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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 REPLY TO  
INTERVENORS' OPPOSITION TO  
MOTION FOR ORDER LIFTING STAY  
OF 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: Hon. Ronald Styn

Trial Date: June 4, 2013

TABLE OF CONTENTS

Table of Authorities.....	(ii)
I. AS DISMISSED PARTIES, THE INTERVENORS HAVE NO LEGAL RIGHT TO FILE ANY DISPOSITIVE MOTIONS.....	1
II. THE INTERVENORS FAILED TO TIMELY FILE A MOTION FOR RECONSIDERATION OF THE MARCH 11, 2011 ORDER DENYING THEM INTERVENTION.....	1
III. AFTER FAILING TO TIMELY FIEL A MOTION FOR RECONSIDERATION, THE INTERVENORS ALSO FAILED TO TIMELY FILE A NOTICE OF APPEAL OF THE MARCH 11, 2011 ORDER DENYING INTERVENTION.....	2
IV. THE COURT OF APPEAL DECISION DIRECTING THAT THE STAY BE LIFTED HAD THE EFFECT OF REINSTATING THE MARCH 11, 2011 ORDER DISMISSING THE INTERVENORS.....	4
V. PLAINTIFF'S MOTION IS NOT JURISDICTIONALLY BARRED.....	6
VI. YAKIMA DIXIE'S DEPOSITION TESTIMONY IS HIGHLY RELEVANT TO THE INTERVENORS' STANDING CLAIM.....	7
VII. THE BIA'S JANUARY 12, 2011 ACKNOWLEDGMENT OF THE TRIBE'S JANUARY 6, 2011 ELECTION IS AN ADDITIONAL CONFIRMATION THAT BURLEY IS THE AUTHORIZED REPRESENTATIVE FOR RECEIPT OF THE RSTF PAYMENTS FOR THE TRIBE.....	9
VIII. CONCLUSION.....	12

**TABLE OF AUTHORITIES**

<b><u>Cases</u></b>	<b><u>Pages</u></b>
<b><u>State Cases</u></b>	
ECC Const., Inc. v. Oak Park Calabasas HO Ass'n. (2004) 122 CA4th 994, 999.....	2
Estate of Hanley (1943) 23 Cal.2d 120, 122.....	4
<b><u>Federal Cases</u></b>	
Timbisha Shoshone Tribe v. Salazar (D.C. Cir. 2012) 678 F.3d 935.....	8
<b><u>Statutes</u></b>	
CCP §1008 (a) .....	1
CCP §1013 .....	2
CRC 8.104 (a) (1) (B), (e) .....	3
CRC 8.104 (b) .....	3

1 Plaintiff CALIFORNIA VALLEY MIWOK TRIBE ("the Miwok  
2 Tribe" or "the Tribe" or "Plaintiff") submits the following  
3 in Reply to the Intervenor's Opposition to Plaintiff's  
4 Motion for an Order Lifting Stay of the Effect of the March  
5 11, 2011 Order Granting Reconsideration and Denying  
6 Intervention.

7 I.

8 **AS DISMISSED PARTIES, THE INTERVENORS HAVE NO LEGAL RIGHT**  
9 **TO FILE ANY DISPOSITIVE MOTIONS**

10 The Intervenor's think and act as if the rules of civil  
11 procedure do not apply to them, and that they can ignore  
12 the fact that they have been dismissed from this case. It  
13 is unheard of that a dismissed party can file a dispositive  
14 motion in the same lawsuit from which it was just  
15 dismissed. There are rules to follow under those  
16 circumstances, including filing a motion to reconsider  
17 and/or a notice of appeal. The Intervenor's have refused to  
18 follow any of these procedures. However, as stated below,  
19 they are time-barred from even pursuing any of these  
20 avenues of relief.

21 II.

22 **THE INTERVENORS FAILED TO TIMELY FILE A MOTION FOR**  
23 **RECONSIDERATION OF THE MARCH 11, 2011 ORDER DENYING THEM**  
24 **INTERVENTION**

25 The attached Notice of Ruling on the March 11, 2011  
26 Minute Order denying the Intervenor's leave to intervene was  
27 mailed to all parties on March 14, 2011. Pursuant to CCP  
28 §1008(a), the Intervenor's had ten (10) days in which to

1 file a motion for reconsideration, i.e., until March 24,  
2 2011.

3 The 10-day deadline seeking reconsideration is not  
4 extended under CCP §1013 for service by mail, etc.  
5 Attached is a copy of the Intervenor's motion for  
6 reconsideration which was served on April 1, 2011, eighteen  
7 (18) days from the March 14<sup>th</sup>, 2011 date of service of the  
8 Notice of Ruling, showing that the motion was in fact  
9 untimely. Thus, even if there was a five day extension for  
10 mailing (which there is not), the motion would have still  
11 been untimely.

12 The April 20, 2011 order providing that the  
13 Intervenor's motion for reconsideration was "off calendar,  
14 without prejudice," (paragraph 7 of the order) was  
15 therefore meaningless. Once the stay was lifted to allow  
16 the Intervenor to re-file the motion, it would have been  
17 ultimately denied as untimely.

### 18 III.

#### 19 **AFTER FAILING TO TIMELY FILE A MOTION FOR RECONSIDERATION, 20 THE INTERVENORS ALSO FAILED TO TIMELY FILE A NOTICE OF 21 APPEAL OF THE MARCH 11, 2011 ORDER DENYING INTERVENTION**

22 Prior to the April 20, 2011 stay order, thirty seven  
23 (37) days had passed since the March 14, 2011 Notice of  
24 Ruling on denying intervention. **However, the time in which  
25 to file a notice of appeal is not tolled pending a stay of  
26 the proceedings.** ECC Const., Inc. v. Oak Park Calabasas  
27 Homeowners' Ass'n (2004) 122 CA4th 994, 999. Thus, despite  
28 the April 20, 2011 stay order, the time for filing a Notice

1 of Appeal on the March 11, 2011 order denying intervention  
2 continued to run.

3 As provided by CRC 8.104(b):

4 Except as provided in rule 8.66 [public emergency,  
5 i.e., earthquake, etc.], no court may extend the time  
6 to file a notice of appeal. If a notice of appeal is  
7 filed late, the reviewing court must dismiss the  
8 appeal.

9 Thus, the April 20, 2011 stay order did not relieve the  
10 Intervenor's of their obligation to file a timely Notice of  
11 Appeal within sixty (60) days from the March 14, 2011 date  
12 of the Notice of Ruling, even during the time that the  
13 April 20, 2011 order stayed the "effect" of the March 11,  
14 2011 order. In this regard, the Intervenor's were required  
15 to file their Notice of Appeal by May 13, 2011, i.e., sixty  
16 (60) days from the March 14, 2011 Notice of Ruling. CRC  
17 8.104(a)(1)(B), (e). To date, there has been no filing of  
18 a Notice of Appeal from the March 11, 2011 order denying  
19 intervention. Accordingly, the March 11, 2011 Order  
20 denying Intervenor's leave to intervene is binding and can  
21 no longer be appealed. The fact that the Intervenor's  
22 contend that it was wrongly decided (a point disproved by  
23 the subsequent Assistant Secretary of Interior's ("ASI")  
24 August 31, 2011 decision affirming the December 22, 2010  
25 ASI decision upon which the March 11, 2011 decision was  
26 based) is irrelevant. Nor can the Intervenor's claim that  
27 they were somehow misled by the April 20, 2011 stay order  
28 that caused them to miss the appeal deadline. The time to  
file a Notice of Appeal is jurisdictional and is strictly

1 adhered to. It cannot be extended by waiver or estoppel,  
2 and the failure to timely file cannot be excused by  
3 excusable neglect of a party's attorney, actions taken by  
4 the opposing party, or even by the trial judge's mistake.  
5 Estate of Hanley (1943) 23 Cal.2d 120, 122.

6 Even if the stay had the effect of tolling the time in  
7 which to file a Notice of Appeal, the remittitur was issued  
8 on February 22, 2013, requiring the Intervenor to file the  
9 Notice of Appeal by March 16, 2013, since it would have  
10 been twenty-two (22) more days from February 22, 2013 to  
11 March 16, 2013 to collectively account for the 60 days.  
12 However, as pointed out, there is no tolling of the time in  
13 which to file a Notice of Appeal, and the Intervenor is  
14 simply out of court.

#### 14 IV.

#### 15 **THE COURT OF APPEAL DECISION DIRECTING THAT THE STAY BE** 16 **LIFTED HAD THE EFFECT OF REINSTATING THE MARCH 11,** 17 **2011 ORDER DISMISSING THE INTERVENORS**

18 The March 11, 2011 order of this court denying  
19 intervention was never vacated or set aside. Instead, on  
20 April 20, 2011, this court merely stayed the "effect" of  
21 that order with respect to the Intervenor as follows:

22 \* \* \*

23 The effect of the Court's prior rulings shall likewise  
24 be stayed pending further order of this Court. These  
25 rulings include: (1) Order of March 11, 2011, granting  
reconsideration and denying intervention..."

26 (April 20, 2011 Order, page 2, lines 22-25, pRJN, Ex.  
27 "27"). Thus, it is undisputed that the "stay" the Court of  
28



1 Appeal ordered be lifted was the stay imposed by the April  
2 20, 2011 order, and that stay was directed, in relevant  
3 part, to the March 11, 2011 order denying intervention. On  
4 March 1, 2013, this Court, following the remittitur from  
5 the Court of Appeal, lifted the stay. Thus, by lifting its  
6 stay, this Court reinstated its March 11, 2011 order  
7 denying intervention.

8 However, because the Intervenors had already failed to  
9 timely file a motion for reconsideration, and thereafter  
10 failed to timely file a Notice of Appeal (which by law is  
11 not tolled by the April 20, 2011 stay order), the trial  
12 court's action of lifting its stay did not resurrect the  
13 time in which the Intervenors could either move for  
14 reconsideration or appeal the March 11, 2011 order denying  
15 intervention. The Intervenors, by virtue of the Court of  
16 Appeal decision and this Court's March 1, 2013 order  
17 following the remittitur, are dismissed parties with no  
18 rights to participate in these proceedings.

19 To ignore this point, would be to allow the Intervenors  
20 to illegally circumvent the law and be reinstated as  
21 Intervenors without being required to meet the time  
22 deadlines for moving for reconsideration or filing a Notice  
23 of Appeal, and thus denying the Tribe due process of law.  
24 At the time of the April 20, 2011 order, the Intervenors  
25 had on calendar a motion for reconsideration, which the  
26 Court took "off calendar, without prejudice." (April 20,  
27 2011 Order, page 3, line 14). However, as stated, the  
28 motion was untimely to begin with and would have never been



1 granted. Knowing that re-filing their motion for  
2 reconsideration would be dismissed as untimely (based on  
3 the initial filing of more than 10 days from the Notice of  
4 Ruling), the Intervenor chose instead to file a motion for  
5 summary judgment and formally oppose Plaintiff's motion for  
6 judgment on the pleadings against the California Gambling  
7 Control Commission ("the Commission"), hoping that the  
8 trial court and the Plaintiff would not be the wiser.

9 The fact remains. The Intervenor missed the required  
10 deadlines for reconsideration of the March 11, 2011 order  
11 denying intervention, and failed to timely file a Notice of  
12 Appeal of that order. They are dismissed parties.

13 Accordingly, because the Intervenor are now dismissed  
14 parties, they have no right to file any dispositive motions  
15 in this case, let alone file opposition papers to  
16 Plaintiff's dispositive motion against the Commission.

17 **V.**

18 **PLAINTIFF'S MOTION IS NOT JURISDICTIONALLY BARRED**

19 In a desperate attempt to find some semblance of an  
20 argument to remain in court, the Intervenor contend that  
21 Plaintiff's motion is in reality a motion for  
22 reconsideration of the April 20, 2011 order and therefore  
23 barred by the ten (10) day rule. This contention is  
24 without merit.

25 The Plaintiff is only asking the Court to order the  
26 Intervenor dismissed as a result of the Court of Appeal  
27 decision directing this Court to lift its stay and allow  
28 the parties to file dispositive motions, or proceed to

1 trial. Plaintiff is not challenging the April 20, 2011  
2 order. Plaintiff is only saying that the Court of Appeal  
3 order directing the trial court to lift its stay as set out  
4 in the April 20, 2011 order, and the trial court's  
5 compliance with that directive, have the effect of lifting  
6 the stay with respect to the March 11, 2011 order denying  
7 intervention. This is a far cry from moving for  
8 reconsideration of the April 20, 2011 order in any respect.

9 VI.

10 **YAKIMA DIXIE'S DEPOSITION TESTIMONY IS HIGHLY RELEVANT TO**  
11 **THE INTERVENORS' STANDING CLAIM**

12 Yakima Dixie's ("Dixie") deposition testimony is  
13 relevant on multiple levels, and it is highly relevant on  
14 the Intervenor's claim of standing.

15 As explained, procedurally, the Intervenor's have lost  
16 their right to participate in this action. They failed to  
17 timely file a motion for reconsideration of the March 11,  
18 2011 order denying them intervention, and then they failed  
19 to timely file a Notice of Appeal of that order. The  
20 entire basis of the Intervenor's argument for intervention  
21 was that Dixie is the rightful Tribal leader, not Silvia  
22 Burley ("Burley"), entitled to receive on behalf of the  
23 Tribe the subject Revenue Sharing Trust Fund ("RSTF") money  
24 being withheld by the Commission. Indeed, the Complaint-  
25 in-Intervention specifically alleges that "the essence of  
26 this action is the tribal dispute regarding the leadership  
27 of the Tribe," (pRJN, Ex. "20", page 13, lines 10-11) and  
28 that Dixie's written resignation as Tribal Chairman is a

1 forgery. (Dixie Declaration, pRJN, Ex. "19", page 2, lines  
2 20-25).

3 Now that Dixie has admitted in a recent deposition that  
4 he in fact resigned, that the document containing his  
5 signature resigning as Tribal Chairman is in fact his, and  
6 that Burley was elected Tribal Chairperson to replace him,  
7 there is no basis for him or his followers to claim any  
8 interest in the subject RSTF money. As a result, Dixie is  
9 presently just one of the five (5) Tribal members who will  
10 benefit from the release of the RSTF money to the Tribe,  
11 not the one who is authorized to receive those funds on  
12 behalf of the Tribe as a whole. To be sure, it is the  
13 Tribe, not the individual members who have standing to  
14 assert an interest in those funds, and under the Compact it  
15 is the Tribe, not the individual Tribal members, who  
16 receives the RSTF money. The case of Timbisha Shoshone  
17 Tribe v. Salazar (D.C. Cir. 2012) 678 F.3d 935, cited in  
18 Plaintiff's motion papers, specifically holds that Tribal  
19 non-members and Tribal members alike lack standing to  
20 assert a claim on behalf of an Indian tribe. 678 F.3d at  
21 937-938. Plaintiff made this point to underscore the  
22 correctness of the trial court's March 11, 2011 order  
23 denying intervention, despite it having been based  
24 exclusively on the December 22, 2010 ASI decision.

25 This court, consistent with the instructions by the  
26 Court of Appeal in granting the Plaintiff's petition for a  
27 writ of mandate, will not be deciding any Tribal leadership  
28 dispute, as the Intervenor's incorrectly assert. Rather,

1 this court will decide whether there is enough information,  
2 i.e., facts, for the Commission to conclude that Burley,  
3 not Dixie, is the authorized representative for the Tribe,  
4 solely for purposes of releasing the presently withheld  
5 RSTF money to an authorized representative of the Tribe.  
6 Plaintiff contends that Dixie's deposition testimony  
7 confirms that Burley is that person, and that the  
8 Commission is simply refusing to acknowledge those facts to  
9 justify withholding the Tribe's RSTF money. A ruling to  
10 that effect is not a ruling on any Tribal leadership  
11 dispute.

12 **VII.**

13 **THE BIA'S JANUARY 12, 2011 ACKNOWLEDGMENT OF THE TRIBE'S**  
14 **JANUARY 6, 2011 ELECTION IS AN ADDITIONAL CONFIRMATION THAT**  
15 **BURLEY IS THE AUTHORIZED REPRESENTATIVE FOR RECEIPT OF THE**  
16 **RSTF PAYMENTS FOR THE TRIBE**

17 In addition to Dixie's admission in his recent  
18 deposition that he resigned as Tribal leader and that  
19 Burley is the new Tribal leader, the Bureau of Indian  
20 Affairs ("BIA") took action on January 12, 2011,  
21 acknowledging Burley as the Tribal Chairperson as a result  
22 of a January 6, 2011 Tribal re-election. (pRJN, Ex. "31").  
23 The BIA took this action based on the December 22, 2010 ASI  
24 decision, despite the Intervenor's having challenged that  
25 decision, and well before the ASI set it aside.

26 The BIA's actions are just as effective as this court's  
27 actions in denying intervention and granting judgment on  
28 the pleadings against the Commission, which were similarly  
based on the December 22, 2010 ASI decision before it was

1 set aside. At the time the BIA took action to acknowledge  
2 those election results, it was correct, just as much as  
3 when the trial court granted the foregoing motions those  
4 rulings were correct, and they still are correct. The  
5 Intervenor's attempts to challenge the BIA's action are  
6 frivolous, which explains why the BIA has never taken any  
7 action on their purported administrative appeal. There is  
8 no evidence that the BIA made any sort of decision that  
9 would give rise to an administrative appeal, and there is  
10 no evidence that the BIA wrote to the Intervenor, by a  
11 copy of its letter or otherwise, that it had acknowledged  
12 the January Tribal election results over the objections of  
13 Dixie or any of the Intervenor. In short, the purported  
14 "administrative appeal" was simply fabricated for  
15 litigation purposes with an eye toward gagging the factual  
16 significance of the BIA's acknowledgment letter.

17 Moreover, contrary to the Intervenor's repeated  
18 misleading assertions, the December 22, 2010 ASI letter was  
19 never rescinded by the ASI's August 31, 2011 decision. As  
20 pointed out, the ASI's August 31, 2011 decision expressly  
21 affirmed his December 22, 2010 decision on all material  
22 points, stating:

23 "Obviously, the December 2010 decision, and today's  
24 reaffirmation of that decision...

25 \* \* \*

26 "My review of the history of the CVMT compels the  
27 conclusion set out in the December decision and  
28 reaffirmed here...

\* \* \*

"Based on the foregoing analysis, I reaffirm the following...

(Pages 2, 7, and 8, 8/31/2011 ASI Decision, pRJN, Ex. "3"). Thus, because the December 22, 2010 decision was not ultimately vacated or "rescinded," as the Intervenor's have incorrectly characterized it as, but was instead "reaffirmed," there is no merit to the Intervenor's assertion that the BIA's January 12, 2011 letter acknowledging the Tribe's re-election results "automatically lost any legal effect it might have had." (Intervenor's P/As, page 6, lines 7-8).

As stated, the ASI's August 31, 2011 decision never expressly rescinded, set aside, vacated, denounced, criticized, disapproved or otherwise overruled the BIA's actions in acknowledging the Tribal re-election results re-electing Burley as the Tribal Chairperson. As a result, instead of the BIA's recognition letter purportedly losing any legal effect, it was re-affirmed when the ASI re-affirmed his December 22, 2010 decision upon which the BIA's recognition letter was based. In short, without having to argue whether the "implementing stay" language in the August 31, 2011 ASI decision affects the recognition of the Tribe's governing body under Burley's leadership, the trial court here can easily conclude, based on judicially noticeable facts, that the Tribe held a re-election on January 6, 2011, which the BIA acknowledged pursuant to the authority of the December 22, 2010 ASI decision that was



1 then in effect, and which was later ultimately affirmed on  
2 August 31, 2011. Those facts are undisputed.


3  
4 **VIII.**

5 **CONCLUSION**

6 For the foregoing reasons, and the reasons expressed in  
7 Plaintiff's motion papers, this court should conclude that  
8 the Court of Appeal decision directing this court to lift  
9 the stay in the April 20, 2011 Order requires this court to  
10 lift the stay with respect to its March 11, 2011 order  
11 denying intervention. As a result, this court should allow  
12 that order to take effect and dismiss the Intervenor as  
13 parties to this action.

14 While the Intervenor's motion for reconsideration was  
15 taken off calendar without prejudice as a result of the  
16 April 20, 2011 stay order, the Intervenor was always  
17 time-barred from filing any motion for reconsideration, and  
18 have missed the deadline for filing a Notice of Appeal with  
19 respect to the March 11, 2011 order as well. They are  
20 simply out of court.

21  
22 Dated: April 2, 2013

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