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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.

**PLAINTIFF'S SEPARATE  
STATEMENT OF DISPUTED AND  
UNDISPUTED MATERIAL FACTS IN  
OPPOSITION TO DEFENDANT  
CALIFORNIA GAMBLING CONTROL  
COMMISSION'S MOTION FOR  
SUMMARY JUDGMENT**

Date: April 26, 2013

Time: 2:00 p.m.

Dept: 62

Judge: Hon. Ronald Styn

Trial Date: June 4, 2013

Plaintiff CALIFORNIA VALLEY MIWOK TRIBE ("the Tribe" or Plaintiff submits this separate statement of disputed and undisputed material facts, together with references to supporting evidence, in response to Defendant's Separate Statement of Undisputed Material Facts and Supporting Evidence in Support of Motion for Summary Judgment.

**DEFENDANT'S UNDISPUTED  
MATERIAL FACTS AND SUPPORTING  
EVIDENCE**

**PLAINTIFF'S RESPONSE AND  
SUPPORTING EVIDENCE**

**FIRST CAUSE OF ACTION FOR INJUNCTIVE RELIEF**

1. Under the Compacts, the Commission is required to collect license fees from gaming tribes, deposit them in the RSTF, and, under the Compacts and Government Code sections 12012.75 and 12012.90, make quarterly payments of those funds according to the Compact's specified distribution plans.

**Gov. Code, §§ 12012.75;  
12012.90;**

**Compact §§ 4.3.2, 4.3.2.1  
(Ex. A to Req. for Jud. Not.  
(RJN); see also Decl. of  
Sylvia Cates (Cates Decl.) ¶  
2.**

2. The Compacts and Government Code provide that

1. Undisputed.

2. Undisputed.

1 quarterly payments shall be  
2 made to Non-Compact Tribes,  
3 noncompact tribes, and  
4 eligible recipient Indian  
5 tribes, respectively—these  
6 are alternative and  
7 functionally equivalent  
8 designations of federally-  
9 recognized California Indian  
10 tribes that operate fewer  
11 than 350 slot machines.

12 **(Id.)**

13 3. The Commission administers  
14 the RSTF in the nominal  
15 capacity of "trustee," for  
16 the purpose of receiving,  
17 depositing, and disbursing  
18 the funds on a quarterly  
19 basis to Non-Compact Tribes.

20 **Compact, § 4.3.2, subd.**  
21 **(a)(ii) (Ex. A to RJN; see**  
22 **also Cates Decl. ¶ 2.**

23 4. Aside from its duties as  
24 administrator of the RSTF,  
25 the Commission has no  
26 discretion "with respect to  
27 the use or disbursement of  
28 the [RSTF] funds."

**Compact, § 4.3.2.1, subd. (b)**  
**(Ex. A to RJN; see also Cates**  
**Decl. ¶ 2.**

This language has been  
clarified in later compacts.  
**See Tribal-State Compact**  
**Between the State of**  
**California and the**

3. Undisputed.

4. Undisputed.

Pinoleville Pomo Nation, §  
5.1, subd. (a) (Ex. F to RJN;  
see also Cates Decl. ¶ 7.

5. The Miwok Tribe is a  
federally-recognized Indian  
tribe that operates fewer  
than 350 slot machines, and  
thus qualifies as a Non-  
Compact Tribe under the  
Compacts and Government Code.

**First Amended Complaint  
Combined With Petition for  
Writ of Mandate, at p. 3 ¶ 6.**

5. Undisputed.

6. The *Salazar* case was  
filed on January 24, 2011, by  
the California Valley Miwok  
Tribe (consisting of  
different individuals than  
the Burley Faction that is  
the plaintiff in this  
action), the Tribal Council,  
Yakima Dixie, Velma  
Whitebear, Antonia Lopez,  
Michael Mendibles, Evelyn  
Wilson, and Antone Azevedo  
(collectively referred to  
herein as the "D.C.  
Plaintiffs"). The *Salazar*  
case challenges Assistant  
Secretary of the Interior  
(ASI) (Indian Affairs) Larry  
Echo Hawk's December 10, 2010  
decision recognizing the  
Burley Faction as the Miwok  
Tribe.

**Complaint (*Salazar*) (Ex. C to  
RJN. See also Docket  
(*Salazar*) (Ex. G to RJN.)**

6. Undisputed.

1 7. As a result of Salazar's  
2 filing, ASI Echo Hawk  
3 withdrew his December 2010  
4 decision for reconsideration,  
5 and then reissued it with  
6 modifications on August 31,  
7 2011 (August 31 Decision).  
8 On October 17, 2011, the D.C.  
9 Plaintiffs filed a first  
10 amended complaint that  
11 challenges ASI Echo Hawk's  
12 August 31 Decision.

13 **Letter, Echo Hawk to Dixie**  
14 **dated April 1, 2011 (Ex. D to**  
15 **RJN); see also Cates Decl., ¶**  
16 **5.**

17 **Echo Hawk decision dated**  
18 **August 31, 2011 (Ex. E to**  
19 **RJN); see also Cates Decl., ¶**  
20 **6.**

21 **First Amended Complaint**  
22 **(Salazar) (Ex. H to RJN.)**

7. Disputed. The ASI also  
stated that he wanted to have  
the matter more fully briefed  
by the parties. His August  
31, 2011 decision affirmed  
his December 22, 2010  
decision.

23 8. By its express terms, the  
24 August 31 Decision is stayed  
25 pending the outcome of  
26 Salazar.

27 **Echo Hawk decision dated**  
28 **August 31, 2011 (Ex. E to**  
RJN, at p. 8); see also Cates  
Decl., ¶ 6.

8. Disputed. The ASI merely  
stayed implementation of his  
decision, which has no effect  
on the declaration of rights  
portion of that decision  
stating that the Tribe has a  
recognized form of government  
and that the Tribe consists  
of five members. (pRJN, Ex.  
"3")

9. At the present time, as  
evidenced by the Salazar  
case, a dispute exists as to  
the composition and  
leadership of the Miwok

9. Disputed. The Salazar  
case is irrelevant, per the  
Court of Appeal decision.  
There is no dispute  
concerning the leadership of

1 Tribe.

2 **First Amended Complaint**  
3 **(Salazar) (Ex. H to RJN.**

the Tribe, in light of the  
recent deposition testimony  
of Yakima Dixie confirming  
that he had resigned as  
Tribal Chairman and  
acknowledging that Burley is  
the new Chairperson. (pRJN,  
Ex. "21"). Composition of  
the Tribe is irrelevant for  
purposes of distributing RSTF  
payments to a Non-Compact  
tribe. (pRJN, Ex. "5").

9 10. On the one hand, the  
10 Miwok Tribe may consist only  
11 of the Burley Faction,  
12 consisting of five members,  
13 or, on the other hand, it may  
14 consist of a much larger  
15 group of Indians, possibly  
16 including up to 242 adult  
members.

17 **(Id.)**

10. Disputed. See No. 9  
above.

17 11. Depending upon the  
18 outcome of the *Salazar* case,  
19 the BIA may, or may not, take  
20 final action recognizing the  
21 Miwok Tribe to consist of the  
22 Burley Faction and  
23 recognizing Silvia Burley as  
the Tribal Chairperson.

24 **(Id.)**

11. Disputed. See No. 9  
above.

24 12. The Commission makes no  
25 independent determinations on  
26 the merits of intra-tribal  
leadership disputes.

27 **Decl. of Tina Littleton**

12. Undisputed.

**(Littleton Decl.), ¶ 3.**

13. The Commission takes no position on the merits of intra-tribal leadership disputes.

**Littleton Decl., ¶ 4.**

14. When uncertainty exists as to a Non-Compact Tribe's authorized leadership, the Commission, as administrator of the RSTF, defers to the BIA's determinations.

**Littleton Decl., ¶ 5.**

13. Undisputed.

14. Disputed. The Commission never said, and never did, pay any of the subject RSTF money to Burley individually. The Commission has been withholding RSTF payments to the Tribe because it claimed an ongoing Tribal leadership dispute between Dixie and Burley called into question who is authorized to accept the RSTF payments on behalf of the Tribe, even though it had previously made RSTRF payments to the Tribe in care of Burley in the midst of the same leadership dispute. The Commission then later claimed that since the Tribe under Burley's leadership did not qualify for federal contract funding under P.L. 638, the Tribe also could not qualify for RSTF money either. The Commission also erroneously claimed that the Tribe needed to be "reorganized" under the IRA, and admit more Indians as members of the Tribe, before the Tribe could qualify for RSTF payments. The Commission also ignored the Tribe's right to operate

1		outside the IRA under its
2		present resolution form of
3		government. (pRJN, Ex. "6"
4		and "7").
5	15. Because the BIA deemed	15. <u>See</u> No. 14 above.
6	it unorganized and lacking a	
7	Tribal Chairperson and, for	
8	that reason, suspended PL 638	
9	contract funding disbursement	
10	to the Miwok Tribe in 2005,	
11	the Commission suspended its	
12	disbursement of quarterly	
13	RSTF payments, pending BIA's	
14	recognition of an authorized	
15	Miwok Tribe leader or	
16	leadership group with which	
17	to conduct its government-to-	
18	government business-as	
19	evidenced either by BIA's	
20	resumption of PL 638 funding,	
21	or other BIA action.	
22	<b>Littleton Decl., ¶ 6.</b>	
23		
24	16. As of this date, the BIA	16. <u>Disputed</u> . The ASI's
25	has not recognized an	August 31, 2011 decision
26	authorized leader or	contains a declaration of
27	leadership group for the	rights that the Plaintiff's
28	Miwok Tribe, nor has the BIA	Tribal Council is in fact
	resumed disbursing PL 638	<u>currently</u> recognized, which
	funds to the Miwok Tribe.	is not affected by the
	<b>Littleton Decl., ¶ 7.</b>	implementing stay language of
		that decision. The decision
		directs the parties to
		continue to resolve their
		leadership dispute pending
		the federal litigation under
		the currently recognized
		tribal Council. (pRJN, Ex.
		"3", page 8). The ASI also
		suggested the Intervenor



1		"take up their cause" of
2		membership with the current
3		Tribal Council, pending the
4		outcome of the federal
5		litigation. (pRJN, Ex. "3",
6		page 7). In addition, the
7		U.S. District Court has
8		stated that the Tribe under
9		Burley's leadership is
10		"currently recognized."
11		(Intervenors' Ex. "15", page
12		10). The implementing stay
13		of the August 31, 2011
14		decision did not affect the
15		declaration portion of the
16		decision, i.e., that the
17		Tribe is currently
18		recognized.
19	17. As of this date, the	17. <u>Undisputed</u> . However,
20	Commission is holding accrued	Plaintiff disputes the amount
21	quarterly RSTF payments	of interest the Commission is
22	totaling \$8,763,001.99, plus	providing under the
23	interest in the amount of	circumstances.
24	\$420,246.17, for eventual	
25	disbursement to the Miwok	
26	Tribe.	
27	<b>Littleton Decl., ¶ 8.</b>	
28	18. The Commission will	18. <u>Disputed</u> . The Compact
	promptly disburse the accrued	does not require that the
	RSTF payments to the Miwok	actions of the BIA dictate
	Tribe once the BIA has	the conditions of RSTF
	identified the Miwok Tribe's	disbursements. The
	authorized leader or	Commission is wrong in
	leadership group.	conditioning payment on this
	<b>Littleton Decl., ¶ 9.</b>	basis. In fact, in light of
		Dixie's recent deposition
		testimony admitting that he
		resigned as Tribal Chairman,
		there is no basis for the

	Commission to continue to claim that it does not know who is authorized to receive the subject RSTF payments for the Tribe. (pRJN, Ex. "21").
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<p>19. The Legislature has provided that shortfalls in the RSTF (which would otherwise preclude disbursing a total of \$1.1M per year to each Non-Compact Tribe) are backfilled from the Special Distribution Fund, which, to the extent not used for that purpose are used for the public benefit to mitigate the off-reservation impacts and costs of tribal gaming.</p> <p><b>Gov. Code, § 12012.90, subd. (e) .</b></p> <p><b>Gov. Code, § 12012.85.</b></p>	19. <u>Undisputed.</u>
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<b>PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE</b>	<b>DEFENDANT'S RESPONSE AND SUPPORTING EVIDENCE</b>
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<b>SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF</b>	
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<p>1. Under the Compacts, the Commission is required to collect license fees from gaming tribes, deposit them in the RSTF, and, under the Compacts and Government Code sections 12012.75 and 12012.90, make quarterly</p>	1. <u>Undisputed.</u>
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1 payments of those funds  
2 according to the Compact's  
3 specified distribution plans.

4 **Gov. Code, §§ 12012.75;  
5 12012.90;**

6 **Compact §§ 4.3.2, 4.3.2.1  
7 (Ex. A to Req. for Jud. Not.  
8 (RJN); see also Decl. of  
9 Sylvia Cates (Cates Decl.) ¶  
10 2.**

11 2. The Compacts and  
12 Government Code provide that  
13 quarterly payments shall be  
14 made to Non-Compact Tribes,  
15 noncompact tribes, and  
16 eligible recipient Indian  
17 tribes, respectively—these  
18 are alternative and  
19 functionally equivalent  
20 designations of federally-  
21 recognized California Indian  
22 tribes that operate fewer  
23 than 350 slot machines.

24 **(Id.)**

25 3. The Commission administers  
26 the RSTF in the nominal  
27 capacity of "trustee," for  
28 the purpose of receiving,  
depositing, and disbursing  
the funds on a quarterly  
basis to Non-Compact Tribes.

**Compact, § 4.3.2, subd.  
(a) (ii) (Ex. A to RJN; see  
also Cates Decl. ¶ 2.**

4. Aside from its duties as

2. Undisputed.

3. Undisputed.

4. Undisputed.

1 administrator of the RSTF,  
2 the Commission has no  
3 discretion "with respect to  
4 the use or disbursement of  
5 the [RSTF] funds."

6 **Compact, § 4.3.2.1, subd. (b)**  
7 **(Ex. A to RJN; see also Cates**  
8 **Decl. ¶ 2.**

9 This language has been  
10 clarified in later compacts.  
11 **See Tribal-State Compact**  
12 **Between the State of**  
13 **California and the**  
14 **Pinoleville Pomo Nation, §**  
15 **5.1, subd. (a) (Ex. F to RJN;**  
16 **see also Cates Decl. ¶ 7.**

17 5. The Miwok Tribe is a  
18 federally-recognized Indian  
19 tribe that operates fewer  
20 than 350 slot machines, and  
21 thus qualifies as a Non-  
22 Compact Tribe under the  
23 Compacts and Government Code.

24 **First Amended Complaint**  
25 **Combined With Petition for**  
26 **Writ of Mandate, at p. 3 ¶ 6.**

27 6. The *Salazar* case was  
28 filed on January 24, 2011, by  
the California Valley Miwok  
Tribe (consisting of  
different individuals than  
the Burley Faction that is  
the plaintiff in this  
action), the Tribal Council,  
Yakima Dixie, Velma  
Whitebear, Antonia Lopez,  
Michael Mendibles, Evelyn

5. Undisputed.

6. Undisputed.

Wilson, and Antone Azevedo (collectively referred to herein as the "D.C. Plaintiffs"). The *Salazar* case challenges Assistant Secretary of the Interior (ASI) (Indian Affairs) Larry Echo Hawk's December 10, 2010 decision recognizing the Burley Faction as the Miwok Tribe.

**Complaint (*Salazar*) (Ex. C to RJN. See also Docket (*Salazar*) (Ex. G to RJN.))**

7. As a result of *Salazar's* filing, ASI Echo Hawk withdrew his December 2010 decision for reconsideration, and then reissued it with modifications on August 31, 2011 (August 31 Decision). On October 17, 2011, the D.C. Plaintiffs filed a first amended complaint that challenges ASI Echo Hawk's August 31 Decision.

**Letter, Echo Hawk to Dixie dated April 1, 2011 (Ex. D to RJN); see also Cates Decl., ¶ 5.**

**Echo Hawk decision dated August 31, 2011 (Ex. E to RJN); see also Cates Decl., ¶ 6.**

**First Amended Complaint (*Salazar*) (Ex. H to RJN.)**

7. Disputed. The ASI also stated that he wanted to have the matter more fully briefed by the parties. His August 31, 2011 decision affirmed his December 22, 2010 decision.

1 8. By its express terms, the  
2 August 31 Decision is stayed  
3 pending the outcome of  
4 *Salazar*.

5 **Echo Hawk decision dated**  
6 **August 31, 2011 (Ex. E to**  
7 **RJN, at p. 8); see also Cates**  
8 **Decl., ¶ 6.**

8. Disputed. The ASI merely  
stayed implementation of his  
decision, which has no effect  
on the declaration of rights  
portion of that decision  
stating that the Tribe has a  
recognized form of government  
and that the Tribe consists  
of five members. (pRJN, Ex.  
"3")

9 9. At the present time, as  
10 evidenced by the *Salazar*  
11 case, a dispute exists as to  
12 the composition and  
13 leadership of the Miwok  
14 Tribe.

15 **First Amended Complaint**  
16 **(*Salazar*) (Ex. H to RJN.**  
17  
18  
19

9. Disputed. The *Salazar*  
case is irrelevant, per the  
Court of Appeal decision.  
There is no dispute  
concerning the leadership of  
the Tribe, in light of the  
recent deposition testimony  
of Yakima Dixie confirming  
that he had resigned as  
Tribal Chairman and  
acknowledging that Burley is  
the new Chairperson. (pRJN,  
Ex. "21"). Composition of  
the Tribe is irrelevant for  
purposes of distributing RSTF  
payments to a Non-Compact  
tribe. (pRJN, Ex. "5").

20 10. On the one hand, the  
21 Miwok Tribe may consist only  
22 of the Burley Faction,  
23 consisting of five members,  
24 or, on the other hand, it may  
25 consist of a much larger  
26 group of Indians, possibly  
27 including up to 242 adult  
28 members.

26 **(*Id.*)**

10. Disputed. See No. 9  
above.

11. Depending upon the outcome of the *Salazar* case, the BIA may, or may not, take final action recognizing the Miwok Tribe to consist of the Burley Faction and recognizing Silvia Burley as the Tribal Chairperson.

**(Id.)**

11. Disputed. See No. 9 above.

12. The Commission makes no independent determinations on the merits of intra-tribal leadership disputes.

**Decl. of Tina Littleton (Littleton Decl.), ¶ 3.**

12. Undisputed.

13. The Commission takes no position on the merits of intra-tribal leadership disputes.

**Littleton Decl., ¶ 4.**

13. Undisputed.

14. When uncertainty exists as to a Non-Compact Tribe's authorized leadership, the Commission, as administrator of the RSTF, defers to the BIA's determinations.

**Littleton Decl, ¶ 5.**

14. Disputed. The Commission never said, and never did, pay any of the subject RSTF money to Burley individually. The Commission has been withholding RSTF payments to the Tribe because it claimed an ongoing Tribal leadership dispute between Dixie and Burley called into question who is authorized to accept the RSTF payments on behalf of the Tribe, even though it had previously made RSTF payments to the Tribe in care of Burley in the

1 midst of the same leadership  
2 dispute. The Commission then  
3 later claimed that since the  
4 Tribe under Burley's  
5 leadership did not qualify  
6 for federal contract funding  
7 under P.L. 638, the Tribe  
8 also could not qualify for  
9 RSTF money either. The  
10 Commission also erroneously  
11 claimed that the Tribe needed  
12 to be "reorganized" under the  
13 IRA, and admit more Indians  
14 as members of the Tribe,  
15 before the Tribe could  
16 qualify for RSTF payments.  
17 The Commission also ignored  
18 the Tribe's right to operate  
19 outside the IRA under its  
20 present resolution form of  
21 government. (pRJN, Ex. "6"  
22 and "7").

15 15. Because the BIA deemed  
16 it unorganized and lacking a  
17 Tribal Chairperson and, for  
18 that reason, suspended PL 638  
19 contract funding disbursement  
20 to the Miwok Tribe in 2005,  
21 the Commission suspended its  
22 disbursement of quarterly  
23 RSTF payments, pending BIA's  
24 recognition of an authorized  
25 Miwok Tribe leader or  
26 leadership group with which  
27 to conduct its government-to-  
28 government business—as  
evidenced either by BIA's  
resumption of PL 638 funding,  
or other BIA action.

**Littleton Decl., ¶ 6.**

15 15. See No. 14 above.



16. As of this date, the BIA has not recognized an authorized leader or leadership group for the Miwok Tribe, nor has the BIA resumed disbursing PL 638 funds to the Miwok Tribe.

**Littleton Decl., ¶ 7.**

16. Disputed. The ASI's August 31, 2011 decision contains a declaration of rights that the Plaintiff's Tribal Council is in fact currently recognized, which is not affected by the implementing stay language of that decision. The decision directs the parties to continue to resolve their leadership dispute pending the federal litigation under the currently recognized tribal Council. (pRJN, Ex. "3", page 8). The ASI also suggested the Intervenor's "take up their cause" of membership with the current Tribal Council, pending the outcome of the federal litigation. (pRJN, Ex. "3", page 7). In addition, the U.S. District Court has stated that the Tribe under Burley's leadership is "currently recognized." (Intervenors' Ex. "15", page 10). The implementing stay of the August 31, 2011 decision did not affect the declaration portion of the decision, i.e., that the Tribe is currently recognized.

17. As of this date, the Commission is holding accrued quarterly RSTF payments totaling \$8,763,001.99, plus interest in the amount of \$420,246.17, for eventual

17. Undisputed. However, Plaintiff disputes the amount of interest the Commission is providing under the circumstances.

disbursement to the Miwok  
Tribe.

**Littleton Decl., ¶ 8.**

18. The Commission will promptly disburse the accrued RSTF payments to the Miwok Tribe once the BIA has identified the Miwok Tribe's authorized leader or leadership group.

**Littleton Decl., ¶ 9.**

19. The Legislature has provided that shortfalls in the RSTF (which would otherwise preclude disbursing a total of \$1.1M per year to each Non-Compact Tribe) are backfilled from the Special Distribution Fund, which, to the extent not used for that purpose are used for the public benefit to mitigate the off-reservation impacts and costs of tribal gaming.

**Gov. Code, § 12012.90, subd. (e).**

**Gov. Code, § 12012.85.**

18. Disputed. The Compact does not require that the actions of the BIA dictate the conditions of RSTF disbursements. The Commission is wrong in conditioning payment on this basis. In fact, in light of Dixie's recent deposition testimony admitting that he resigned as Tribal Chairman, there is no basis for the Commission to continue to claim that it does not know who is authorized to receive the subject RSTF payments for the Tribe. (pRJN, Ex. "21").

19. Undisputed.

**PLAINTIFFS' UNDISPUTED  
MATERIAL FACTS AND SUPPORTING  
EVIDENCE**

**DEFENDANT'S RESPONSE AND  
SUPPORTING EVIDENCE**

**THIRD CAUSE OF ACTION FOR WRIT OF MANDATE**

1. Under the Compacts, the Commission is required to collect license fees from gaming tribes, deposit them in the RSTF, and, under the Compacts and Government Code sections 12012.75 and 12012.90, make quarterly payments of those funds according to the Compact's specified distribution plans.

**Gov. Code, §§ 12012.75;  
12012.90;**

**Compact §§ 4.3.2, 4.3.2.1  
(Ex. A to Req. for Jud. Not.  
(RJN); see also Decl. of  
Sylvia Cates (Cates Decl.) ¶  
2.**

1. Undisputed.

2. The Compacts and Government Code provide that quarterly payments shall be made to Non-Compact Tribes, noncompact tribes, and eligible recipient Indian tribes, respectively—these are alternative and functionally equivalent designations of federally-recognized California Indian tribes that operate fewer

2. Undisputed.

than 350 slot machines.

**(Id.)**

3. The Commission administers the RSTF in the nominal capacity of "trustee," for the purpose of receiving, depositing, and disbursing the funds on a quarterly basis to Non-Compact Tribes.

**Compact, § 4.3.2, subd. (a) (ii) (Ex. A to RJN; see also Cates Decl. ¶ 2.**

3. Undisputed.

4. Aside from its duties as administrator of the RSTF, the Commission has no discretion "with respect to the use or disbursement of the [RSTF] funds."

**Compact, § 4.3.2.1, subd. (b) (Ex. A to RJN; see also Cates Decl. ¶ 2.**

This language has been clarified in later compacts. **See Tribal-State Compact Between the State of California and the Pinoleville Pomo Nation, § 5.1, subd. (a) (Ex. F to RJN; see also Cates Decl. ¶ 7.**

4. Undisputed.

5. The Miwok Tribe is a federally-recognized Indian tribe that operates fewer than 350 slot machines, and thus qualifies as a Non-Compact Tribe under the

5. Undisputed.

Compacts and Government Code.

**First Amended Complaint  
Combined With Petition for  
Writ of Mandate, at p. 3 ¶ 6.**

6. The *Salazar* case was filed on January 24, 2011, by the California Valley Miwok Tribe (consisting of different individuals than the Burley Faction that is the plaintiff in this action), the Tribal Council, Yakima Dixie, Velma Whitebear, Antonia Lopez, Michael Mendibles, Evelyn Wilson, and Antone Azevedo (collectively referred to herein as the "D.C. Plaintiffs"). The *Salazar* case challenges Assistant Secretary of the Interior (ASI) (Indian Affairs) Larry Echo Hawk's December 10, 2010 decision recognizing the Burley Faction as the Miwok Tribe.

**Complaint (*Salazar*) (Ex. C to RJN. See also Docket (*Salazar*) (Ex. G to RJN.)**

6. Undisputed.

7. As a result of *Salazar's* filing, ASI Echo Hawk withdrew his December 2010 decision for reconsideration, and then reissued it with modifications on August 31, 2011 (August 31 Decision). On October 17, 2011, the D.C. Plaintiffs filed a first

7. Disputed. The ASI also stated that he wanted to have the matter more fully briefed by the parties. His August 31, 2011 decision affirmed his December 22, 2010 decision.

1 amended complaint that  
2 challenges ASI Echo Hawk's  
August 31 Decision.

3 **Letter, Echo Hawk to Dixie**  
4 **dated April 1, 2011 (Ex. D to**  
5 **RJN); see also Cates Decl., ¶**  
6 **5.**

7 **Echo Hawk decision dated**  
8 **August 31, 2011 (Ex. E to**  
9 **RJN); see also Cates Decl., ¶**  
10 **6.**

11 **First Amended Complaint**  
12 **(Salazar) (Ex. H to RJN.)**

13 8. By its express terms, the  
14 August 31 Decision is stayed  
pending the outcome of  
*Salazar*.

15 **Echo Hawk decision dated**  
16 **August 31, 2011 (Ex. E to**  
17 **RJN, at p. 8); see also Cates**  
18 **Decl., ¶ 6.**

19 9. At the present time, as  
20 evidenced by the *Salazar*  
21 case, a dispute exists as to  
the composition and  
22 leadership of the Miwok  
Tribe.

23 **First Amended Complaint**  
24 **(Salazar) (Ex. H to RJN.**

8. Disputed. The ASI merely  
stayed implementation of his  
decision, which has no effect  
on the declaration of rights  
portion of that decision  
stating that the Tribe has a  
recognized form of government  
and that the Tribe consists  
of five members. (pRJN, Ex.  
"3")

9. Disputed. The *Salazar*  
case is irrelevant, per the  
Court of Appeal decision.  
There is no dispute  
concerning the leadership of  
the Tribe, in light of the  
recent deposition testimony  
of Yakima Dixie confirming  
that he had resigned as  
Tribal Chairman and  
acknowledging that Burley is  
the new Chairperson. (pRJN,  
Ex. "21"). Composition of  
the Tribe is irrelevant for

	purposes of distributing RSTF payments to a Non-Compact tribe. (pRJN, Ex. "5").
10. On the one hand, the Miwok Tribe may consist only of the Burley Faction, consisting of five members, or, on the other hand, it may consist of a much larger group of Indians, possibly including up to 242 adult members.  <b>(Id.)</b>	10. <u>Disputed</u> . See No. 9 above.
11. Depending upon the outcome of the <i>Salazar</i> case, the BIA may, or may not, take final action recognizing the Miwok Tribe to consist of the Burley Faction and recognizing Silvia Burley as the Tribal Chairperson.  <b>(Id.)</b>	11. <u>Disputed</u> . See No. 9 above.
12. The Commission makes no independent determinations on the merits of intra-tribal leadership disputes.  <b>Decl. of Tina Littleton (Littleton Decl.), ¶ 3.</b>	12. <u>Undisputed</u> .
13. The Commission takes no position on the merits of intra-tribal leadership disputes.  <b>Littleton Decl., ¶ 4.</b>	13. <u>Undisputed</u> .

14. When uncertainty exists as to a Non-Compact Tribe's authorized leadership, the Commission, as administrator of the RSTF, defers to the BIA's determinations.

**Littleton Decl, ¶ 5.**

14. Disputed. The Commission never said, and never did, pay any of the subject RSTF money to Burley individually. The Commission has been withholding RSTF payments to the Tribe because it claimed an ongoing Tribal leadership dispute between Dixie and Burley called into question who is authorized to accept the RSTF payments on behalf of the Tribe, even though it had previously made RSTF payments to the Tribe in care of Burley in the midst of the same leadership dispute. The Commission then later claimed that since the Tribe under Burley's leadership did not qualify for federal contract funding under P.L. 638, the Tribe also could not qualify for RSTF money either. The Commission also erroneously claimed that the Tribe needed to be "reorganized" under the IRA, and admit more Indians as members of the Tribe, before the Tribe could qualify for RSTF payments. The Commission also ignored the Tribe's right to operate outside the IRA under its present resolution form of government. (pRJN, Ex. "6" and "7").

15. Because the BIA deemed it unorganized and lacking a Tribal Chairperson and, for

15. See No. 14 above.



1 that reason, suspended PL 638  
2 contract funding disbursement  
3 to the Miwok Tribe in 2005,  
4 the Commission suspended its  
5 disbursement of quarterly  
6 RSTF payments, pending BIA's  
7 recognition of an authorized  
8 Miwok Tribe leader or  
9 leadership group with which  
10 to conduct its government-to-  
11 government business—as  
12 evidenced either by BIA's  
13 resumption of PL 638 funding,  
14 or other BIA action.

15 **Littleton Decl., ¶ 6.**

16 16. As of this date, the BIA  
17 has not recognized an  
18 authorized leader or  
19 leadership group for the  
20 Miwok Tribe, nor has the BIA  
21 resumed disbursing PL 638  
22 funds to the Miwok Tribe.

23 **Littleton Decl., ¶ 7.**

24 16. Disputed. The ASI's  
25 August 31, 2011 decision  
26 contains a declaration of  
27 rights that the Plaintiff's  
28 Tribal Council is in fact  
currently recognized, which  
is not affected by the  
implementing stay language of  
that decision. The decision  
directs the parties to  
continue to resolve their  
leadership dispute pending  
the federal litigation under  
the currently recognized  
tribal Council. (pRJN, Ex.  
"3", page 8). The ASI also  
suggested the Intervenor  
"take up their cause" of  
membership with the current  
Tribal Council, pending the  
outcome of the federal  
litigation. (pRJN, Ex. "3",  
page 7). In addition, the  
U.S. District Court has  
stated that the Tribe under

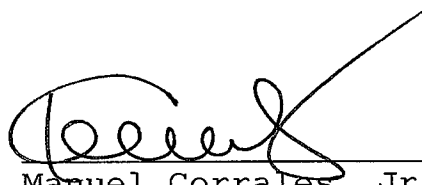
	<p>Burley's leadership is "currently recognized." (Intervenors' Ex. "15", page 10). The implementing stay of the August 31, 2011 decision did not affect the declaration portion of the decision, i.e., that the Tribe is currently recognized.</p>
<p>17. As of this date, the Commission is holding accrued quarterly RSTF payments totaling \$8,763,001.99, plus interest in the amount of \$420,246.17, for eventual disbursement to the Miwok Tribe.</p> <p><b>Littleton Decl., ¶ 8.</b></p>	<p>17. <u>Undisputed</u>. However, Plaintiff disputes the amount of interest the Commission is providing under the circumstances.</p>
<p>18. The Commission will promptly disburse the accrued RSTF payments to the Miwok Tribe once the BIA has identified the Miwok Tribe's authorized leader or leadership group.</p> <p><b>Littleton Decl., ¶ 9.</b></p>	<p>18. <u>Disputed</u>. The Compact does not require that the actions of the BIA dictate the conditions of RSTF disbursements. The Commission is wrong in conditioning payment on this basis. In fact, in light of Dixie's recent deposition testimony admitting that he resigned as Tribal Chairman, there is no basis for the Commission to continue to claim that it does not know who is authorized to receive the subject RSTF payments for the Tribe. (pRJN, Ex. "21").</p>
<p>19. The Legislature has provided that shortfalls in</p>	<p>19. <u>Undisputed</u>.</p>

1 the RSTF (which would  
2 otherwise preclude disbursing  
3 a total of \$1.1M per year to  
4 each Non-Compact Tribe) are  
5 backfilled from the Special  
6 Distribution Fund, which, to  
7 the extent not used for that  
8 purpose are used for the  
9 public benefit to mitigate  
10 the off-reservation impacts  
11 and costs of tribal gaming.

8 **Gov. Code, § 12012.90, subd.  
9 (e).**

10 **Gov. Code, § 12012.85.**

12  
13  
14  
15 Dated: March 18, 2013

  
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TRIBE