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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  
DEFENDANT CALIFORNIA GAMBLING  
CONTROL COMMISSION'S  
OPPOSITION TO MOTION FOR  
JUDGMENT ON THE PLEADINGS**

Date: April 26, 2013

Time: 2:00 p.m.

Dept: 62

Judge: Hon. Ronald Styn

Trial Date: June 4, 2013

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1 Plaintiff CALIFORNIA VALLEY MIWOK TRIBE ("the Tribe" or  
2 "the Miwok Tribe" or "Plaintiff") submits the following  
3 Reply to Defendant CALIFORNIA GAMBLING CONTROL COMMISSION's  
4 ("the Commission") Opposition to Plaintiff's Motion for  
5 Judgment on the Pleadings as against the Commission.

6 **I. THE COMMISSION HAS SUFFICIENT INFORMATION TO REASONABLY**  
7 **CONCLUDE THAT BURLEY IS THE AUTHORIZED REPRESENTATIVE**  
8 **FOR THE TRIBE FOR RSTF DISTRIBUTION PURPOSES**

9 The trial court must decide whether the Commission has  
10 sufficient information to enable it to reasonably conclude  
11 that Silvia Burley ("Burley"), as opposed to Yakima Dixie  
12 ("Dixie"), is the Tribe's authorized representative for  
13 purposes of receiving the subject RSTF money on behalf of  
14 the Tribe. The trial court is to make this determination  
15 despite the pending federal litigation in which the  
16 Intervenor's are challenging the Assistant Secretary of  
17 Interior's ("ASI") decision recognizing the current Tribal  
18 Council under Burley's leadership and recognizing that the  
19 Tribe consists of only five (5) members. The trial court  
20 is not to decide the same issues presently being litigated  
21 in the federal court. As the Court of Appeal stated in its  
22 decision:

23 The trial court need only **acknowledge** that the federal  
24 dispute is ongoing...

25 Put simply, the issue for the trial court to resolve is  
26 limited to whether the Commission is justified in  
27 withholding the RSTF funds *because of the Salazar case*  
28 is pending and the BIA has not recognized a tribal  
leadership body for the distribution of ISDEAA  
benefits. It need not decide the issues being

1       considered in federal court or resolve an internal  
2       tribal dispute.

3       (pRJN, Ex. "23", 12/18/2012 Ct. App. Decision, page 17).

4       At issue in the federal court is whether the ASI was  
5       correct in his August 31, 2011 decision, which would allow  
6       the Tribe under Burley's leadership to once again receive  
7       federal contract funding. However it has nothing to do  
8       with whether the Commission in this case can lawfully  
9       withhold Revenue Sharing Trust Fund ("RSTF") payment from  
10      the Tribe, because (1) it believes there is no authorized  
11      representative to accept those payments on behalf of the  
12      Tribe, (2) because it contends there is still a Tribal  
13      leadership dispute, (3) because it contends the Tribe must  
14      first qualify for federal contract funding before it can  
15      receive RSTF money, (4) because it believes there is no  
16      Tribal Council recognized by the Bureau of Indian Affairs  
17      ("the BIA"), (5) because the Tribe does not meet certain  
18      membership criteria acceptable to the Commission, (6)  
19      because it believes the Tribe is not, but should be,  
20      "reorganized" under the Indian Reorganization Act of 1934  
21      ("IRA"), (7) because the ASI in his August 31, 2011  
22      decision stayed the "implementation" of his decision  
23      pending resolution of the Intervenor's federal litigation  
24      challenging his decision, which the Commission has  
25      interpreted to mean that the ASI's decision has "no force  
26      and effect," and (8) because the "implementing stay"  
27      language in the ASI's August 31, 2011 decision purportedly  
28      reinstates prior BIA decisions condemned in the ASI's

1 decision which stated that the Tribe has no recognized  
2 governing body.

3 **II. PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS CAN BE**  
4 **DECIDED BASED UPON THE ACTIONS TAKEN BY THE BIA ON**  
5 **JANUARY 12, 2011 ACKNOWLEDGING THE TRIBE'S RE-ELECTION**  
6 **OF BURLEY AS TRIBAL CHAIRPERSON**

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

16 The BIA's actions are just as effective as this court's  
17 actions in denying intervention and granting judgment on  
18 the pleadings against the Commission, which were similarly  
19 based on the December 22, 2010 ASI decision before it was  
20 set aside. At the time the BIA took action to acknowledge  
21 those election results, it was correct, just as much as  
22 when the trial court granted the foregoing motions those  
23 rulings were correct, and they still are correct. The  
24 Intervenor's attempts to challenge the BIA's action are  
25 frivolous, which explains why the BIA has never taken any  
26 action on their purported administrative appeal. There is  
27 no evidence that the BIA made any sort of decision that  
28 would give rise to an administrative appeal, and there is  
no evidence that the BIA wrote to the Intervenor's, by a

1 copy of its letter or otherwise, that it had acknowledged  
2 the January Tribal election results over the objections of  
3 Dixie or any of the Intervenor. In short, the purported  
4 "administrative appeal" was simply fabricated for  
5 litigation purposes with an eye toward gagging the factual  
6 significance of the BIA's acknowledgment letter.

7 Moreover, contrary to the Intervenor's and the  
8 Commission's repeated misleading assertions, the December  
9 22, 2010 ASI letter was never rescinded by the ASI's August  
10 31, 2011 decision. As pointed out, the ASI's August 31,  
11 2011 decision expressly affirmed his December 22, 2010  
12 decision on all material points, stating:

13 "Obviously, the December 2010 decision, and today's  
14 reaffirmation of that decision...

15 \* \* \*

16 "My review of the history of the CVMT compels the  
17 conclusion set out in the December decision and  
18 reaffirmed here...

19 \* \* \*

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

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



1 (Intervenors' P/As, page 6, lines 7-8), or, as the  
2 Commission contends, was "merely a documentary artifact."  
3 (Commission P/A's, page 11).

4 As stated, the ASI's August 31, 2011 decision never  
5 expressly rescinded, set aside, vacated, denounced,  
6 criticized, disapproved or otherwise overruled the BIA's  
7 actions in acknowledging the Tribal re-election results re-  
8 electing Burley as the Tribal Chairperson. As a result,  
9 instead of the BIA's recognition letter purportedly losing  
10 any legal effect, it was re-affirmed when the ASI re-  
11 affirmed his December 22, 2010 decision upon which the  
12 BIA's recognition letter was based. In short, without  
13 having to decide whether the "implementing stay" language  
14 in the August 31, 2011 ASI decision affects the recognition  
15 of the Tribe's governing body under Burley's leadership,  
16 the trial court here can easily conclude, based on  
17 judicially noticeable facts, that the Tribe held a re-  
18 election on January 6, 2011, which the BIA acknowledged  
19 pursuant to the authority of the December 22, 2010 ASI  
20 decision that was then in effect, and which was later  
21 ultimately affirmed on August 31, 2011. Those facts are  
22 undisputed.

23 Accordingly, and solely for purposes of determining  
24 whether there exists an authorized representative for the  
25 Tribe who can receive the RSTF money for the Tribe, the  
26 January 12, 2011 BIA acknowledgment letter is sufficient  
27 evidence for this court to conclude that the Commission  
28 can, and should, release the RSTF money to the Tribe in



1 care of Burley, as the Commission had previously did prior  
2 to 2005.

3 **III. THE TRIBAL COUNCIL UNDER BURLEY'S LEADERSHIP IS IN FACT**  
4 **CURRENTLY RECOGNIZED**

5 The thrust of the Commission's argument against an  
6 order releasing the RSTF money to the Tribe under Burley's  
7 leadership is that the BIA does not currently acknowledge  
8 any Tribal government until the pending federal litigation  
9 challenging the ASI's August 31, 2011 decision is  
10 concluded. This contention is without merit and  
11 misleading.

12 The premise of this argument is based on the erroneous  
13 interpretation of the implementing stay language of the  
14 ASI's August 31, 2011 decision, which was to merely stay  
15 the implementation of that decision, not to void the  
16 effective nature of the decision itself, especially with  
17 respect to the decision's declaration of rights that the  
18 Tribal Council is currently recognized.

19 Immediately after stating that "implementation" of his  
20 decision was "stayed" pending resolution of the federal  
21 litigation, the ASI in his August 31, 2011 decision  
22 requested that the parties, i.e., Burley and Dixie, attempt  
23 to resolve their long-standing Tribal leadership dispute  
24 within the Tribe's "existing government structure." He  
25 stated:

26 "Finally, I strongly encourage the parties to work  
27 within the Tribe's existing government structure to  
28 resolve this longstanding dispute and bring this  
contentious period in the tribe's history to a  
close." (Emphasis added).

1 (pRJN, Ex. "3", page 8). Obviously, the parties cannot do  
2 this, if the implementing stay language is erroneously  
3 interpreted to mean that the Tribe has no present,  
4 operative governing body. Had the ASI intended that his  
5 decision be completely ineffective pending the resolution  
6 of the federal case, he would have either left this  
7 language out or modified it by saying that in light of his  
8 implementing stay, the Tribe has no governing body, and  
9 therefore, once the federal litigation is concluded the  
10 parties can resume to work out their Tribal leadership  
11 dispute within the Tribe's governing body. But he did not  
12 say that. Clearly, the ASI concluded that despite the  
13 implementing stay language in his decision, the Tribe still  
14 had an "existing government structure" to which they can  
15 resort to address internal Tribal matters.

16 Significantly, this key provision comes immediately  
17 after the ASI's implementing stay paragraph, and is the  
18 last provision of the decision, thus emphasizing the fact  
19 that the Tribe continues to have a recognized governing  
20 body despite the fact that implementation of the decision  
21 with respect to any BIA actions is stayed.

22 This language also cuts against the Intervenor's (and  
23 Commission's) argument that because the ASI's decision  
24 applies "prospectively," the prior erroneous BIA actions  
25 against the Tribe have somehow been "resurrected,"  
26 including the prior erroneous statements that the Tribe has  
27 no recognized governing body and no recognized leader.  
28 This statement further supports the Tribe's position that

1 the phrase "implementation shall be stayed" only means that  
2 the decision cannot be carried out by the BIA to, for  
3 example, award federal contract funding to the Tribe, or  
4 take any other actions by the BIA toward the Tribe's  
5 benefit. **It does not, and from this statement cannot mean,**  
6 **that the ASI's substantive decision with respect to a**  
7 **"declaration of rights" is of "no force and effect."**  
8 Clearly, the ASI has stated ("declared") here that the  
9 Tribe's "existing government structure," i.e., the  
10 resolution form of government established under Resolution  
11 #GC-98-01, must continue to be recognized and function for  
12 purposes of resolving internal Tribal matters despite the  
13 pending federal litigation brought by Dixie.

14 This key provision also explains the following ruling  
15 in the ASI's August 31, 2011 decision, repeated several  
16 times throughout his decision:

17 "...The five acknowledged citizens are the only current  
18 citizens of the Tribe, and the Tribe's General  
19 Council is authorized to exercise the Tribe's  
20 governmental authority. In this case, again, the  
21 factual record is clear: there are only five citizens  
22 of CVMT. The Federal government is under no duty or  
23 obligation to 'potential citizens' of the CVMT.  
24 **Those potential citizens, if they so desire, should**  
25 **take up their cause with the CVMT general Council**  
26 **directly.**" (Emphasis added).

27 (pRJN, Ex. "3", page 7). Thus, because the ASI's  
28 implementing stay does not affect the existing governing  
body of the Tribe, the individual Intervenor, as well as  
any other "potential" citizens, can apply for tribal  
membership with the currently recognized Tribal Council,

1 without having to wait for the resolution of the pending  
2 federal action. This is because, as recognized by the  
3 Court of Appeal in its prior decision, "[a]n Indian tribe  
4 has the power to define membership as it chooses, subject  
5 to the plenary power of Congress." (pRJN, Ex. "24", Ct.  
6 App. Decision 4/16/2010, page 8, fn. 9, citing Williams v.  
7 Gover (9<sup>th</sup> Cir. 2007) 490 F.3d 785, 789. That is not to say  
8 that the Tribe will accept them as members, since that  
9 decision is the Tribe's alone to make. Williams v. Gover,  
10 supra. The point here is that the "implementing stay"  
11 language cannot be interpreted to take away this  
12 fundamental right of self-government.

13 In fact, the federal District Court has acknowledged  
14 that the Tribe is currently recognized despite the  
15 Intervenor's present challenge to the ASI's August 31, 2011  
16 decision in federal court. In granting the Tribe's motion  
17 to intervene in that federal action, the U.S. District  
18 Court stated:

19 "Third, plaintiffs' [Dixie's group] 'threaten[s] to  
20 impair,' (citation omitted) the proposed intervenor's  
21 legally protected interest because resolution of the  
22 matter in the plaintiffs' favor would directly  
23 interfere with the governance of the Tribe as currently  
24 recognized and preclude access to federal funds."  
25 (Emphasis added)

26 (Intervenors' Ex. "15", page 10).

27 If the Intervenor's (and the Commission's)  
28 interpretation concerning the meaning of the phrase  
"implementation shall be stayed" in the ASI's August 31,  
2011 decision were to be accepted, then the BIA would have

1 resumed its efforts to organize the Tribe against the  
2 Tribe's will. The BIA had previously published notice in a  
3 newspaper of a general council meeting to be sponsored by  
4 the BIA, and sought to initiate the "reorganization" of the  
5 Tribe itself. (Page 3 of December 22, 2010 ASI letter). In  
6 response, the August 31, 2011 decision expressly stated:

7 "Accordingly, unless asked by the CVMT General Council,  
8 the Department will make no further efforts to assist  
9 the Tribe to organize and define its citizenship. I  
10 accept the Resolution #GC-98-01 as the interim  
11 governing document of the Tribe, and as the basis for  
12 resuming government-to-government relations between the  
13 United State and the Tribe." (Emphasis added).

14 (pRJN, Ex. "3", page 7). The fact that the BIA has not  
15 resumed its efforts to reorganize the tribe against the  
16 Tribe's will confirms that the BIA itself respects and is  
17 abiding by the August 31, 2011 decision. If in fact the  
18 implementing stay language means that the decision has no  
19 force and effect, and that the prior BIA decisions stating  
20 that the Tribe has no recognized government have been  
21 reinstated as the Intervenor and the Commission argue,  
22 then the BIA would have resumed its efforts to reorganize  
23 the Tribe, as if the ASI's August 31, 2011 decision did not  
24 exist. Clearly, the BIA has not done so, because the  
25 August 31, 2011 decision prohibits it from doing so. Thus,  
26 the only kind of things the implementing stay language  
27 prohibits the BIA from doing is conduct that amount to  
28 carrying out the decision's terms, as, for example, in  
taking steps to enter into contracts with the Tribe for 638  
federal contract funding. Resuming its efforts in



1 reorganizing the Tribe would not be implementing the  
2 decision, because nowhere in the decision does it provide  
3 that the BIA is permitted to do so.

4 The same would be true with the ASI's "declaration of  
5 rights" that the Tribal Council under Burley's leadership  
6 is recognized. While the implementation of that  
7 declaratory ruling has been stayed, that declaration of  
8 rights is still valid and effective.

9 **IV. THE ASSISTANT SECRETARY OF THE INTERIOR NEVER**  
10 **"STIPULATED" TO CHANGE THE STAY LANGUAGE OF HIS**  
11 **DECISION**

12 Contrary to the Intervenor's assertion (a point  
13 apparently adopted by the Commission), there is no evidence  
14 that the ASI ever stipulated that his August 31, 2011  
15 decision would have "no force and effect" in a joint status  
16 report filed in the federal action before the Tribe was  
17 allowed to intervene. (Intervenor's P/As, page 7).  
18 Nowhere in this joint status report do the words  
19 "stipulate," "stipulation," or "agree" appear. In fact,  
20 the federal court never adopted the language "of no force  
21 and effect" in any order he signed. The "proposed order"  
22 the Intervenor's point to was never signed. Instead, the  
23 federal court simply issued a minute order on September 9,  
24 2011, directing the parties to propose a schedule, but said  
25 nothing about the ASI's decision having "no force and  
26 effect." (See entry 9/09/2011 federal civil docket,  
27 Commission's Ex. "G", page 10).

28 Indeed, a joint status report is not a stipulation.



1           Moreover, the Plaintiff here and Burley were not part  
2 of the joint status report, even though they are the  
3 subject of the ASI's August 31, 2011 decision under review  
4 in federal court.

5       **V.    THE TERM "STAYING IMPLEMENTATION" IN THE ASI'S**  
6       **AUGUST 31, 2011 DECISION IS MERELY ANALOGOUS TO**  
7       **"STAYING EXECUTION" OF A JUDGMENT OR ORDER**

8           Because the Commission can do nothing to "implement"  
9 the ASI's August 31, 2011 decision, releasing the RSTF  
10 money to the Tribe, or an order directing the Commission to  
11 do so, cannot be viewed as implementing that decision.  
12 This is because the Commission is not subject to the  
13 jurisdiction of the BIA, DOI or the ASI with respect to the  
14 RSTF money, and there is nothing in the August 31, 2011  
15 decision that ruled on the Commission's actions in  
16 withholding the Tribe's RSTF money.

17           Staying implementation of the August 31, 2011 decision  
18 is analogous to staying execution of a judgment after it is  
19 rendered. The stay of execution does not render the  
20 judgment or order void, or "of no force and effect." It  
21 merely means the judgment creditor cannot enforce it (i.e.,  
22 implement it) and collect on it by garnishing a judgment  
23 debtor's wages, bank accounts, etc. For the same reason,  
24 staying implementation of the August 31, 2011 decision does  
25 not render the decision of "no force and effect." It only  
26 means that the persons and entities that are subject to the  
27 jurisdiction of the BIA and DOI cannot make decisions or  
28 take actions in accordance with that decision, i.e., put  
the decision into effect. And since the Commission is not

1 subject to the jurisdiction of the BIA or DOI, it can do  
2 nothing to implement that decision in any way. The  
3 Commission does not award tribes federal grants.

4 **VI. THE ASI'S AUGUST 31, 2011 DECISION IS ANALOGOUS TO A**  
5 **JUDICIAL DECISION FOR A DECLARATION OF RIGHTS AND**  
6 **INJUNCTIVE RELIEF**

7 Significantly, the ASI's August 31, 2011 decision made  
8 certain rulings analogous to a declaration of rights and  
9 injunctive relief. He declared the Tribe's existing Tribal  
10 Council to be one the DOI would recognize and that Tribal  
11 membership was only five in number. Analogous to  
12 injunctive relief, he directed the BIA to refrain from  
13 attempting to "reorganize" the Tribe against the Tribe's  
14 wishes. When he stayed the implementation of his decision,  
15 the ASI was only directing the BIA not to carry out its  
16 terms in such a way as to conduct business with the Tribe.  
17 He did not stay or "freeze" his declaratory ruling.

18 **VII. THE COURT OF APPEAL DECISION DIRECTING THAT THE STAY BE**  
19 **LIFTED HAD THE EFFECT OF REINSTATING THE MARCH 11,**  
20 **2011 ORDER GRANTING JUDGMENT ON THE PLEADINGS**

21 The March 11, 2011 order of this court granting  
22 judgment on the pleadings was never vacated or set aside.  
23 Instead, on April 20, 2011, this court merely stayed the  
24 "effect" of that order as follows:

25 \* \* \*

26 The effect of the Court's prior rulings shall likewise  
27 be stayed pending further order of this Court. These  
28 rulings include: ... (2) Order of March 11, 2011,  
granting judgment on the pleadings as against the  
Commission..."

1 (April 20, 2011 Order, page 2, lines 22-25, pRJN, Ex.  
2 "27"). Thus, it is undisputed that the "stay" the Court of  
3 Appeal ordered be lifted was the stay imposed by the April  
4 20, 2011 order, and that stay was directed, in relevant  
5 part, to the March 11, 2011 order granting judgment on the  
6 pleadings. On March 1, 2013, this Court, following the  
7 remittitur from the Court of Appeal, lifted the stay.  
8 Thus, by lifting its stay, this Court reinstated its March  
9 11, 2011 order granting judgment on the pleadings.

10 As stated, the March 11, 2011 Order was based  
11 exclusively on the ASI's December 22, 2010 decision, and  
12 the ASI's December 22, 2010 decision was substantively re-  
13 affirmed in all material respects as it relates to the  
14 reasons this court gave in granting the motion for judgment  
15 on the pleadings. The April 20, 2011 stay order  
16 specifically stated that the "effect" of the order granting  
17 judgment on the pleadings "shall...be stayed pending  
18 further order of this Court." (pRJN, Ex. "34", page 2).  
19 Thus, this court can now order that its March 11, 2011  
20 order granting judgment on the pleadings be fully effective  
21 based on the following:

22 1. The ASI's August 31, 2011 decision re-affirmed his  
23 December 22, 2010 decision in all material respects as it  
24 relates to the basis for the order granting judgment on the  
25 pleadings.

26 2. The "implementing stay" language of the ASI's  
27 August 31, 2011 decision does not stay the declaration of  
28 rights portion of his decision as it relates to his

1 recognition of the current Tribal Council under Burley's  
2 leadership, and the Tribe consisting of five (5) members.

3 3. The BIA acknowledged the January 6, 2011 re-  
4 election results re-electing Burley as the Tribal  
5 Chairperson at a time when the December 22, 2010 was in  
6 full force and effect, and the ASI never rescinded that  
7 acknowledgment letter in his August 31, 2011 decision.

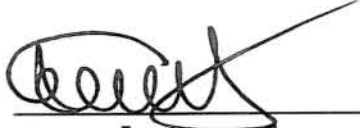
8 4. Dixie admitted in sworn deposition testimony that  
9 he resigned as Tribal Chairman, and that Burley replaced  
10 him as Tribal Chairperson.

11 5. The order denying the Intervenor's leave to  
12 intervene was never timely challenged by a motion for  
13 reconsideration, and the Intervenor's never timely appealed  
14 that order, making that order final for all purposes.

15 **VIII. CONCLUSION**

16 For the foregoing reasons, and the reasons expressed in  
17 Plaintiff's motion papers, Plaintiff's motion for judgment  
18 on the pleadings should be granted against the Commission.

19  
20 Dated: April 4, 2013

21   
22 Manuel Corrales, Jr., Esq.  
23 Attorney for Plaintiff  
24 CALIFORNIA VALLEY MIWOK  
25 TRIBE  
26  
27  
28