ("Miwok III").
29. Under the Compact, each eligible Non-Compact tribe is entitled to \$1.1 million per year from the Revenue Sharing Trust Fund ("RSTF").	FAC, ¶¶ 6-7; Ex. 2, Compact § 4.3.2.1; <i>Miwok III</i> at *2.
30. The Commission serves as the trustee of the RSTF.	FAC, ¶¶ 6, 22, 29, 34; Ex. 2, Compact § 4.3.2.1(b); <i>Miwok III</i> at *3.
31. As a trustee, the Commission owes a fiduciary duty to the Non-Compact tribes with respect to the RSTF.	FAC, ¶¶ 6, 25, 30, 34; <i>Miwok III</i> at *9-10.
32. The California Valley Miwok Tribe (the "Tribe") is a Non-Compact tribe.	FAC, ¶¶ 6-7; <i>Miwok III</i> at *2.
33. Plaintiff contends that the Tribe consists of four adult members (Silvia Burley, her two daughters Rashel Reznor and Anjelica Paulk, and Intervenor Yakima Dixie) and that Silvia Burley is the "selected spokesperson" for the Tribe.	Ex. 3, Burley Declaration at ¶ 3; FAC, ¶¶ 8-9 and Verification at p. 14 of FAC.
34. Intervenor contend that: (1) the Tribe consists of more than 200 adult members and their children; (2) the Tribe is governed by a Tribal	WhiteBear Decl., ¶¶ 1-8; Complaint in Intervention, ¶¶ 4,

1	council consisting of seven members; and (3) Silvia Burley is neither a Tribal official, Tribal	8, 13, 15, 22.
2	representative nor member of the Tribal	
3	government.	
4	35. Commencing in February 2005, BIA issued a series of decisions in which it stated that there	Exhibits 4, 5, 29, 30, 31; FAC, ¶¶ 12-17.
5	was no recognized government or governing	
6	body of the Tribe. BIA further stated that it	
7	would assist the Tribe in identifying its full	
8	membership and forming a valid Tribal	
9	government.	
10	36. Commencing in July 2005, BIA issued a series	Exhibits 6, 7; FAC, ¶¶ 15-17;
11	of decisions in which it denied funding to	25 U.S.C. § 450 et seq.;
12	Plaintiff and Silvia Burley under Public Law 93-	<i>California Valley Miwok Tribe</i>
13	638 ("PL-638"), the Indian Self-Determination	<i>v. Central California</i>
14	and Education Assistance Act, through which	<i>Superintendent</i> , 47 IBIA 91
15	the BIA supports recognized tribal governments	(June 10, 2008).
16	in providing services to their members. Burley	
17	challenged those decisions, and the Interior	
18	Board of Indian Appeals upheld the decision.	
19	37. Plaintiff filed a federal lawsuit in 2005	<i>California Valley Miwok Tribe</i>
20	challenging the BIA's refusal to recognize its	<i>v. USA</i> , 424 F.Supp.2d 197,
21	tribal government. The district court dismissed	197, 202 (D.D.C. 2006);
22	its complaint in 2006, finding that the Burley	<i>California Valley Miwok Tribe</i>
23	government was not entitled to recognition	<i>v. United States</i> , 515 F.3d 1262,
24	because it did not "reflect the will of a majority	1267 (D.C. Cir. 2008).
25	of the tribal community." The Court of Appeals	
26	for the District of Columbia Circuit affirmed in	
27	2008, holding that Burley's "antimajoritarian	
28	gambit deserves no stamp of approval from the	
	Secretary."	
	38. On December 22, 2010, the AS-IA issued a	Exhibit 8.
	decision in response to a federal administrative	
	appeal that Silvia Burley had filed before the	
	Interior Board of Indian Appeals.	
	39. Intervenor filed an administrative appeal with	Exhibit 11; Uram Decl., ¶ 2.
	the BIA on February 9, 2011. As of today,	
	BIA's Regional Director has never responded to	
	this appeal.	
	40. Intervenor filed suit in federal district court for	Uram Decl., ¶ 4; <i>California</i>
	the District of Columbia, challenging the	<i>Valley Miwok Tribe v. Salazar</i> ,
	December 22 Decision.	No. 1:11-cv-00160-RWR
		(Jan. 24, 2011).
	41. The AS-IA rescinded the December 22 Decision	Exhibit 12.
	and announced that he would issue a new	
	decision after briefing by both parties.	
	42. On August 31, 2011, the AS-IA issued a new	Exhibit 13. p. 8: <i>see also</i>

1	decision. However, the AS-IA specifically	Exhibits 14, 15, 16; <i>California</i>
2	stayed the implementation of his decision	<i>Valley Miwok Tribe v.</i>
3	pending resolution of Intervenor's federal	<i>California Gambling Control</i>
4	lawsuit.	<i>Commission</i> , No. D061811, p. 9
5		(12/18/12) (unpublished) ("The
6		implementation of the August
7		31, 2011 decision was stayed.").
8	43. Intervenor's filed an amended complaint in the	Exhibits 17, 19; Uram Decl., ¶¶
9	federal litigation, and Plaintiff intervened.	5-6.
10	44. Intervenor's federal lawsuit directly challenges	Exhibits 18-19; Uram Decl., ¶¶
11	the AS-IA's findings regarding the membership	6, 8.
12	and leadership of the Tribe, including the	
13	validity of Ms. Burley's general council and the	
14	governing documents it is based on. If the	
15	federal court grants Intervenor's motion for	
16	summary judgment, it will invalidate the August	
17	31 Decision, and the prior BIA decisions	
18	denying recognition of any Tribal government	
19	would remain in effect.	
20	45. Intervenor's, Plaintiff, and the BIA each have	Exhibit 17; Uram Decl., ¶ 7.
21	filed dispositive motions and await the district	
22	court's ruling.	
23	46. In 2005, in response to the ongoing Tribal	Exhibit 20; Exhibit 32 at ¶ 14;
24	dispute and the BIA's determination that the	FAC, ¶¶ 15-17.
25	Tribe did not have a recognized Tribal	
26	government, the Commission suspended RSTF	
27	payments to the Tribe. The Commission stated	
28	that "our trustee status under the Compact	
	demands that we ensure the RSTF distributions	
	go to the Tribe for the benefit of the Tribe and	
	not merely to an individual member," and	
	therefore it could no longer release RSTF money	
	to Ms. Burley. The Commission informed Ms.	
	Burley and Mr. Dixie that the withheld funds	
	would be forwarded to the Tribe, with interest,	
	when the BIA acknowledged a Tribal	
	government and reestablished government-to-	
	government relations with the Tribe.	
23	47. Because the membership and leadership of the	Exhibits 4, 5, 6, 7, 11, 12, 14,
24	Tribe remains in dispute pending the outcome of	19, 20, 21, 22, 23, 24, 25, 29,
25	<i>CVMT v. Salazar</i> , the Commission continues to	30, 31, 33, and 34 (California
26	hold the Tribe's RSTF money in trust and	Gambling Control Commission
27	refuses payment to Plaintiff.	Response to CVMT Form
28		Interrogatories, Set Two,
		Response to Requests for
		Admission Nos. 86, 97, 98, 101,
		102, 106, 112-114, 119, 121);
		FAC, ¶¶ 15-17; <i>see also</i> <i>Miwok</i>
		<i>III</i> at *2, *8 ("The Commission
		contends that because it has a

1		fiduciary duty as trustee of the RSTF, the current uncertainties regarding the Miwok Tribe's government and membership require it to withhold the RSTF funds and hold them in trust until it can be assured that the funds, if released, will be going to the proper parties.");
2		<i>California Valley Miwok Tribe v. USA</i> , 424 F.Supp.2d 197,
3		197, 202 (D.D.C. 2006);
4		<i>California Valley Miwok Tribe v. United States</i> , 515 F.3d 1262,
5		1267 (D.C. Cir. 2008).
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9	48. In 2005, after suspending RSTF payments to the Tribe, the Commission filed an interpleader action in state court, asking the court to determine to whom the Commission should release the Tribe's RSTF money. Silvia Burley successfully opposed that action, arguing that neither the court nor the Commission had any authority to determine the proper representative of the Tribe for purposes of RSTF distribution.	Exhibits 26-28.
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ISSUE NO. 3

PLAINTIFF'S FOURTH CAUSE OF ACTION FOR WRIT OF MANDATE HAS NO MERIT

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18	<u>Undisputed Material Facts:</u>	<u>Supporting Evidence:</u>
19	49. Plaintiff's fourth cause of action for writ of mandate seeks an order compelling defendant California Gambling Control Commission ("Commission") to immediately disburse Revenue Sharing Trust Funds held in trust for the California Valley Miwok Tribe to Plaintiff in care of Silvia Burley.	First Amended Complaint ("FAC"), ¶¶ 30, 35, 44, and Prayer for Relief no. 3; <i>California Valley Miwok Tribe v. California Gambling Control Commission</i> , No. D061811 (December 18, 2012), pp. 5, 17.
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23	50. Intervenor's filed a Complaint in Intervention in which they joined in with the Commission in opposition to Plaintiff's FAC.	Complaint in Intervention.
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25	51. In 1999, California entered into a Tribal-State Gaming Compact ("Compact") with various Indian tribes authorized to conduct gaming in California.	FAC, ¶ 5; <i>Cates v. Chiang</i> , 154 Cal.App.4th 1302, 1305 (2007).
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28	52. Under the Compact, a Non-Compact tribe is a federally recognized Indian tribe in California	Ex.2, Compact § 4.3.2(a)(i); <i>California Valley Miwok Tribe</i>

1	that operates fewer than 350 gaming devices.	<i>v. California Gambling Control Commission</i> , 2010 WL 1511744, *2 (4th Dist. 2010) (unpublished) (“ <i>Miwok III</i> ”).
2		
3	53. Under the Compact, each eligible Non-Compact tribe is entitled to \$1.1 million per year from the Revenue Sharing Trust Fund (“RSTF”).	FAC, ¶¶ 6-7; Ex. 2, Compact § 4.3.2.1; <i>Miwok III</i> at *2.
4		
5	54. The Commission serves as the trustee of the RSTF.	FAC, ¶¶ 6, 22, 29, 34; Ex. 2, Compact § 4.3.2.1(b); <i>Miwok III</i> at *3.
6		
7	55. As a trustee, the Commission owes a fiduciary duty to the Non-Compact tribes with respect to the RSTF.	FAC, ¶¶ 6, 25, 30, 34; <i>Miwok III</i> at *9-10.
8		
9	56. The California Valley Miwok Tribe (the “Tribe”) is a Non-Compact tribe.	FAC, ¶¶ 6-7; <i>Miwok III</i> at *2.
10		
11	57. Plaintiff contends that the Tribe consists of four adult members (Silvia Burley, her two daughters Rashel Reznor and Anjelica Paulk, and Intervenor Yakima Dixie) and that Silvia Burley is the “selected spokesperson” for the Tribe.	Ex. 3, Burley Declaration at ¶ 3; FAC, ¶¶ 8-9 and Verification at p. 14 of FAC.
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14	58. Intervenors contend that: (1) the Tribe consists of more than 200 adult members and their children; (2) the Tribe is governed by a Tribal council consisting of seven members; and (3) Silvia Burley is neither a Tribal official, Tribal representative nor member of the Tribal government.	WhiteBear Decl., ¶¶ 1-8; Complaint in Intervention, ¶¶ 4, 8, 13, 15, 22.
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18	59. Commencing in February 2005, BIA issued a series of decisions in which it stated that there was no recognized government or governing body of the Tribe. BIA further stated that it would assist the Tribe in identifying its full membership and forming a valid Tribal government.	Exhibits 4, 5, 29, 30, 31; FAC, ¶¶ 12-17.
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22	60. Commencing in July 2005, BIA issued a series of decisions in which it denied funding to Plaintiff and Silvia Burley under Public Law 93-638 (“PL-638”), the Indian Self-Determination and Education Assistance Act, through which the BIA supports recognized tribal governments in providing services to their members. Burley challenged those decisions, and the Interior Board of Indian Appeals upheld the decision.	Exhibits 6, 7; FAC, ¶¶ 15-17; 25 U.S.C. § 450 et seq.; <i>California Valley Miwok Tribe v. Central California Superintendent</i> , 47 IBIA 91 (June 10, 2008).
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27	61. Plaintiff filed a federal lawsuit in 2005 challenging the BIA’s refusal to recognize its tribal government. The district court dismissed	<i>California Valley Miwok Tribe v. USA</i> , 424 F.Supp.2d 197, 197.202 (D.D.C. 2006):
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1	its complaint in 2006, finding that the Burley government was not entitled to recognition	<i>California Valley Miwok Tribe v. United States</i> , 515 F.3d 1262, 1267 (D.C. Cir. 2008).
2	because it did not “reflect the will of a majority of the tribal community.” The Court of Appeals for the District of Columbia Circuit affirmed in 2008, holding that Burley’s “antimajoritarian gambit deserves no stamp of approval from the Secretary.”	
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6	62. On December 22, 2010, the AS-IA issued a decision in response to a federal administrative appeal that Silvia Burley had filed before the Interior Board of Indian Appeals.	Exhibit 8.
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8	63. Intervenor filed an administrative appeal with the BIA on February 9, 2011. As of today, BIA’s Regional Director has never responded to this appeal.	Exhibit 11; Uram Decl., ¶ 2.
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11	64. Intervenor filed suit in federal district court for the District of Columbia, challenging the December 22 Decision.	Uram Decl., ¶ 4; <i>California Valley Miwok Tribe v. Salazar</i> , No. 1:11-cv-00160-RWR (Jan. 24, 2011).
12		
13	65. The AS-IA rescinded the December 22 Decision and announced that he would issue a new decision after briefing by both parties.	Exhibit 12.
14		
15	66. On August 31, 2011, the AS-IA issued a new decision. However, the AS-IA specifically stayed the implementation of his decision pending resolution of Intervenor’s federal lawsuit.	Exhibit 13, p. 8; <i>see also</i> Exhibits 14, 15, 16; <i>California Valley Miwok Tribe v. California Gambling Control Commission</i> , No. D061811, p. 9 (12/18/12) (unpublished) (“The implementation of the August 31, 2011 decision was stayed.”).
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20	67. Intervenor filed an amended complaint in the federal litigation, and Plaintiff intervened.	Exhibits 17, 19; Uram Decl., ¶¶ 5-6.
21		
22	68. Intervenor’s federal lawsuit directly challenges the AS-IA’s findings regarding the membership and leadership of the Tribe, including the validity of Ms. Burley’s general council and the governing documents it is based on. If the federal court grants Intervenor’s motion for summary judgment, it will invalidate the August 31 Decision, and the prior BIA decisions denying recognition of any Tribal government would remain in effect.	Exhibits 18-19; Uram Decl., ¶¶ 6, 8.
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27	69. Intervenor, Plaintiff, and the BIA each have filed dispositive motions and await the district court’s ruling.	Exhibit 17; Uram Decl., ¶ 7.
28		

1 70. In 2005, in response to the ongoing Tribal
2 dispute and the BIA's determination that the
3 Tribe did not have a recognized Tribal
4 government, the Commission suspended RSTF
5 payments to the Tribe. The Commission stated
6 that "our trustee status under the Compact
7 demands that we ensure the RSTF distributions
8 go to the Tribe for the benefit of the Tribe and
9 not merely to an individual member," and
10 therefore it could no longer release RSTF money
11 to Ms. Burley. The Commission informed Ms.
12 Burley and Mr. Dixie that the withheld funds
13 would be forwarded to the Tribe, with interest,
14 when the BIA acknowledged a Tribal
15 government and reestablished government-to-
16 government relations with the Tribe.

Exhibit 20; Exhibit 32 at ¶ 14;
FAC, ¶¶ 15-17.

17 71. Because the membership and leadership of the
18 Tribe remains in dispute pending the outcome of
19 *CVMT v. Salazar*, the Commission continues to
20 hold the Tribe's RSTF money in trust and
21 refuses payment to Plaintiff.

Exhibits 4, 5, 6, 7, 11, 12, 14,
19, 20, 21, 22, 23, 24, 25, 29,
30, 31, 33, and 34 (California
Gambling Control Commission
Response to CVMT Form
Interrogatories, Set Two,
Response to Requests for
Admission Nos. 86, 97, 98, 101,
102, 106, 112-114, 119, 121);
FAC, ¶¶ 15-17; *see also* *Miwok*
III at *2, *8 ("The Commission
contends that because it has a
fiduciary duty as trustee of the
RSTF, the current uncertainties
regarding the Miwok Tribe's
government and membership
require it to withhold the RSTF
funds and hold them in trust
until it can be assured that the
funds, if released, will be going
to the proper parties.");
California Valley Miwok Tribe
v. USA, 424 F.Supp.2d 197,
197, 202 (D.D.C. 2006);
California Valley Miwok Tribe
v. United States, 515 F.3d 1262,
1267 (D.C. Cir. 2008).

22 72. In 2005, after suspending RSTF payments to the
23 Tribe, the Commission filed an interpleader
24 action in state court, asking the court to
25 determine to whom the Commission should
26 release the Tribe's RSTF money. Silvia Burley
27 successfully opposed that action, arguing that
28 neither the court nor the Commission had any
authority to determine the proper representative
of the Tribe for purposes of RSTF distribution.

Exhibits 26-28.

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4 Dated: March 6, 2013
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6 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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