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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 INTERVENORS'
MOTION FOR SUMMARY
JUDGMENT/MOTION FOR SUMMARY
ADJUDICATION**

Date: April 26, 2013

Time: 2:00 p.m.

Dept: 62

Judge: Hon. Ronald Styn

Trial Date: June 4, 2013

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

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

PLAINTIFF'S RESPONSE AND
SUPPORTING EVIDENCE

10
11 **ISSUE NO. 1: PLAINTIFF'S FIRST CAUSE OF ACTION FOR**
INJUNCTIVE RELIEF HAS NO MERIT

12
13 1. Plaintiff's first cause
14 of action for injunctive
15 relief seeks an order
16 compelling defendant
17 California Gambling Control
18 Commission ("Commission") to
19 immediately disburse Revenue
20 Sharing Trust Funds held in
trust for the California
Valley Miwok Tribe to
Plaintiff in care of Silvia
Burley.

21 [First Amended Complaint
22 ("FAC"), ¶ 30; *California*
23 *Valley Miwok Tribe v.*
24 *California Gambling Control*
25 *Commission*, No. D061811
(December 18, 2012), pp. 5,
17.]

1. Undisputed.

26 2. Intervenor's filed a
27 Complaint in Intervention in
28 which they joined in with the

2. Undisputed.

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; *Cates v. Chiang*, 154 Cal.App.4th 1302, 1305 (2007).]

3. Undisputed.

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); *California Valley Miwok Tribe v. California Gambling Control Commission*, 2010 WL 1511744, *2 (4th Dist. 2010) (unpublished) ("*Miwok III*").]

4. Undisputed.

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; *Miwok III* at *2.]

5. Undisputed.

6. The Commission serves as the trustee of the RSTF.

[FAC, ¶¶ 6, 22, 29, 34; Ex.

6. Disputed. The Compact describes the Commission as a trustee of the RSTF money in an administrative capacity

2, Compact § 4.3.2.1(b);
Miwok III at *3.]

with no discretion as to the use or disbursement of those funds. Thus, by the express terms of the Compacts, the Commission can make no decisions on how the RSTF money is to be distributed to Non-Compact tribes. It serves as a mere depository. (pRJN, Ex. "5") (Section 4.3.2.1(b))

7. As a trustee, the Commission owes a fiduciary duty to the Non-Compact tribes with respect to the RSTF.

[FAC, ¶¶ 6, 25, 30, 34; *Miwok III* at *9-10.]

7. Disputed. The Compact describes the Commission as a trustee of the RSTF money in an administrative capacity with no discretion as to the use or disbursement of those funds. Thus, by the express terms of the Compacts, the Commission can make no decisions on how the RSTF money is to be distributed to Non-Compact tribes. It serves as a mere depository. (pRJN, Ex. "5") (Section 4.3.2.1(b))

8. The California Valley Miwok Tribe (the "Tribe") is a Non-Compact tribe.

[FAC, ¶¶ 6-7; *Miwok III* at *2.]

8. Undisputed.

9. 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

9. Disputed. Plaintiff consists of five members as confirmed by the Assistant Secretary of the Interior, Larry Echo Hawk, in his August 31, 2011 decision, which reaffirmed his December 22, 2010 decision letter

1 the Tribe.

2 [Ex. 3, Burley Declaration at
3 ¶ 3; FAC, ¶¶ 8-9 and
4 Verification at p. 14 of
5 FAC.]
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declaring the same thing.
(pRJN, Ex. "2" and "3").
Silvia Burley is the
authorized Chairperson of the
Tribe, as confirmed by Yakima
Dixie in his recent
deposition admitting that he
resigned as Tribal Chairman
and acknowledging Burley as
the Tribal Chairperson, and
as acknowledged by the BIA in
January 2011, after the ASI's
December 22, 2010 decision
was rendered. (pRJN, Ex.
"21", "31" and "32")

11 10. Intervenors contend
12 that: (1) the Tribe consists
13 of more than 200 adult
14 members and their children;
15 (2) the Tribe is governed by
16 a Tribal council consisting
17 of seven members; and (3)
18 Silvia Burley is neither a
19 Tribal official, Tribal
20 representative nor member of
the Tribal government.
[WhiteBear Decl., ¶¶ 1-8:
Complaint in Intervention, ¶¶
4, 8, 13, 15, 22.]

10. Disputed. Intervenors'
contentions are false and
fraudulent. See No. 9 above.

21 11. Commencing in February
22 2005, BIA issued a series of
23 decisions in which it stated
24 that there was no recognized
25 government or governing body
26 of the Tribe. BIA further
27 stated that it would assist
the Tribe in identifying its
full membership and forming a
valid Tribal government.

11. Disputed. The BIA's
actions were legally
erroneous, since they failed
to recognize the undisputed
fact that the Tribe had since
1998 a resolution form of
government established under
Resolution #GC-98-01, which
was drafted by the BIA, and
that the BIA had no legal

1 [Exhibits 4, 5, 29, 30, 31;
2 FAC, ¶¶ 12-17.]

basis to force the Tribe
under Burley's leadership to
"reorganize" under the Indian
Reorganization Act of 1934
("IRA"), condition federal
contract funding on the Tribe
being organized under the
IRA, or force the Tribe to
add to its membership against
its will. (pRJN, Ex. "3")

8 12. Commencing in July 2005,
9 BIA issued a series of
10 decisions in which it denied
11 funding to Plaintiff and
12 Silvia Burley under Public
13 Law 93-638 ("PL-638"), the
14 Indian Self-Determination and
15 Education Assistance Act,
16 through which the BIA
17 supports recognized tribal
18 governments in providing
19 services to their members.
20 Burley challenged those
21 decisions, and the Interior
22 Board of Indian Appeals
upheld the decision.

19 [Exhibits 6, 7; FAC, ¶¶ 15-
20 17; 25 U.S.C. § 450 et seq.;
21 *California Valley Miwok Tribe*
22 *v. Central California*
Superintendent, 47 IBIA 91
(June 10, 2008).]

12. Disputed. See No. 11
above.

23 13. Plaintiff filed a
24 federal lawsuit in 2005
25 challenging the BIA's refusal
26 to recognize its tribal
27 government. The district
court dismissed its complaint
in 2006, finding that the

13. Disputed. See No. 11
above.

1 Burley government was not
2 entitled to recognition
3 because it did not "reflect
4 the will of a majority of the
5 tribal community." The Court
6 of Appeals for the District
7 of Columbia Circuit affirmed
8 in 2008, holding that
9 Burley's "antimajoritarian
10 gambit deserves no stamp of
11 approval from the Secretary."

12 [California Valley Miwok
13 Tribe v. USA, 424 F.Supp.2d
14 197, 197, 202 (D.D.C. 2006);
15 California Valley Miwok Tribe
16 v. United States, 515 F.3d
17 1262, 1267 (D.C. Cir. 2008).]

18 14. On December 22, 2010,
19 the AS-IA issued a decision
20 in response to a federal
21 administrative appeal that
22 Silvia Burley had filed
23 before the Interior Board of
24 Indian Appeals.

25 [Exhibit 8.]

26 15. Intervenors filed an
27 administrative appeal with
28 the BIA on February 9, 2011.
As of today, BIA's Regional
Director has never responded
to this appeal.

[Exhibit 11; Uram Decl., ¶
2.]

16. Intervenors filed suit
in federal district court for
the District of Columbia,
challenging the December 22
Decision.

14. Undisputed.

15. Disputed. The letter
the Intervenors attempted
appeal was not a "decision"
for purposes of appeal.

16. Undisputed.

1 [Uram Decl., ¶ 4; *California*
2 *Valley Miwok Tribe v.*
3 *Salazar*, No.
4 1:11-cv-00160-RWR (Jan. 24,
2011).]

5 17. The AS-IA rescinded the
6 December 22 Decision and
7 announced that he would issue
8 a new decision after briefing
by both parties.

9 [Exhibit 12.]

17. Disputed. The ASI never
used the word "rescind." He
set aside the decision and
later reaffirmed it in his
August 31, 2011 decision.
(pRJN, Ex. "3").

10 18. On August 31, 2011, the
11 AS-IA issued a new decision.
12 However, the AS-IA
13 specifically stayed the
14 implementation of his
15 decision pending resolution
of Intervenor's federal
lawsuit.

16 [Exhibit 13, p. 8; see also
17 Exhibits 14, 15, 16;
18 *California Valley Miwok Tribe*
19 *v. California Gambling*
20 *Control Commission*, No.
D061811, p. 9 (12/18/12)
21 (unpublished) ("The
22 implementation of the August
31, 2011 decision was
stayed.").]

18. Undisputed.

23 19. Intervenor's filed an
24 amended complaint in the
25 federal litigation, and
Plaintiff intervened.

26 [Exhibits 17, 19; Uram Decl.,
27 ¶¶ 5-6.]

19. Undisputed.

1 20. Intervenor's federal
2 lawsuit directly challenges
3 the AS-IA's findings
4 regarding the membership and
5 leadership of the Tribe,
6 including the validity of Ms.
7 Burley's general council and
8 the governing documents it is
9 based on. If the federal
10 court grants Intervenor's
11 motion for summary judgment,
12 it will invalidate the August
13 31 Decision, and the prior
14 BIA decisions denying
15 recognition of any Tribal
16 government would remain in
17 effect.

18 [Exhibits 18-19; Uram Decl.,
19 ¶¶ 6, 8.]

20 21. Intervenor, Plaintiff,
21 and the BIA each have filed
22 dispositive motions and await
23 the district court's ruling.

24 [Exhibit 17; Uram Decl., ¶
25 7.]

26 22. In 2005, in response to
27 the ongoing Tribal dispute
28 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

20. Disputed. The
Intervenor's federal
challenge is irrelevant to
the proceedings in this case,
as ruled by the Court of
Appeal. (pRJN, Ex. "23").

21. Disputed. The
Intervenor's federal
challenge is irrelevant to
the proceedings in this case,
as ruled by the Court of
Appeal. (pRJN, Ex. "23").

22. 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

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.

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

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").

23. Because the membership and leadership of the Tribe remains in dispute pending the outcome of CVMT v. Salazar, the Commission continues to hold the Tribe's RSTF money in trust and 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

23. Disputed. See No. 22 above.

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

23 24. In 2005, after
24 suspending RSTF payments to
25 the Tribe, the Commission
26 filed an interpleader action
27 in state court, asking the
28 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.]

24. Disputed. The
Intervenors' evidence is
irrelevant and misleading.
The Commission never sought
declaratory relief with
respect to the same issues
presented in this case.

1 **PLAINTIFFS' UNDISPUTED**
2 **MATERIAL FACTS AND SUPPORTING**
3 **EVIDENCE**

DEFENDANT'S RESPONSE AND
SUPPORTING EVIDENCE

4 **ISSUE NO. 2: PLAINTIFF'S SECOND CAUSE OF ACTION FOR**
5 **DECLARATORY RELIEF HAS NO MERIT**

6 25. Plaintiff's second cause
7 of action for declaratory
8 relief seeks an order
9 declaring that defendant
10 California Gambling Control
11 Commission ("Commission") has
12 a duty to immediately
13 disburse Revenue Sharing
Trust Funds held in trust for
the California Valley Miwok
Tribe to Plaintiff in care of
Silvia Burley.

14 [First Amended Complaint
15 ("FAC"), ¶ 35; *California*
16 *Valley Miwok Tribe v.*
17 *California Gambling Control*
18 *Commission*, No. D061811
19 (December 18, 2012), pp. 5,
20 17.]

25. Undisputed.

21 26. Intervenors filed a
22 Complaint in Intervention in
23 which they joined in with the
24 Commission in opposition to
Plaintiff's FAC.

25 [Complaint in Intervention.]

26. Undisputed.

27 27. In 1999, California
28 entered into a Tribal-State
Gaming Compact ("Compact")
with various Indian tribes
authorized to conduct gaming

27. Undisputed.

1 in California.

2 [FAC, ¶ 5; *Cates v. Chiang*,
3 154 Cal.App.4th 1302, 1305
4 (2007).]

5 28. Under the Compact, a
6 Non-Compact tribe is a
7 federally recognized Indian
8 tribe in California that
9 operates fewer than 350
10 gaming devices.

11 [Ex.2, Compact § 4.3.2(a)(i);
12 *California Valley Miwok Tribe*
13 *v. California Gambling*
14 *Control Commission*, 2010 WL
15 1511744, *2 (4th Dist. 2010)
16 (unpublished) ("*Miwok III*").]

17 29. Under the Compact, each
18 eligible Non-Compact tribe is
19 entitled to \$1.1 million per
20 year from the Revenue Sharing
21 Trust Fund ("RSTF").

22 [FAC, ¶¶ 6-7; Ex. 2, Compact
23 § 4.3.2.1; *Miwok III* at *2.]

24 30. The Commission serves as
25 the trustee of the RSTF.

26 [FAC, ¶¶ 6, 22, 29, 34; Ex.
27 2, Compact § 4.3.2.1(b);
28 *Miwok III* at *3.]

28. Undisputed.

29. Undisputed.

30. Disputed. The Compact describes the Commission as a trustee of the RSTF money in an administrative capacity with no discretion as to the use or disbursement of those funds. Thus, by the express terms of the Compacts, the Commission can make no decisions on how the RSTF money is to be distributed to Non-Compact tribes. It serves as a mere depository.

	(pRJN, Ex. "5") (Section 4.3.2.1(b))
<p>31. As a trustee, the Commission owes a fiduciary duty to the Non-Compact tribes with respect to the RSTF.</p> <p>[FAC, ¶¶ 6, 25, 30, 34; <i>Miwok III</i> at *9-10.]</p>	<p>31. <u>Disputed</u>. The Compact describes the Commission as a trustee of the RSTF money in an administrative capacity with <u>no discretion</u> as to the use or disbursement of those funds. Thus, by the express terms of the Compacts, the Commission can make no decisions on how the RSTF money is to be distributed to Non-Compact tribes. It serves as a mere depository. (pRJN, Ex. "5") (Section 4.3.2.1(b))</p>
<p>32. The California Valley Miwok Tribe (the "Tribe") is a Non-Compact tribe.</p> <p>[FAC, ¶¶ 6-7; <i>Miwok III</i> at *2.]</p>	<p>32. <u>Undisputed</u>.</p>
<p>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.</p> <p>[Ex. 3, Burley Declaration at ¶ 3; FAC, ¶¶ 8-9 and Verification at p. 14 of FAC.]</p>	<p>33. <u>Disputed</u>. Plaintiff consists of five members as confirmed by the Assistant Secretary of the Interior, Larry Echo Hawk, in his August 31, 2011 decision, which reaffirmed his December 22, 2010 decision letter declaring the same thing. (pRJN, Ex. "2" and "3"). Silvia Burley is the authorized Chairperson of the Tribe, as confirmed by Yakima Dixie in his recent deposition admitting that he resigned as Tribal Chairman</p>

1		and acknowledging Burley as the Tribal Chairperson, and
2		as acknowledged by the BIA in
3		January 2011, after the ASI's
4		December 22, 2010 decision
5		was rendered. (pRJN, Ex. "21", "31" and "32")
6	34. Intervenor's contend that: (1) the Tribe consists of more than 200 adult members and their children;	34. <u>Disputed</u> . Intervenor's contentions are false and fraudulent. <u>See</u> No. 9 above.
7	(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.	
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14	[WhiteBear Decl., ¶¶ 1-8: Complaint in Intervention, ¶¶ 4, 8, 13, 15, 22.]	
15		
16	35. 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.	35. <u>Disputed</u> . The BIA's actions were legally erroneous, since they failed to recognize the undisputed fact that the Tribe had since 1998 a resolution form of government established under Resolution #GC-98-01, which was drafted by the BIA, and that the BIA had no legal basis to force the Tribe under Burley's leadership to "reorganize" under the Indian Reorganization Act of 1934 ("IRA"), condition federal contract funding on the Tribe being organized under the IRA, or force the Tribe to
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23	[Exhibits 4, 5, 29, 30, 31; FAC, ¶¶ 12-17.]	
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	add to its membership against its will. (pRJN, Ex. "3")
<p>36. 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.</p> <p>[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).]</p>	36. <u>Disputed.</u> <u>See</u> No. 11 above.
<p>37. Plaintiff filed a federal lawsuit in 2005 challenging the BIA's refusal to recognize its tribal government. The district court dismissed its complaint in 2006, finding that the Burley government was not entitled to recognition 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</p>	37. <u>Disputed.</u> <u>See</u> No. 11 above.

1 Burley's "antimajoritarian
2 gambit deserves no stamp of
approval from the Secretary."

3 [California Valley Miwok
4 Tribe v. USA, 424 F.Supp.2d
5 197, 197, 202 (D.D.C. 2006);
6 California Valley Miwok Tribe
7 v. United States, 515 F.3d
1262, 1267 (D.C. Cir. 2008).]

8 38. On December 22, 2010,
9 the AS-IA issued a decision
10 in response to a federal
11 administrative appeal that
12 Silvia Burley had filed
before the Interior Board of
Indian Appeals.

13 [Exhibit 8.]

38. Undisputed.

14 39. Intervenors filed an
15 administrative appeal with
16 the BIA on February 9, 2011.
17 As of today, BIA's Regional
18 Director has never responded
to this appeal.

19 [Exhibit 11; Uram Decl., ¶
20 2.]

39. Disputed. The letter
the Intervenors attempted
appeal was not a "decision"
for purposes of appeal.

21 40. Intervenors filed suit
22 in federal district court for
23 the District of Columbia,
challenging the December 22
Decision.

24 [Uram Decl., ¶ 4; California
25 Valley Miwok Tribe v.
26 Salazar, No.
27 1:11-cv-00160-RWR (Jan. 24,
2011).]

40. Undisputed.

1 41. The AS-IA rescinded the
2 December 22 Decision and
3 announced that he would issue
4 a new decision after briefing
5 by both parties.

6 [Exhibit 12.]

7 42. On August 31, 2011, the
8 AS-IA issued a new decision.
9 However, the AS-IA
10 specifically stayed the
11 implementation of his
12 decision pending resolution
13 of Intervenor's federal
14 lawsuit.

15 [Exhibit 13, p. 8; see also
16 Exhibits 14, 15, 16;
17 *California Valley Miwok Tribe*
18 *v. California Gambling*
19 *Control Commission*, No.
20 D061811, p. 9 (12/18/12)
21 (unpublished) ("The
22 implementation of the August
23 31, 2011 decision was
24 stayed.").]

25 43. Intervenor's filed an
26 amended complaint in the
27 federal litigation, and
28 Plaintiff intervened.

[Exhibits 17, 19; Uram Decl.,
¶¶ 5-6.]

44. Intervenor's federal
lawsuit directly challenges
the AS-IA's findings
regarding the membership and
leadership of the Tribe,
including the validity of Ms.

41. Disputed. The ASI never
used the word "rescind." He
set aside the decision and
later reaffirmed it in his
August 31, 2011 decision.
(pRJN, Ex. "3").

42. Undisputed.

43. Undisputed.

44. Disputed. The
Intervenor's federal
challenge is irrelevant to
the proceedings in this case,
as ruled by the Court of
Appeal. (pRJN, Ex. "23").

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.]

45. Intervenor's, Plaintiff, and the BIA each have filed dispositive motions and await the district court's ruling.

[Exhibit 17; Uram Decl., ¶ 7.]

46. 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. Burley and Mr. Dixie that the withheld funds would be

45. Disputed. The Intervenor's federal challenge is irrelevant to the proceedings in this case, as ruled by the Court of Appeal. (pRJN, Ex. "23").

46. 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

1 forwarded to the Tribe, with
2 interest, when the BIA
3 acknowledged a Tribal
4 government and reestablished
government-to-government
relations with the Tribe.

5 [Exhibit 20; Exhibit 32 at ¶
6 14; FAC, ¶¶ 15-17.]
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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").

13 47. Because the membership
14 and leadership of the Tribe
remains in dispute pending
15 the outcome of CVMT v.
16 Salazar, the Commission
continues to hold the Tribe's
17 RSTF money in trust and
refuses payment to Plaintiff.
18

19 [Exhibits 4, 5, 6, 7, 11, 12,
20 14, 19, 20, 21, 22, 23, 24,
25 25, 29, 30, 31, 33, and 34
(California Gambling Control
Commission Response to CVMT
Form Interrogatories, Set
22 Two, Response to Requests for
23 Admission Nos. 86, 97, 98,
24 101, 102, 106, 112-114, 119,
25 121); FAC, ¶¶ 15-17; see also
26 Miwok III at *2, *8 ("The
Commission contends that
27 because it has a fiduciary
duty as trustee of the RSTF,

47. Disputed. See No. 22
above.

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).]

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.]

48. Disputed. The Intervenor's evidence is irrelevant and misleading. The Commission never sought declaratory relief with respect to the same issues presented in this case.

PLAINTIFFS' UNDISPUTED MATERIAL FACTS AND SUPPORTING EVIDENCE

DEFENDANT'S RESPONSE AND SUPPORTING EVIDENCE

ISSUE NO. 3: PLAINTIFF'S THIRD CAUSE OF ACTION FOR WRIT OF MANDATE HAS NO MERIT

1
2 49. Plaintiff's fourth cause
3 of action for writ of mandate
4 seeks an order compelling
5 defendant California Gambling
6 Control Commission
7 ("Commission") to immediately
8 disburse Revenue Sharing
9 Trust Funds held in trust for
10 the California Valley Miwok
11 Tribe to Plaintiff in care of
12 Silvia Burley.

13 [First Amended Complaint
14 ("FAC"), ¶¶ 30, 35, 44, and
15 Prayer for Relief no. 3;
16 *California Valley Miwok Tribe*
17 *v. California Gambling*
18 *Control Commission*, No.
19 D061811 (December 18, 2012),
20 pp. 5, 17.]

49. Undisputed.

21 50. Intervenors filed a
22 Complaint in Intervention in
23 which they joined in with the
24 Commission in opposition to
25 Plaintiff's FAC.

26 [Complaint in Intervention.]

50. Undisputed.

27 51. In 1999, California
28 entered into a Tribal-State
Gaming Compact ("Compact")
with various Indian tribes
authorized to conduct gaming
in California.

[FAC, ¶ 5; *Cates v. Chiang*,
154 Cal.App.4th 1302, 1305
(2007).]

51. Undisputed.

52. Under the Compact, a

52. Undisputed.

1 Non-Compact tribe is a
2 federally recognized Indian
3 tribe in California that
4 operates fewer than 350
5 gaming devices.

6 [Ex.2, Compact § 4.3.2(a)(i);
7 *California Valley Miwok Tribe*
8 *v. California Gambling*
9 *Control Commission*, 2010 WL
10 1511744, *2 (4th Dist. 2010)
11 (unpublished) ("*Miwok III*").]

12 53. Under the Compact, each
13 eligible Non-Compact tribe is
14 entitled to \$1.1 million per
15 year from the Revenue Sharing
16 Trust Fund ("RSTF").

17 [FAC, ¶¶ 6-7; Ex. 2, Compact
18 § 4.3.2.1; *Miwok III* at *2.]

19 54. The Commission serves as
20 the trustee of the RSTF.

21 [FAC, ¶¶ 6, 22, 29, 34; Ex.
22 2, Compact § 4.3.2.1(b);
23 *Miwok III* at *3.]

24 55. As a trustee, the
25 Commission owes a fiduciary
26 duty to the Non-Compact
27 tribes with respect to the

53. Undisputed.

54. Disputed. The Compact
describes the Commission as a
trustee of the RSTF money in
an administrative capacity
with no discretion as to the
use or disbursement of those
funds. Thus, by the express
terms of the Compacts, the
Commission can make no
decisions on how the RSTF
money is to be distributed to
Non-Compact tribes. It
serves as a mere depository.
(pRJN, Ex. "5") (Section
4.3.2.1(b))

55. Disputed. The Compact
describes the Commission as a
trustee of the RSTF money in
an administrative capacity

1 RSTF.

2 [FAC, ¶¶ 6, 25, 30, 34; *Miwok*
3 *III* at *9-10.]

with no discretion as to the
use or disbursement of those
funds. Thus, by the express
terms of the Compacts, the
Commission can make no
decisions on how the RSTF
money is to be distributed to
Non-Compact tribes. It
serves as a mere depository.
(pRJN, Ex. "5") (Section
4.3.2.1(b))

8 56. The California Valley
9 Miwok Tribe (the "Tribe") is
10 a Non-Compact tribe.

11 [FAC, ¶¶ 6-7; *Miwok III* at
12 *2.]

56. Undisputed.

13 57. Plaintiff contends that
14 the Tribe consists of four
15 adult members (Silvia Burley,
16 her two daughters Rashel
17 Reznor and Anjelica Paulk,
18 and Intervenor Yakima Dixie)
and that Silvia Burley is the
"selected spokesperson" for
the Tribe.

19 [Ex. 3, Burley Declaration at
20 ¶ 3; FAC, ¶¶ 8-9 and
21 Verification at p. 14 of
22 FAC.]

57. Disputed. Plaintiff
consists of five members as
confirmed by the Assistant
Secretary of the Interior,
Larry Echo Hawk, in his
August 31, 2011 decision,
which reaffirmed his December
22, 2010 decision letter
declaring the same thing.
(pRJN, Ex. "2" and "3").
Silvia Burley is the
authorized Chairperson of the
Tribe, as confirmed by Yakima
Dixie in his recent
deposition admitting that he
resigned as Tribal Chairman
and acknowledging Burley as
the Tribal Chairperson, and
as acknowledged by the BIA in
January 2011, after the ASI's
December 22, 2010 decision
was rendered. (pRJN, Ex.
"21", "31" and "32")

1 58. Intervenor's contend
2 that: (1) the Tribe consists
3 of more than 200 adult
4 members and their children;
5 (2) the Tribe is governed by
6 a Tribal council consisting
7 of seven members; and (3)
8 Silvia Burley is neither a
9 Tribal official, Tribal
10 representative nor member of
11 the Tribal government.

12 [WhiteBear Decl., ¶¶ 1-8:
13 Complaint in Intervention, ¶¶
14 4, 8, 13, 15, 22.]

15 59. Commencing in February
16 2005, BIA issued a series of
17 decisions in which it stated
18 that there was no recognized
19 government or governing body
20 of the Tribe. BIA further
21 stated that it would assist
22 the Tribe in identifying its
23 full membership and forming a
24 valid Tribal government.

25 [Exhibits 4, 5, 29, 30, 31;
26 FAC, ¶¶ 12-17.]

27 60. Commencing in July 2005,
28 BIA issued a series of
decisions in which it denied
funding to Plaintiff and
Silvia Burley under Public

58. Disputed. Intervenor's
contentions are false and
fraudulent. See No. 9 above.

59. Disputed. The BIA's
actions were legally
erroneous, since they failed
to recognize the undisputed
fact that the Tribe had since
1998 a resolution form of
government established under
Resolution #GC-98-01, which
was drafted by the BIA, and
that the BIA had no legal
basis to force the Tribe
under Burley's leadership to
"reorganize" under the Indian
Reorganization Act of 1934
("IRA"), condition federal
contract funding on the Tribe
being organized under the
IRA, or force the Tribe to
add to its membership against
its will. (pRJN, Ex. "3")

60. Disputed. See No. 11
above.

1 Law 93-638 ("PL-638"), the
2 Indian Self-Determination and
3 Education Assistance Act,
4 through which the BIA
5 supports recognized tribal
6 governments in providing
7 services to their members.
8 Burley challenged those
9 decisions, and the Interior
10 Board of Indian Appeals
11 upheld the decision.

12 [Exhibits 6, 7; FAC, ¶¶ 15-
13 17; 25 U.S.C. § 450 et seq.;
14 *California Valley Miwok Tribe*
15 *v. Central California*
16 *Superintendent*, 47 IBIA 91
17 (June 10, 2008).]

18 61. Plaintiff filed a
19 federal lawsuit in 2005
20 challenging the BIA's refusal
21 to recognize its tribal
22 government. The district
23 court dismissed its complaint
24 in 2006, finding that the
25 Burley government was not
26 entitled to recognition
27 because it did not "reflect
28 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."

[*California Valley Miwok*
Tribe v. USA, 424 F.Supp.2d
197, 197, 202 (D.D.C. 2006);
California Valley Miwok Tribe

61. Disputed. See No. 11
above.

1 v. *United States*, 515 F.3d
2 1262, 1267 (D.C. Cir. 2008).]

3 62. On December 22, 2010,
4 the AS-IA issued a decision
5 in response to a federal
6 administrative appeal that
7 Silvia Burley had filed
8 before the Interior Board of
9 Indian Appeals.

10 [Exhibit 8.]

62. Undisputed.

11 63. Intervenors filed an
12 administrative appeal with
13 the BIA on February 9, 2011.
14 As of today, BIA's Regional
15 Director has never responded
16 to this appeal.

17 [Exhibit 11; Uram Decl., ¶
18 2.]

63. Disputed. The letter
the Intervenors attempted
appeal was not a "decision"
for purposes of appeal.

19 64. Intervenors filed suit
20 in federal district court for
21 the District of Columbia,
22 challenging the December 22
23 Decision.

24 [Uram Decl., ¶ 4; *California*
25 *Valley Miwok Tribe v.*
26 *Salazar*, No.
27 1:11-cv-00160-RWR (Jan. 24,
28 2011).]

64. Undisputed.

29 65. The AS-IA rescinded the
30 December 22 Decision and
31 announced that he would issue
32 a new decision after briefing
33 by both parties.

34 [Exhibit 12.]

65. Disputed. The ASI never
used the word "rescind." He
set aside the decision and
later reaffirmed it in his
August 31, 2011 decision.
(pRJN, Ex. "3").

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; see also Exhibits 14, 15, 16; *California Valley Miwok Tribe v. California Gambling Control Commission*, No. D061811, p. 9 (12/18/12) (unpublished) ("The implementation of the August 31, 2011 decision was stayed.").]

66. Undisputed.

67. Intervenor's filed an amended complaint in the federal litigation, and Plaintiff intervened.

[Exhibits 17, 19; Uram Decl., ¶¶ 5-6.]

67. Undisputed.

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

68. Disputed. The Intervenor's federal challenge is irrelevant to the proceedings in this case, as ruled by the Court of Appeal. (pRJN, Ex. "23").

1 recognition of any Tribal
2 government would remain in
effect.

3 [Exhibits 18-19; Uram Decl.,
4 ¶¶ 6, 8.]

5 69. Intervenors, Plaintiff,
6 and the BIA each have filed
7 dispositive motions and await
the district court's ruling.

8 [Exhibit 17; Uram Decl., ¶
9 7.]

69. Disputed. The
Intervenors' federal
challenge is irrelevant to
the proceedings in this case,
as ruled by the Court of
Appeal. (pRJN, Ex. "23").

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

70. 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

1 [Exhibit 20; Exhibit 32 at ¶
2 14; FAC, ¶¶ 15-17.]

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").

8 71. Because the membership
9 and leadership of the Tribe
10 remains in dispute pending
11 the outcome of CVMT v.
12 Salazar, the Commission
13 continues to hold the Tribe's
RSTF money in trust and
refuses payment to Plaintiff.

14 [Exhibits 4, 5, 6, 7, 11, 12,
15 14, 19, 20, 21, 22, 23, 24,
16 25, 29, 30, 31, 33, and 34
17 (California Gambling Control
Commission Response to CVMT
Form Interrogatories, Set
18 Two, Response to Requests for
19 Admission Nos. 86, 97, 98,
20 101, 102, 106, 112-114, 119,
21 121); FAC, ¶¶ 15-17; see also
22 Miwok III at *2, *8 ("The
Commission contends that
because it has a fiduciary
23 duty as trustee of the RSTF,
the current uncertainties
24 regarding the Miwok Tribe's
government and membership
25 require it to withhold the
26 RSTF funds and hold them in
trust until it can be assured
27 that the funds, if released,

71. Disputed. See No. 22
above.


1 will be going to the proper
2 parties."); *California Valley*
3 *Miwok Tribe v. USA*, 424
4 F.Supp.2d 197, 197, 202
5 (D.D.C. 2006); *California*
6 *Valley Miwok Tribe v. United*
7 *States*, 515 F.3d 1262, 1267
8 (D.C. Cir. 2008).]

9 72. In 2005, after
10 suspending RSTF payments to
11 the Tribe, the Commission
12 filed an interpleader action
13 in state court, asking the
14 court to determine to whom
15 the Commission should release
16 the Tribe's RSTF money.
17 Silvia Burley successfully
18 opposed that action, arguing
19 that neither the court nor
20 the Commission had any
21 authority to determine the
22 proper representative of the
23 Tribe for purposes of RSTF
24 distribution.

25 [Exhibits 26-28.]

72. Disputed. The
Intervenors' evidence is
irrelevant and misleading.
The Commission never sought
declaratory relief with
respect to the same issues
presented in this case.

26 Dated: March 18, 2013


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Attorney for Plaintiff
CALIFORNIA VALLEY MIWOK
TRIBE