

1 KAMALA D. HARRIS  
Attorney General of California  
2 SARA J. DRAKE  
Senior Assistant Attorney General  
3 WILLIAM L. WILLIAMS, JR.  
Deputy Attorney General  
4 T. MICHELLE LAIRD  
Deputy Attorney General  
5 NEIL D. HOUSTON  
Deputy Attorney General  
6 State Bar No. 168058  
1300 I Street, Suite 125  
7 P.O. Box 944255  
Sacramento, CA 94244-2550  
8 Telephone: (916) 322-5476  
Fax: (916) 327-2319  
9 E-mail: Neil.Houston@doj.ca.gov  
*Attorneys for Defendant*

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SAN DIEGO  
13 CENTRAL BRANCH  
14

15 **CALIFORNIA VALLEY MIWOK TRIBE,**

16 Plaintiff,

17 v.  
18

19 **THE CALIFORNIA GAMBLING**  
20 **CONTROL COMMISSION; and DOES 1**  
**THROUGH 50, Inclusive,**

21 Defendants.  
22

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

**DEFENDANT CALIFORNIA  
GAMBLING CONTROL  
COMMISSION'S OBJECTION TO  
PLAINTIFF CALIFORNIA VALLEY  
MIWOK TRIBE'S MOTION FOR  
ORDER LIFTING THE EFFECT OF  
THE MARCH 11, 2011 ORDER  
GRANTING RECONSIDERATION AND  
DENYING INTERVENTION**

Date: April 26, 2013  
Time: 2:00 p.m.  
Dept: 62  
Judge: The Honorable Ronald L. Styn  
Trial Date: June 4, 2013  
Action Filed: January 8, 2008

1 Defendant California Gambling Control Commission (Commission) submits the following  
2 objection to Plaintiff California Valley Miwok Tribe's Motion for Order Lifting Effect of March  
3 11, 2011 Order Granting Reconsideration and Denying Intervention.

4 The plaintiff Burley Faction of the California Valley Miwok Tribe (Plaintiff or Burley  
5 Faction) seeks to have this Court lift its stay with respect to its March 11, 2011 order denying  
6 intervention. Plaintiff alleges that the legal basis for the order denying intervention has not  
7 changed and that the Intervenors do not have standing to assert a claim to the Revenue Sharing  
8 Trust Fund (RSTF) payments at issue in this case. However, as set forth in the Commission's  
9 Opposition to the Plaintiff's Motion for Judgment on the Pleadings (JOP Opposition), the  
10 determination as to the authorized leadership of the California Valley Miwok Tribe (CVMT) is  
11 yet to be adjudicated due to the pendency of the case *California Valley Miwok Tribe v. Salazar*  
12 (D.D.C. No. 1:10-CV-160 (filed Jan. 24, 2011 (*Salazar*))). Lifting the stay with respect to this  
13 Court's order denying intervention effectively cuts the Intervenors out of the determination  
14 regarding the proper disbursement of the RSTF money before the leadership and membership  
15 issue at stake in *Salazar* has been resolved.

16 In support of its motion, the Burley Faction incorrectly interprets the January 12, 2011 letter  
17 from Troy Burdick to constitute an official recognition by the Bureau of Indian Affairs (BIA) of  
18 the Burley Faction's leadership of the CVMT. As explained in the Commission's JOP  
19 Opposition, which the Commission incorporates here by reference, the Burdick letter was merely  
20 a clerical, ministerial act and was based merely on the fact that an election had been held. (JOP  
21 Opp., at pp. 8-9.) The Burdick letter does not constitute a substantive decision or an  
22 acknowledgment of the Burley Faction as the legitimate leadership of the CVMT. The Burdick  
23 letter is of no force and effect until the leadership and composition of the CVMT are determined  
24 by the outcome of the *Salazar* case. (*Id.*)

25 Contrary to the Burley Faction's assertions, the January 2011 tribal election results are not  
26 recognized by the BIA as a "final agency action." Assistant Secretary Larry Echo Hawk  
27 confirmed by stipulation in the *Salazar* case that his August 31, 2011 reaffirmation of the  
28 December 22, 2010 decision "will have no force and effect" until the *Salazar* case was resolved.

1 (August 2011 Decision, Def's Req. Jud. Notice' in Supp. Opp. to Mot. for Judg. on Pldgs. (Def's  
2 Exhibits, at p. 0076; Joint Stat. Report, Def's Exhibits, at p 0226.) As a result, the BIA's  
3 recognition of the CVMT leadership has reverted to what it was prior to December 22, 2010  
4 decision—the BIA does not currently recognize the Burley Faction as the CVMT's authorized  
5 leadership. (See JOP Opp., at p. 3.)

6 The Burley Faction also argues as an additional basis for lifting the stay of the order  
7 denying intervention that Yakima Dixie has allegedly admitted that he resigned as Tribal  
8 Chairman in 1999 and, as a result, his claim for authority for receipt of the RSTF payments has  
9 been refuted. The Burley Faction previously unsuccessfully moved this Court for an order lifting  
10 the stay, based in part on the alleged admissions of Yakima Dixie.

11 The Fourth District Court of Appeals December 18, 2012 writ of mandate (Decision)  
12 directed this Court to lift the stay so that the parties could file dispositive motions on an issue that  
13 does not require adjudication of the merits of the underlying intra-tribal dispute pending in  
14 *Salazar*. (JOP Opp., at pp. 1-2.) The lifting of the stay of the Court's order denying intervention  
15 is outside the scope of the Decision and would allow the Burley Faction to exclude the  
16 Intervenor—who are necessary parties in this case and the plaintiffs in the *Salazar* case—from  
17 participating in this matter before the *Salazar* case is resolved. This result is contrary to the Court  
18 of Appeal's Decision and the intent of this Court when it stayed all proceedings. It would, in  
19 effect, have this Court rule on the intra-tribal dispute although this Court does not have  
20 jurisdiction to do so.

21 The Burdick letter does not deprive the Intervenor of standing in this case because it is not  
22 a final decision of the BIA. The *current* status is that the BIA doesn't recognize the Burley  
23 Faction as the leadership of the CVMT. Given that status and the undecided nature of the *Salazar*  
24 case, lifting the stay of the order denying intervention is not necessary for this Court to hear and  
25 decide the limited matter for which the Court of Appeals lifted the stay—the parties' dispositive  
26 motions regarding the Commission's duty as trustee of the RSTF as to disbursement to the  
27 CVMT under the present circumstances.

1        There is no reason to lift the stay of the order denying intervention and it should remain in  
2 place until the resolution of *Salazar*. Therefore, the Commission respectfully objects to the  
3 Plaintiff's Motion for Order Lifting Effect of the March 11, 2011 Order Granting Reconsideration  
4 and Denying Intervention.

5        Dated: March 27, 2013

Respectfully Submitted,

6        KAMALA D. HARRIS  
7        Attorney General of California  
8        SARA J. DRAKE  
9        Senior Assistant Attorney General  
10       WILLIAM L. WILLIAMS, JR.  
11       Deputy Attorney General  
12       T. MICHELLE LAIRD  
13       Deputy Attorney General



14       NEIL D. HOUSTON  
15       Deputy Attorney General  
16       *Attorneys for Defendant*

17       SA2008300115  
18       31653162.docx  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28