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8					
9	Attorneys for Intervenors				
10	SUPERIOR COURT OF TH	IE STATE OF CALIFORNIA			
11	FOR THE COUNT	ΓY OF SAN DIEGO			
12					
13	CALIFORNIA VALLEY MIWOK TRIBE,	No: 37-2008-00075326-CU-CO-CTL			
14	Plaintiff,	INTERVENORS' RESPONSE TO			
15	v. CALIFORNIA GAMBLING CONTROL COMMISSION, et al.,	PLAINTIFF'S SEPARATE STATEMENT OF DISPUTED AND UNDISPUTED FACTS RE			
16	Defendants.	MOTION FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION			
17	Defendants.	BOWWART ADJUDICATION			
18	CALIFORNIA VALLEY MIWOK TRIBE,	Date: April 26, 2013 Time: 2:00 p.m.			
19	CALIFORNIA (a.k.a. SHEEP RANCH RANCHERIA OF ME-WUK INDIANS,	Dept.: C-62 Judge: The Hon. Ronald L. Styn			
20	CALIFORNIA), YAKIMA K. DIXIE, VELMA WHITEBEAR, ANTONIA LOPEZ,	Juago. The Hom. Romana D. Deyn			
21	ANTONE AZEVEDO, MICHAEL MENDIBLES, AND EVELYN WILSON,				
22	Intervenors.				
23					
24					
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26					
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28					

INTERVENORS' RESPONSE TO PLAINTIFF'S SEPARATE STATEMENT OF DISPUTED AND UNDISPUTED FACTS RE MOTION FOR SUMMARY JUDGMENT OR SUMMARY ADJUDICATION

SMRH:408265571.1

Intervenors hereby respond to Plaintiff's Separate Statement of Disputed and

Undisputed Material Facts.

#### **ISSUE NO. 1**

### PLAINTIFF'S FIRST CAUSE OF ACTION FOR INJUNCTIVE RELIEF HAS NO MERIT

5 6	Intervenors' Undisputed Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
7	1. Plaintiff's first cause of	Undisputed.	Undisputed.
8	action for injunctive relief seeks an order compelling		
9	defendant California Gambling Control		
10	Commission ("Commission") to		
11	immediately disburse Revenue Sharing Trust		
12	Funds held in trust for the California Valley Miwok		
13	Tribe to Plaintiff in care of		
	Silvia Burley.		
14	[First Amended Complaint ("FAC"), ¶ 30; California		
15	Valley Miwok Tribe v. California Gambling		
16	Control Commission, No. D061811 (December 18,		
17	2012), pp. 5, 17.]		
18	Intervenors filed a     Complaint in Intervention	<u>Undisputed</u> .	Undisputed.
19	in which they joined in with the Commission in		
20	opposition to Plaintiff's FAC.		
21	[Complaint in intervention.]		
22		T.T. 11	***
23	into a Tribal-State Gaming	<u>Undisputed</u> .	Undisputed.
24	Compact ("Compact") with various Indian tribes		
25	authorized to conduct gaming in California.		The state of the s
26	[FAC, ¶ 5; Cates v. Chiang,		
27	154 Cal.App.4th 1302,   1305 (2007).]		
28			

1		Intervenors' Undisputed Material Facts and	Plaintiff's Response and		
2		Supporting Evidence	Supporting Evidence	Intervenors' Reply	
3 4	4.	Compact tribe is a federally recognized Indian tribe in	<u>Undisputed</u> .	Undisputed.	
5		California that operates fewer than 350 gaming devices.			
6		The 2 Compact S			
7	WHAT	[Ex.2, Compact § 4.3.2(a)(i); California Valley Miwok Tribe v.			
8		California Gambling Control Commission, 2010			
9		WL 1511744, *2 (4th Dist.			
10		2010) (unpublished) ("Miwok III").]		-	
11	5.	Under the Compact, each	Undisputed.	Undisputed.	-
12	- South Val	eligible Non-Compact tribe is entitled to \$1.1 million			
13		per year from the Revenue Sharing Trust Fund			
14		("RSTF").			
15	- Transport	[FAC, ¶¶ 6-7; Ex. 2, Compact § 4.3.2.1; <i>Miwok</i> <i>III</i> at *2.]			
16	6.	The Commission serves as	Disputed. The Compact	Plaintiff misstates and ignores the	
17		the trustee of the RSTF.	describes the Commission as a trustee of the RSTF	evidence.	
18			money in an administrative capacity with no discretion	First, the Compact expressly states: "The Commission shall serve as the	
19		Miwok III at *3.]	as to the use or disbursement of those	trustee of the fund." (Compact, § 4.3.2.1(b).)	-
20			funds. Thus, by the express terms of the Compacts, the	Second, Plaintiff's own First	
21			Commission can make no decisions on how the RSTF	Amended Complaint repeatedly states that the Commission serves	
22			money is to be distributed to Non-Compact tribes. It	as trustee of the RSTF. (FAC, ¶¶ 2, 6, 22, 29, 34.) According to the	
23			serves as a mere depository.	FAC, "The RSTF is a 'trust' fund, and The Commission is	
24			(pRJN, Ex. "5")(Section 4.3.2.1(b))	contractually and statutorily	
25				designated to 'serve as the trustee of the fund.'" (FAC, ¶ 29.) "A	
26				complaint's factual allegations constitute judicial admissions	
27				binding on the plaintiff." Gibbs v.  American Airlines, Inc., 74  Cal American 4th 1, 12 (1999)	
28				Cal.App.4th 1, 12 (1999).	
- 11					

1 2	Intervenors' Undisputed Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
3 4			According to the Court of Appeal, "all three causes of action present the common question of whether, in
5			carrying out its fiduciary duty as a trustee of the RSTF, the
6			Commission is legally justified in maintaining a policy of withholding the RSTF funds from the Miwok
7			Tribe" California Valley Miwok Tribe v. California
8 9			Gambling Control Commission, Case No. D061811, pp. 5-6 (4th Dist. Dec. 18, 2012) (unpublished)
10			("Miwok IV") (emphasis added); see also Miwok III at *1, 2, 4, 8; Miwok
11	7 As a trustee the	Dit-1 The C	<i>IV</i> at pp. 3, 4, 5, 6, 12, 16, 17, 19.
12	7. As a trustee, the Commission owes a	Disputed. The Compact describes the Commission	Plaintiff misstates and ignores the evidence.
13	fiduciary duty to the Non- Compact tribes with respect to the RSTF.	as a trustee of the RSTF money in an administrative capacity with no discretion	Plaintiff's own First Amended Complaint states that the
14	[FAC, ¶ 6, 25, 30, 34;	as to the use or disbursement of those	Commission is a trustee and that the Commission breached its fiduciary
15	Miwok III at *9-10.]	funds. Thus, by the express terms of the Compacts, the	duties as trustee of the RSTF. (FAC, ¶¶ 6, 22, 29, 34.) According
16		Commission can make no decisions on how the RSTF	to the FAC, "Plaintiff contends that The Commission has
17		money is to be distributed to Non-Compact tribes. It	breached its fiduciary duties under the Compact by wrongfully
18		serves as a mere depository. (pRJN, Ex. "5")(Section	withholding Plaintiff's entitled share of RSTF payments." (FAC,
19		4.3.2.1(b))	¶ 34; emphasis added.) "A complaint's factual allegations
20			constitute judicial admissions binding on the plaintiff." Gibbs v.
21			American Airlines, Inc., 74 Cal.App.4th 1, 12 (1999).
22			Finally, as explained by the Court
23			of Appeal, "all three causes of action present the common question
24			of whether, in carrying out its fiduciary duty as a trustee of the
25			RSTF, the Commission is legally justified in maintaining a policy of
26			withholding the RSTF funds from the Miwok Tribe" Miwok IV at
27			pp. 5-6 (emphasis added); see also Miwok III at *1, 2, 4, 8; Miwok IV
28			

1		Intervenors' Undisputed Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
3				at pp. 3, 4, 5, 6, 12, 16, 17, 19.
4	8.	The California Valley Miwok Tribe (the "Tribe")	Undisputed.	Undisputed.
5		is a Non-Compact tribe.		
6 7		[FAC, ¶¶ 6-7; <i>Miwok III</i> at *2.]		
8	9.	Plaintiff contends that the Tribe consists of four adult	Disputed. Plaintiff consists of five members as	Plaintiff fails to contradict the stated fact which is based entirely
9		members (Silvia Burley, her two daughters Rashel Reznor and Anjelica Paulk,	confirmed by the Assistant Secretary of the Interior, Larry Echo Hawk, in his	on the FAC and Silvia Burley's declaration.
10		and Intervenor Yakima Dixie) and that Silvia	August 31, 2011 decision, which reaffirmed his	The fact states that Plaintiff contends there are only four adult
11		Burley is the "selected spokesperson" for the	December 22, 2010 decision letter declaring the	members. This is straight out of Silvia Burley's declaration. (Ex. 3,
12		Tribe.	same thing. (pRJN, Ex. "2" and"3"). Silvia Burley is	Burley Declaration at ¶ 3.) The fifth purported member, Angelica
13		[Ex. 3, Burley Declaration at ¶ 3; FAC, ¶¶ 8-9 and	the authorized Chairperson of the Tribe, as confirmed	Paulk, is presumably not yet an adult.
14		Verification at p. 14 of FAC.]	by Yakima Dixie in his recent deposition admitting	The fact states that Plaintiff
15			that he resigned as Tribal Chairman and	contends Silvia Burley is the "selected spokesperson" of the
16 17			acknowledging Burley as the Tribal Chairperson, and as acknowledged by the	Tribe. Again, this is a direct quote from Silvia Burley's Verification of the FAC.
18	180000		BIA in January 2011, after the ASI's December 22,	Plaintiff's arguments about the
19	-		2010 decision was rendered. (pRJN, Ex. "21", "31" and	rescinded December 22, 2010 letter and the stayed August 31, 2011
20			"32")	letter have nothing to do with the fact which pertains solely to
21				Plaintiff's contentions. Similarly, Mr. Dixie's conflicted testimony also has nothing to do with
22	1			Plaintiff's contentions.
23		Intervenors contend that: (1) the Tribe consists of	Disputed. Intervenors' contentions are false and	Plaintiff fails to contradict the actual fact which is nothing more
24		• • • • • • • • • • • • • • • • • • • •	fraudulent. <u>See</u> No. 9 above.	than Intervenors' contentions. Plaintiff's assertion that these
25		(2) the Tribe is governed by a Tribal council consisting		contentions are false and fraudulent is unsupported by any admissible
26		of seven members; and (3) Silvia Burley is neither a		evidence and is irrelevant. Plaintiff continues to ignore the reality that
27		Tribal official, Tribal representative nor member		Intervenors contend the Tribe is governed by a seven person Tribal
28				

1 2	Intervenors' Undisputed Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
3	of the Tribal government.		council, not by Yakima Dixie.
4	[WhiteBear Decl., ¶¶ 1-8: Complaint in Intervention,		
5	¶¶ 4, 8, 13, 15, 22.]		
6	11.Commencing in February 2005, BIA issued a series	Disputed. The BIA's actions were legally	Plaintiff's entire argument is non- responsive and irrelevant. The fact
7	of decisions in which it stated that there was no	erroneous, since they failed to recognize the undisputed	simply reiterates various determinations by BIA
8	recognized government or governing body of the	fact that the Tribe had since 1998 a resolution form of	commencing in 2004. Many of these determinations are reiterated
9	Tribe. BIA further stated that it would assist the	government established under Resolution #GC-98-	in Plaintiff's own complaint.
10	Tribe in identifying its full membership and forming a	01, which was drafted by the BIA, and that the BIA	Plaintiff attempts to argue the validity of BIA's prior
11	valid Tribal government.	had no legal basis to force the Tribe under Burley's	determinations. First, such arguments are entirely irrelevant to
12	[Exhibits 4, 5, 29, 30, 31; FAC, ¶¶ 12-17.]	leadership to "reorganize" under the Indian	the fact or this litigation. Second, this Court has no jurisdiction to
13		Reorganization Act of 1934 ("IRA"), condition federal	decide the validity of BIA's prior determinations. Third, all of
14		contract funding on the Tribe being organized under	Plaintiff's arguments have previously been litigated and
15 16		the IRA, or force the Tribe to add to its membership against its will. (pRJN, Ex.	rejected in federal court. See California Valley Miwok Tribe v. USA, 424 F.Supp.2d 197, 197, 202
17		"3")	(D.D.C. 2006); California Valley Miwok Tribe v. United States, 515
18			F.3d 1262, 1267 (D.C. Cir. 2008).
19	12.Commencing in July 2005, BIA issued a series of	<u>Disputed</u> . <u>See</u> No. 11 above.	Plaintiff's entire argument is non-responsive and irrelevant. The fact
20	decisions in which it denied funding to Plaintiff and Silvia Burley under Public		simply recites BIA's decision to cease providing PL-638 funding to Plaintiff and Silvia Burley
21	Law 93-638 ("PL-638"), the Indian Self-		commencing in 2005. There is no dispute that this occurred. There is
22	Determination and Education Assistance Act,		also no dispute that Silvia Burley challenged this decision and lost.
23	through which the BIA supports recognized tribal		Plaintiff attempts to argue the
24	governments in providing services to their members.		validity of BIA's prior determinations. First, such
25	Burley challenged those decisions, and the Interior		arguments are entirely irrelevant to the fact or this litigation. Second,
26	Board of Indian Appeals upheld the decision.		this Court has no jurisdiction to decide the validity of BIA's prior
27   28	[Exhibits 6, 7; FAC, ¶¶ 15- 17; 25 U.S.C. § 450 et seq.;		determinations. Third, all of Plaintiff's arguments have previously been litigated and

1 2	Intervenors' Undisputed Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
3	California Valley Miwok Tribe v. Central California	William Control of the Control of th	rejected in federal court. See California Valley Miwok Tribe v.
4 5	Superintendent, 47 IBIA 91 (June 10, 2008).]		USA, 424 F.Supp.2d 197, 197, 202 (D.D.C. 2006); California Valley Miwok Tribe v. United States, 515
6 7			F.3d 1262, 1267 (D.C. Cir. 2008); California Valley Miwok Tribe v. Central California Superintendent, 47 IBIA 91 (June 10, 2008).
8	13.Plaintiff filed a federal	Disputed Coa No. 11	
9	lawsuit in 2005 challenging the BIA's refusal to	<u>Disputed</u> . <u>See</u> No. 11 above.	Plaintiff's entire argument is non- responsive and irrelevant. There is no dispute that Plaintiff filed a
10	recognize its tribal government. The district		lawsuit in district court and lost. Plaintiff cites to its response to Fact
11	court dismissed its complaint in 2006, finding that the Burley government		no. 11, but that fact dealt with prior BIA determinations.
12	was not entitled to recognition because it did		Regardless, Plaintiff's arguments are entirely irrelevant to the fact or
13	not "reflect the will of a majority of the tribal		this litigation. This Court has no jurisdiction to decide the validity of
14	community." The Court of Appeals for the District of		BIA's prior determinations. Finally, all of Plaintiff's arguments
15	Columbia Circuit affirmed in 2008, holding that		have previously been litigated and rejected in federal court. See
16	Burley's "antimajoritarian gambit deserves no stamp		California Valley Miwok Tribe v. USA, 424 F.Supp.2d 197, 197, 202
17	of approval from the Secretary."		(D.D.C. 2006); California Valley Miwok Tribe v. United States, 515
18	[California Valley Miwok		F.3d 1262, 1267 (D.C. Cir. 2008).
19	Tribe v. USA, 424 F.Supp.2d 197, 197, 202		
20	(D.D.C. 2006); California Valley Miwok Tribe v.		
21	United States, 515 F.3d		
22	1262, 1267 (D.C. Cir. 2008).]		
23		Undisputed.	Undisputed.
24	AS-IA issued a decision in response to a federal		
25	administrative appeal that Silvia Burley had filed		
26	before the Interior Board of Indian Appeals.		
27	[Exhibit 8.]		
28		<u> </u>	

1	Intervenors' Undisputed Material Facts and	Plaintiff's Dosnanse and	
2	Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
3	15.Intervenors filed an administrative appeal with the BIA on February 9,	Disputed. The letter the Intervenors attempted appeal was not a "decision"	The fact itself is undisputed.
5	2011. As of today, BIA's Regional Director has never responded to this appeal.	for purposes of appeal.	
6	[Exhibit 11; Uram Decl., ¶		
7	2.]	77.1	
8	16.Intervenors filed suit in federal district court for the District of Columbia,	<u>Undisputed</u> .	Undisputed.
10	challenging the December 22 Decision.		
11	[Uram Decl., ¶ 4; California Valley Miwok		
12	Tribe v. Salazar, No. 1:11–cv–00160–RWR		
13	(Jan. 24, 2011).]		
14 15	17. The AS-IA rescinded the December 22 Decision and announced that he would	Disputed. The ASI never used the word "rescind." He set aside the decision	While Plaintiff argues semantics over "set aside" versus "rescind,"
16	issue a new decision after	and later reaffirmed it in his August 31, 2011 decision.	the undisputed reality is that the December 22, 2010 ceased to have any force or effect as of April 1,
17		(pRJN, Ex. "3").	2011.
18			Plaintiff's assertion that the August 11, 2011 decision "reaffirmed" the December 22, 2010 decision is
19			entirely irrelevant to Intervenors' fact and should be disregarded.
20			Moreover, it is not accurate. While portions of the December 22, 2010
21    22			decision were affirmed, other portions were not.
23	18. On August 31, 2011, the AS-IA issued a new	Undisputed.	Undisputed.
24	decision. However, the AS-IA specifically stayed		
25	the implementation of his decision pending resolution		
26	of Intervenors' federal lawsuit.		
	[Exhibit 13, p. 8; see also Exhibits 14, 15, 16; California Vallev Miwok		
27 28	[Exhibit 13, p. 8; <i>see also</i> Exhibits 14, 15, 16;		

1 2	Intervenors' Undisputed  Material Facts and  Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
3	Tribe v. California		
4	Gambling Control Commission, No. D061811,		
5	p. 9 (12/18/12) (unpublished) ("The implementation of the		
6	August 31, 2011 decision was stayed.").]		
7			
8	19.Intervenors filed an amended complaint in the federal litigation, and	<u>Undisputed</u> .	Undisputed.
9	Plaintiff intervened.		
10	[Exhibits 17, 19; Uram Decl., ¶¶ 5-6.]		
11	20.Intervenors' federal lawsuit	Disputed. The Intervenors'	The fact itself is undisputed.
12	directly challenges the AS-	federal challenge is irrelevant to the	Plaintiff's argument is non-
13	membership and leadership	proceedings in this case, as ruled by the Court of	responsive and irrelevant. The Court of Appeal did not hold that
14		Appeal. (pRJN, Ex. "23").	the Salazar case was irrelevant. To
15	governing documents it is based on. If the federal		the contrary, the Court of Appeal made it clear that the existence of
16	court grants Intervenors'	1	Salazar case goes to the core question to be decided in this case:
17	motion for summary judgment, it will invalidate		"whether the current uncertainty in the federal government's
18	the August 31 Decision, and the prior BIA decisions		relationship to the Miwok Tribe – including the pendency of the
19	denying recognition of any Tribal government would		Salazar case – constitutes a legally sufficient basis for the Commission,
20	remain in effect.		as trustee of the RSTF, to withhold the RSTF funds from the Miwok
21	[Exhibits 18-19; Uram Decl., ¶¶ 6, 8.]		Tribe." <i>Miwok IV</i> at p. 17.
22		<u>Disputed</u> . The Intervenors' federal challenge is	The fact itself is undisputed.
23	dispositive motions and	irrelevant to the	Plaintiff's argument is non-
24	ruling.	proceedings in this case, as ruled by the Court of	responsive and irrelevant. The Court of Appeal did not hold that
25	Exhibit 17; Uram Decl., ¶	Appeal. (pRJN, Ex. "23").	the Salazar case was irrelevant. To the contrary, the Court of Appeal
26	[ 7.]		made it clear that the existence of Salazar case goes to the core
27			question to be decided in this case: "whether the current uncertainty in the federal government's
28			relationship to the Miwok Tribe –

	including the pendency of the Salazar case – constitutes a legally sufficient basis for the Commission,
	as trustee of the RSTF, to withhold the RSTF funds from the Miwok Tribe." <i>Miwok IV</i> at p. 17.
22. 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 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.]  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 to behalf of the Tribe, even though it had previously made RSTRF payments to the Tribe in care of Burley in the midst of the same leadership dispute. The Commission then later claimed that since the Tribe under Burley's leadership did not qualify for RSTF money cither. The Commission also culd not qualify for RSTF money cither. The Commission also ignored that 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").	The fact itself is undisputed.  Plaintiff's argument is non-responsive and irrelevant. It also misstates the evidence and ignores Plaintiff's own allegations in the FAC.

1 2	Intervenors' Undisputed Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
3			
4		Disputed. See No. 22 above.	The fact itself is undisputed.
5	remains in dispute pending	above.	Plaintiff's argument is non-
6	the outcome of <u>CVMT v.</u> <u>Salazar</u> , the Commission		responsive and irrelevant. It also misstates the evidence and ignores
7	continues to hold the Tribe's RSTF money in		Plaintiff's own allegations in the FAC.
8	trust and refuses payment to Plaintiff.		
9	[Exhibits 4, 5, 6, 7, 11, 12, 14, 19, 20, 21, 22, 23, 24,		
10	25, 29, 30, 31, 33, and 34 (California Gambling		
11	Control Commission Response to CVMT Form		
12	Interrogatories, Set Two, Response to Requests for		
13	Admission Nos. 86, 97, 98,		
14	101, 102, 106, 112-114,   119, 121); FAC, ¶¶ 15-17;		
15	see also Miwok III at *2, *8 ("The Commission		
16	contends that because it has		
	a fiduciary duty as trustee of the RSTF, the current		
17	uncertainties regarding the Miwok Tribe's government		
18	and membership require it to withhold the RSTF funds		
19	and hold them in trust until		
20	it can be assured that the funds, if released, will be		
21	going to the proper parties."); California Valley		
22	Miwok Tribe v. USA, 424 F.Supp.2d 197, 197, 202		
	(D.D.C. 2006); <i>California</i>	The state of the s	
23	Valley Miwok Tribe v. United States, 515 F.3d		
24			
25	/ -	Disputed. The Intervenors'	The fact itself is undisputed.
26	RSTF payments to the	evidence is irrelevant and	•
27	filed an interpleader action	misleading. The Commission never sought	Plaintiff's argument misstates the evidence and fails to explain what
28		declaratory relief with respect to the same issues	portion of this fact it specifically disputes. A review of the Exhibits
		11	***************************************

1 2	Intervenors' Undisputed Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
3	the Commission should release the Tribe's RSTF	presented in this case.	cited by Intervenors demonstrates
4	money. Silvia Burley successfully opposed that		that the fact is exactly correct. <i>See</i> also Miwok III at *4 ("In December 2005 the Commission filed an
5	action, arguing that neither		interpleader action in superior court
6	the court nor the Commission had any authority to determine the		concerning the proper disposition of the RSTF funds payable to the Miwok Tribe. The suit was
7	proper representative of the Tribe for purposes of RSTF		dismissed on demurrer.").
8	distribution.		
9	[Exhibits 26-28.]		
10			

#### **ISSUE NO. 2**

## $\frac{\text{PLAINTIFF'S SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF HAS NO}{\underline{\text{MERIT}}}$

13		<u>WERT</u>		
14	Intervenors' Undisputed Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intornous? Donley	
15	Supporting Evidence	Supporting Evidence	Intervenors' Reply	
16	25. Plaintiff's second cause of action for declaratory relief	<u>Undisputed</u> .	Undisputed.	
17	seeks an order declaring that defendant California Gambling Control			
18	Commission ("Commission") has a duty			
19	to immediately disburse Revenue Sharing Trust			
20	Funds held in trust for the			
21	California Valley Miwok Tribe to Plaintiff in care of Silvia Burley.			
22	Silvia Bulley.			
23	[First Amended Complaint ("FAC"), ¶ 35; California Valley Miwok Tribe v.			
24	California Gambling			
25	Control Commission, No. D061811 (December 18,			
26	2012), pp. 5, 17.]			
27	Complaint in Intervention	<u>Undisputed</u> .	Undisputed.	
28	in which they joined in with the Commission in			
1				

1 2	Intervenors' Undisputed  Material Facts and  Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
3	opposition to Plaintiff's FAC.		
4			
5	[Complaint in Intervention.]		
6	27.In 1999, California entered	Undisputed.	Undisputed.
7	into a Tribal-State Gaming Compact ("Compact") with		
8	various Indian tribes authorized to conduct		
9	gaming in California.		
	[FAC, ¶ 5; Cates v. Chiang,		
10	154 Cal.App.4th 1302, 1305 (2007).]		
11		[Indisputed	Undignuted
12	28. Under the Compact, a Non-Compact tribe is a federally	<u>Undisputed</u> .	Undisputed.
13	recognized Indian tribe in California that operates		
14	fewer than 350 gaming devices.		
15	[Ex.2, Compact §		
16	4.3.2(a)(i); California Valley Miwok Tribe v.		
17	California Gambling		
	Control Commission, 2010 WL 1511744, *2 (4th Dist.		
18	2010) (unpublished) ("Miwok III").]		
19	29. Under the Compact, each	I Indianuted	Undisputed
20	eligible Non-Compact tribe	<u>Undisputed</u> .	Undisputed.
21	is entitled to \$1.1 million per year from the Revenue		
22	Sharing Trust Fund ("RSTF").		
23	[FAC, ¶¶ 6-7; Ex. 2,	·	
24	Compact § 4.3.2.1; Miwok III at *2.]		
25		Disputed. The Compact	Plaintiff misstates and ignores the
26		describes the Commission as a trustee of the RSTF	evidence.
27	[FAC, ¶¶ 6, 22, 29, 34; Ex.	money in an administrative	First, the Compact expressly states:
28	Miwok III at *3.]	capacity with <u>no discretion</u> as to the use or disbursement of those	"The Commission shall serve as the trustee of the fund." (Compact, §

1 2	Intervenors' Undisputed Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply	
3 4		funds. Thus, by the express terms of the Compacts, the	4.3.2.1(b).)	-
5	A CONTRACTOR OF THE PROPERTY O	Commission can make no decisions on how the RSTF money is to be distributed	Second, Plaintiff's own First Amended Complaint repeatedly states that the Commission serves	
6		to Non-Compact tribes. It serves as a mere depository. (pRJN, Ex. "5")(Section	as trustee of the RSTF. (FAC, ¶¶ 2, 6, 22, 29, 34.) According to the	
7		4.3.2.1(b))	FAC, "The RSTF is a 'trust' fund, and The Commission is contractually and statutorily	
8	A		designated to 'serve as the trustee of the fund.'" (FAC, ¶ 29.) "A	
9 10			complaint's factual allegations constitute judicial admissions binding on the plaintiff." <i>Gibbs v.</i>	
11			American Airlines, Inc., 74 Cal.App.4th 1, 12 (1999).	
12			According to the Court of Appeal, "all three causes of action present	
13			the common question of whether, in carrying out its fiduciary duty as	
14 15			a trustee of the RSTF, the Commission is legally justified in maintaining a policy of withholding	
16			the RSTF funds from the Miwok Tribe" California Valley	
17			Miwok Tribe v. California Gambling Control Commission,	
18			Case No. D061811, pp. 5-6 (4th Dist. Dec. 18, 2012) (unpublished) ("Miwok IV") (emphasis added); see	
19			also <i>Miwok III</i> at *1, 2, 4, 8; <i>Miwok</i>   <i>IV</i> at pp. 3, 4, 5, 6, 12, 16, 17, 19.	
20	31. As a trustee, the	Disputed. The Compact	Plaintiff misstates and ignores the	-
21   22		describes the Commission as a trustee of the RSTF money in an administrative	evidence.  Plaintiff's own First Amended	
23	to the RSTF.	capacity with <u>no discretion</u> as to the use or	Complaint states that the Commission is a trustee and that the	
24	[FAC, ¶¶ 6, 25, 30, 34;	disbursement of those funds. Thus, by the express	Commission breached its fiduciary duties as trustee of the RSTF.	
25		terms of the Compacts, the Commission can make no	(FAC, ¶ 6, 22, 29, 34.) According to the FAC, "Plaintiff contends	
26		decisions on how the RSTF money is to be distributed to Non-Compact tribes. It	that The Commission has breached its fiduciary duties under the Compact by wrongfully	
27 28		serves as a mere depository. (pRJN, Ex. "5")(Section	withholding Plaintiff's entitled share of RSTF payments." (FAC, ¶34; emphasis added.) "A	***************************************
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1 2	Intervenors' Undisputed Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
3 4		4.3.2.1(b))	complaint's factual allegations constitute judicial admissions binding on the plaintiff." Gibbs v.
5	1		American Airlines, Inc., 74 Cal.App.4th 1, 12 (1999).
6			Finally, as explained by the Court of Appeal, "all three causes of
7 8			action present the common question of whether, in carrying out its fiduciary duty as a trustee of the
9			RSTF, the Commission is legally justified in maintaining a policy of
10			withholding the RSTF funds from the Miwok Tribe" <i>Miwok IV</i> at pp. 5-6 (emphasis added); see also
11			Miwok III at *1, 2, 4, 8; Miwok IV at pp. 3, 4, 5, 6, 12, 16, 17, 19.
12 13	32.The California Valley Miwok Tribe (the "Tribe")	Undisputed.	Undisputed.
14	is a Non-Compact tribe.		
15	[FAC, ¶¶ 6-7; <i>Miwok III</i> at *2.]		
16	33. Plaintiff contends that the Tribe consists of four adult	<u>Disputed</u> . Plaintiff consists of five members as	Plaintiff fails to contradict the stated fact which is based entirely
17 18	members (Silvia Burley, her two daughters Rashel Reznor and Anjelica Paulk,	confirmed by the Assistant Secretary of the Interior, Larry Echo Hawk, in his	on the FAC and Silvia Burley's declaration.
19	and Intervenor Yakima Dixie) and that Silvia	August 31, 2011 decision, which reaffirmed his	The fact states that Plaintiff contends there are only four adult
20	Burley is the "selected spokesperson" for the	December 22, 2010 decision letter declaring the	members. This is straight out of Silvia Burley's declaration. (Ex. 3,
21	Tribe. [Ex. 3, Burley Declaration	same thing. (pRJN, Ex. "2" and"3"). Silvia Burley is the authorized Chairperson	Burley Declaration at ¶ 3.) The fifth purported member, Angelica Paulk, is presumably not yet an
22	at ¶ 3; FAC, ¶¶ 8-9 and Verification at p. 14 of	of the Tribe, as confirmed by Yakima Dixie in his	adult.
23	FAC.]	recent deposition admitting that he resigned as Tribal	The fact states that Plaintiff contends Silvia Burley is the
25		Chairman and acknowledging Burley as the Tribal Chairperson, and	"selected spokesperson" of the Tribe. Again, this is a direct quote from Silvia Burley's Verification of
26		as acknowledged by the BIA in January 2011, after	the FAC.
27 28		the ASI's December 22, 2010 decision was rendered. (pRJN, Ex. "21", "31" and	Plaintiff's arguments about the rescinded December 22, 2010 letter and the stayed August 31, 2011 letter have nothing to do with the

1 2	Intervenors' Undisputed Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
3 4 5		"32")	fact which pertains solely to Plaintiff's contentions. Similarly, Mr. Dixie's conflicted testimony also has nothing to do with Plaintiff's contentions.
6	34.Intervenors contend that:	Disputed Internal 2	
7	(1) the Tribe consists of more than 200 adult	<u>Disputed.</u> Intervenors' contentions are false and fraudulent. <u>See</u> No. 9	Plaintiff fails to contradict the actual fact which is nothing more than Intervenors' contentions.
8	members and their children; (2) the Tribe is governed by a Tribal council consisting	above.	Plaintiff's assertion that these contentions are false and fraudulent is unsupported by any admissible
9   10	of seven members; and (3) Silvia Burley is neither a Tribal official, Tribal		evidence and is irrelevant. Plaintiff continues to ignore the reality that Intervenors contend the Tribe is
11	representative nor member of the Tribal government.		governed by a seven person Tribal council, not by Yakima Dixie.
12	[WhiteBear Decl., ¶¶ 1-8: Complaint in Intervention,		
13	¶¶ 4, 8, 13, 15, 22.]		
14	35. Commencing in February 2005, BIA issued a series	Disputed. The BIA's actions were legally	Plaintiff's entire argument is non-responsive and irrelevant. The fact
15 16	of decisions in which it stated that there was no	erroneous, since they failed to recognize the undisputed	simply reiterates various determinations by BIA
17	recognized government or governing body of the Tribe. BIA further stated	fact that the Tribe had since 1998 a resolution form of government established	commencing in 2004. Many of these determinations are reiterated in Plaintiff's own complaint.
18	that it would assist the Tribe in identifying its full membership and forming a	under Resolution #GC-98- 01, which was drafted by the BIA, and that the BIA	Plaintiff attempts to argue the
19	valid Tribal government.	had no legal basis to force the Tribe under Burley's	validity of BIA's prior determinations. First, such arguments are entirely irrelevant to
20	[Exhibits 4, 5, 29, 30, 31; FAC, ¶¶ 12-17.]	leadership to "reorganize" under the Indian	the fact or this litigation. Second, this Court has no jurisdiction to
21		Reorganization Act of 1934 ("IRA"), condition federal	decide the validity of BIA's prior determinations. Third, all of
22    23		contract funding on the Tribe being organized under	Plaintiff's arguments have previously been litigated and
23    24		the IRA, or force the Tribe to add to its membership	rejected in federal court. See California Valley Miwok Tribe v.
25		against its will. (pRJN, Ex. "3")	USA, 424 F.Supp.2d 197, 197, 202 (D.D.C. 2006); California Valley Miwok Tribe v. United States, 515
26			F.3d 1262, 1267 (D.C. Cir. 2008).
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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 not" reflect the will of a not "reflect the will of a not" reflect the will of a not "reflect the will of a not" reflect the will of a not" reflect the will of a not "reflect the will of a not" reflect the will of a not "reflect the will of a not" reflect the will of a not "reflect the will of a not" reflect the will of a not "reflect the will of a not" reflect the will of a not "reflect the will of a not" reflect the will of a not "reflect the will of a not" ref			· -	
Supporting Evidence   Supporting Evidence   Intervenors' Reply	1			
BIA issued a series of fanding 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.  Bearing June 10, 2008).]  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.  Exhibits 6, 7; FAC, ¶ 15-17; 25 U.S.C. § 450 et seq.; California Valley Miwok Tribe v. Central California Superintendent, 47 IBIA 91 (June 10, 2008).]  The v. Central California Superintendent, 47 IBIA 91 (June 10, 2008).]  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 government was not entitled to recognition because it did not "reflect the will of a majority of the tribal surface of the Decision of the See No. 11 (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."  Bobove.  Bobove.  Bobove.  Tribe v. Dittal and Silvia Burley comments in providing pt. 638 funding to case proviously bear in giagated and rejected in federal court. See California Valley Miwok Tribe v. United States, 515 (California Valle	2			Intervenors' Reply
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 Solf-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.  Burley challenged those decisions, and the Interior Board of Indian Appeals upheld the decision.  Exhibits 6, 7; FAC, ¶ 15-17; 25 U.S.C. § 450 et seq.; California Valley Miwok Tribe v. Central California Superintendent, 47 IBIA 91 (June 10, 2008).]  Japan 18  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 not 'reflect the will of a majority of the tribal court dismissed its complaint in 2006, finding that Burley's "antimajoritarian gambit deserves no stamp of approval from the Secretary."  Blab ve. Secretary."  babove.  babove.  babove.  babove.  cresponsive and irrelevant. The reis in odispute that Slivia Burley convenieng in 2005. There is no dispute that Slivia Burley convenieng in 2005. There is no dispute that Plaintiff is arguments have previously been litigated and rejected in federal played in federal and providing PL-638 funding to case providing PL-638 funding to convenieng in 2005. There is no dispute that Plaintiff is arguments as contributed to the fact of Plaintiff's arguments are entirely irrelevant to the fact on the strict court dismissed its complaint in 2006, finding that Burley of the tribal court dismissed its complaint in 2006, finding that Burley irrelevant to the fact out this litigation. This Court has no jurisdiction to decide the validity of BIA's prior determinations.  Final	3	36.Commencing in July 2005,	Disputed. See No. 11	Plaintiff's entire argument is non-
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.  10 (Exhibits 6, 7; FAC, ¶15-17; 25 U.S.C. § 450 et seq.; California Valley Miwok Tribe v. Central California Valley Miwok Tribe v. Central California Valley Miwok Tribe v. Central California Superintendent, 47 IBIA 91 (June 10, 2008).]  37 Plaintiff filed a federal lawsuit in 2005 challenging that the Burley government was not entitled to recognize its tribal government was not entitled to recognize its tribal community." The Court of Appeals for the District of Court and Court	4	BIA issued a series of		responsive and irrelevant. The fact
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(June 10, 2008).]   (D.D.C. 2006); California Valley Miwok Tribe v. United States, 515	14	Tribe v. Central California		California Valley Miwok Tribe v.
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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."  majority of the tribal jurisdiction to decide the validity of BIA's prior determinations. Finally, all of Plaintiff's arguments have previously been litigated and rejected in federal court. See 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	23		3	are entirely irrelevant to the fact or
Appeals for the District of Columbia Circuit affirmed in 2008, holding that Burley's "antimajoritarian gambit deserves no stamp of approval from the Secretary."  Appeals for the District of Columbia Circuit affirmed have previously been litigated and rejected in federal court. See 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		majority of the tribal		jurisdiction to decide the validity of
Columbia Circuit affirmed in 2008, holding that Burley's "antimajoritarian gambit deserves no stamp of approval from the Secretary."  Columbia Circuit affirmed rejected in federal court. See 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		Appeals for the District of		
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 v. United States, 515	25			have previously been litigated and
of approval from the Secretary." (D.D.C. 2006); California Valley Miwok Tribe v. United States, 515	26	Burley's "antimajoritarian		California Valley Miwok Tribe v.
28 Vitwok Tribe v. Onlied Sidles, 515	27	of approval from the		(D.D.C. 2006); California Valley
	28	Beetelary.		Miwok Tribe v. Officea States, 313

1	Intervenors' Undisputed	Addington	
. 2	Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
3	[California Valley Miwok Tribe v. USA, 424		F.3d 1262, 1267 (D.C. Cir. 2008).
4 5	F.Supp.2d 197, 197, 202 (D.D.C. 2006); California Valley Miwok Tribe v.		
6	United States, 515 F.3d 1262, 1267 (D.C. Cir.		
7	2008).]		
8	38. On December 22, 2010, the AS-IA issued a decision in response to a federal	<u>Undisputed</u> .	Undisputed.
9	administrative appeal that Silvia Burley had filed		
11	before the Interior Board of Indian Appeals.		
12	[Exhibit 8.]		
13	39.Intervenors filed an administrative appeal with	Disputed. The letter the Intervenors attempted	The underlying fact is undisputed.
14	the BIA on February 9, 2011. As of today, BIA's Regional Director has never	appeal was not a "decision" for purposes of appeal.	
15	responded to this appeal.		
16 17	[Exhibit 11; Uram Decl., ¶ 2.]		
18	40.Intervenors filed suit in federal district court for the	Undisputed.	Undisputed.
19	District of Columbia, challenging the December 22 Decision.		
20	[Uram Decl., ¶ 4;		
21	California Valley Miwok Tribe v. Salazar, No.		
22   23	1:11-cv-00160-RWR (Jan. 24, 2011).]		
24		Disputed. The ASI never used the word "rescind."	While Plaintiff argues semantics over "set aside" versus "rescind,"
25	announced that he would issue a new decision after	He set aside the decision and later reaffirmed it in his	the undisputed reality is that the December 22, 2010 ceased to have
26	briefing by both parties.	August 31, 2011 decision. (pRJN, Ex. "3").	any force or effect as of April 1, 2011.
27 28	[Exhibit 12.]		Plaintiff's assertion that the August 11, 2011 decision "reaffirmed" the December 22, 2010 decision is

1	T		
2	Intervenors' Undisputed Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
3			entirely irrelevant to Intervenors' fact and should be disregarded.
4 5			Moreover, it is not accurate. While portions of the December 22, 2010 decision were affirmed, other
6			portions were not.
7	42.On August 31, 2011, the AS-IA issued a new	Undisputed.	Undisputed.
8	decision. However, the AS-IA specifically stayed the implementation of his		
9	decision pending resolution of Intervenors' federal		
10	lawsuit.		
11	[Exhibit 13, p. 8; see also Exhibits 14, 15, 16;		
12	California Valley Miwok Tribe v. California		
13	Gambling Control Commission, No. D061811,		
14	p. 9 (12/18/12) (unpublished) ("The		
15	implementation of the August 31, 2011 decision		
16	was stayed.").]		
17	43.Intervenors filed an amended complaint in the	<u>Undisputed</u> .	Undisputed.
18	federal litigation, and Plaintiff intervened.		
19	Exhibits 17, 19; Uram		To the state of th
20	Decl., ¶¶ 5-6.]		
21		Disputed. The Intervenors' federal challenge is	The fact itself is undisputed.
22	IA's findings regarding the	irrelevant to the proceedings in this case, as	Plaintiff's argument is non- responsive and irrelevant. The
23	of the Tribe, including the	ruled by the Court of Appeal. (pRJN, Ex. "23").	Court of Appeal did not hold that the Salazar case was irrelevant. To
24	general council and the governing documents it is	rappour (prost) sin. 20 j.	the contrary, the Court of Appeal made it clear that the existence of
25	based on. If the federal court grants Intervenors'		Salazar case goes to the core question to be decided in this case:
26	motion for summary		"whether the current uncertainty in
27	judgment, it will invalidate the August 31 Decision, and the prior BIA decisions		the federal government's relationship to the Miwok Tribe – including the pendency of the
28	denying recognition of any		Salazar case – constitutes a legally

1 2	Intervenors' Undisputed Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
3 4	Tribal government would remain in effect.		sufficient basis for the Commission, as trustee of the RSTF, to withhold the RSTF funds from the Miwok
5	[Exhibits 18-19; Uram Decl., ¶¶ 6, 8.]		Tribe." Miwok IV at p. 17.
6	45. Intervenors, Plaintiff, and the BIA each have filed	<u>Disputed</u> . The Intervenors' federal challenge is	The fact itself is undisputed.
7 8	dispositive motions and await the district court's ruling.	irrelevant to the proceedings in this case, as ruled by the Court of	Plaintiff's argument is non- responsive and irrelevant. The Court of Appeal did not hold that
9	[Exhibit 17; Uram Decl., ¶	Appeal. (pRJN, Ex. "23").	the Salazar case was irrelevant. To the contrary, the Court of Appeal
10	7.]		made it clear that the existence of Salazar case goes to the core question to be decided in this case:
11 12			"whether the current uncertainty in the federal government's
13			relationship to the Miwok Tribe – including the pendency of the Salazar case – constitutes a legally
14			sufficient basis for the Commission, as trustee of the RSTF, to withhold
15			the RSTF funds from the Miwok Tribe." <i>Miwok IV</i> at p. 17.
16 17	46.In 2005, in response to the ongoing Tribal dispute and the BIA's determination	<u>Disputed</u> . The Commission never said, and never did, pay any of the subject	The fact itself is undisputed.
18	that the Tribe did not have a recognized Tribal	RSTF money to Burley individually. The	Plaintiff's argument is non- responsive and irrelevant. It also misstates the evidence and ignores
19	government, the Commission suspended RSTF payments to the	Commission has been withholding RSTF payments to the Tribe	Plaintiff's own allegations in the FAC.
20	Tribe. The Commission stated that "our trustee	because it claimed an ongoing Tribal leadership	
21    22	status under the Compact demands that we ensure the RSTF distributions go to	dispute between Dixie and Burley called into question who is authorized to accept	
23	the Tribe for the benefit of the Tribe and not merely to	the RSTF payments on behalf of the Tribe, even	
24	an individual member," and therefore it could no longer release RSTF money to Ms.	though it had previously made RSTRF payments to the Tribe in care of Burley	
25	Burley. The Commission informed Ms. Burley and	in the midst of the same leadership dispute. The	
26    27	Mr. Dixie that the withheld funds would be forwarded to the Tribe, with interest,	Commission then later claimed that since the Tribe under Burley's leadership	
28	when the BIA acknowledged a Tribal	did not qualify for federal contract funding under P.L.	
		20	

1	Intervenors' Undisputed		
2	Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
3 4	government and reestablished government-to-government relations	638, the Tribe also could not qualify for RSTF money either. The Commission	
5	with the Tribe.	also erroneously claimed that the Tribe needed to be	
6	[Exhibit 20; Exhibit 32 at ¶ 14; FAC, ¶¶ 15-17.]	"reorganized" under the IRA, and admit more Indians as members of the	
7		Tribe, before the Tribe could qualify for RSTF	
8		payments. The Commission also ignored	
9		the Tribe's right to operate outside the IRA under its	
10		present resolution form of government. (pRJN, Ex.	
11		"6" and "7").	
12	47. Because the membership and leadership of the Tribe	Disputed. See No. 22 above.	The fact itself is undisputed.
13	remains in dispute pending the outcome of <u>CVMT v.</u>		Plaintiff's argument is non- responsive and irrelevant. It also
14	Salazar, the Commission continues to hold the		misstates the evidence and ignores Plaintiff's own allegations in the
15	Tribe's RSTF money in trust and refuses payment		FAC.
16	to Plaintiff.		
17	[Exhibits 4, 5, 6, 7, 11, 12, 14, 19, 20, 21, 22, 23, 24,		
18	25, 29, 30, 31, 33, and 34 (California Gambling		
19	Control Commission Response to CVMT Form		
20	Interrogatories, Set Two, Response to Requests for		
21	Admission Nos. 86, 97, 98, 101, 102, 106, 112-114,		
23	119, 121); FAC, ¶¶ 15-17; see also Miwok III at *2, *8 ("The Commission		
24	contends that because it has a fiduciary duty as trustee		
25	of the RSTF, the current uncertainties regarding the	The state of the s	
26	Miwok Tribe's government and membership require it		
27	to withhold the RSTF funds and hold them in trust until		
28	it can be assured that the funds, if released, will be		
_	TAMES IN LOCATION WITH UC		

1	Intervenors' Undisputed Material Facts and	Plaintiff's Response and	
2	Supporting Evidence	Supporting Evidence	Intervenors' Reply
3	going to the proper		
4	parties."); California Valley Miwok Tribe v. USA, 424 E Supp 2d 197, 197, 202		
5	F.Supp.2d 197, 197, 202 (D.D.C. 2006); California Valley Miwok Tribe v.		
6	United States, 515 F.3d		
7			
8	48.In 2005, after suspending	Disputed. The Intervenors'	The fact itself is undisputed.
9	Tribe, the Commission	evidence is irrelevant and misleading. The	Plaintiff's argument misstates the
10	in state court, asking the	Commission never sought declaratory relief with	evidence and fails to explain what portion of this fact it specifically
11		respect to the same issues presented in this case.	disputes. A review of the Exhibits cited by Intervenors demonstrates
12	money. Silvia Burley successfully opposed that		that the fact is exactly correct. See also Miwok III at *4 ("In December
13	action, arguing that neither the court nor the		2005 the Commission filed an interpleader action in superior court
14	Commission had any authority to determine the		concerning the proper disposition of the RSTF funds payable to the Miwok Tribe. The suit was
15	proper representative of the Tribe for purposes of RSTF		dismissed on demurrer.").
16	distribution.		
17	[Exhibits 26-28.]		
18			

# $\frac{\text{PLAINTIFF'S FOURTH CAUSE OF ACTION FOR WRIT OF MANDATE HAS NO}{\text{MERIT}}$

**ISSUE NO. 3** 

Intervenors' Undisputed  Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
49. Plaintiff's fourth cause of action for writ of mandate seeks an order compelling defendant California Gambling Control Commission ("Commission") to immediately disburse Revenue Sharing Trust Funds held in trust for the	<u>Undisputed</u> .	Undisputed.

SMRH:408265571.1

1	Intervenors' Undisputed Material Facts and	Plaintiff's Response and	
2	Supporting Evidence	Supporting Evidence	Intervenors' Reply
3	California Valley Miwok Tribe to Plaintiff in care of Silvia Burley.		
5	[First Amended Complaint		
6	("FAC"), ¶¶ 30, 35, 44, and Prayer for Relief no. 3;	,	
7	California Valley Miwok Tribe v. California Gambling Control		
8	Commission, No. D061811 (December 18, 2012), pp.		
9	5, 17.]		
10	50.Intervenors filed a Complaint in Intervention	<u>Undisputed</u> .	Undisputed.
11	in which they joined in with the Commission in		
12	opposition to Plaintiff's FAC.		
13	[Complaint in		
14	Intervention.]		
15	into a Tribal-State Gaming	<u>Undisputed</u> .	Undisputed.
16	Compact ("Compact") with various Indian tribes		
17 18	authorized to conduct gaming in California.		
19	[FAC, ¶ 5; Cates v. Chiang, 154 Cal.App.4th 1302,		
20	1305 (2007).]		
21	Compact tribe is a federally	Undisputed.	Undisputed.
22	recognized Indian tribe in California that operates		
23	fewer than 350 gaming devices.		
24	[Ex.2, Compact §		
25	4.3.2(a)(i); California Valley Miwok Tribe v.		
26	California Gambling Control Commission, 2010		
27	WL 1511744, *2 (4th Dist. 2010) (unpublished)		
28	("Miwok III").]		

1 2	Intervenors' Undisputed  Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply	
3 4 5 6 7 8	53. 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.]	<u>Undisputed</u> .	Undisputed.	
9 10 11		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	Plaintiff misstates and ignores the evidence.  First, the Compact expressly states: "The Commission shall serve as the trustee of the fund." (Compact, §	*
12		disbursement of those funds. Thus, by the express terms of the Compacts, the	4.3.2.1(b).) Second, Plaintiff's own First	
13 14		Commission can make no decisions on how the RSTF	Amended Complaint repeatedly states that the Commission serves	-
15		money is to be distributed to Non-Compact tribes. It serves as a mere depository. (pRJN, Ex. "5")(Section	as trustee of the RSTF. (FAC, ¶ 2, 6, 22, 29, 34.) According to the FAC, "The RSTF is a 'trust' fund, and The Commission is	
16 17		4.3.2.1(b))	contractually and statutorily designated to 'serve as the trustee	
18			of the fund." (FAC, ¶ 29.) "A complaint's factual allegations constitute judicial admissions	
19			binding on the plaintiff." Gibbs v.  American Airlines, Inc., 74  Cal.App.4th 1, 12 (1999).	-
20			According to the Court of Appeal,	
21			"all three causes of action present the common question of whether, in	777
22   23			carrying out its fiduciary duty as a trustee of the RSTF, the	
24			Commission is legally justified in maintaining a policy of withholding the RSTF funds from the Miwok	
25			Tribe" California Valley Miwok Tribe v. California	Year and
26			Gambling Control Commission, Case No. D061811, pp. 5-6 (4th	
27			Dist. Dec. 18, 2012) (unpublished) ("Miwok IV") (emphasis added); see also Miwok III at *1, 2, 4, 8; Miwok	The state of the s
28	<u> </u>	· · · · · · · · · · · · · · · · · · ·	4.50 MINON III at 1, 2, 4, 0, MIWOK	J

Material Facts as Supporting Evide		<u>Intervenors' Reply</u>
		<i>IV</i> at pp. 3, 4, 5, 6, 12, 16, 17, 19.
S5. As a trustee, the Commission owes a fiduciary duty to the Compact tribes with to the RSTF.  [FAC, ¶¶ 6, 25, 30, 3 Miwok III at *9-10.]	Non- respect as a trustee of the RSTF money in an administrative capacity with no discretion as to the use or	Complaint states that the Commission is a trustee and that the Commission breached its fiduciary duties as trustee of the RSTF. (FAC, ¶ 6, 22, 29, 34.) According to the FAC, "Plaintiff contends that The Commission has breached its fiduciary duties under the Compact by wrongfully withholding Plaintiff's entitled share of RSTF payments." (FAC, ¶ 34; emphasis added.) "A complaint's factual allegations constitute judicial admissions binding on the plaintiff." Gibbs v. American Airlines, Inc., 74 Cal.App.4th 1, 12 (1999).  Finally, as explained by the Court of Appeal, "all three causes of action present the common question of whether, in carrying out its fiduciary duty as a trustee of the RSTF, the Commission is legally justified in maintaining a policy of withholding the RSTF funds from the Miwok Tribe" Miwok IV at pp. 5-6 (emphasis added); see also Miwok III at *1, 2, 4, 8; Miwok IV
56.The California Valle	y Undisputed.	at pp. 3, 4, 5, 6, 12, 16, 17, 19.  Undisputed.
Miwok Tribe (the "T is a Non-Compact tri	ribe")	Ondisputed.
[FAC, ¶¶ 6-7; <i>Miwok</i>		
*2.]		
57.Plaintiff contends that Tribe consists of four		Plaintiff fails to contradict the stated fact which is based entirely
members (Silvia Burl her two daughters Ra Reznor and Anjelica	ey, confirmed by the Assistant Secretary of the Interior,	on the FAC and Silvia Burley's declaration.
	posts / posts tratting III IIID	1

1	Intervenors' Undisputed  Material Facts and  Supporting Evidence	Plaintiff's Response and	L. d
2	Supporting Evidence	Supporting Evidence	Intervenors' Reply
3 4	Burley is the "selected spokesperson" for the Tribe.	December 22, 2010 decision letter declaring the same thing. (pRJN, Ex. "2"	members. This is straight out of Silvia Burley's declaration. (Ex. 3, Burley Declaration at ¶ 3.) The
5	[Ex. 3, Burley Declaration at ¶ 3; FAC, ¶¶ 8-9 and	and"3"). Silvia Burley is the authorized Chairperson of the Tribe, as confirmed	fifth purported member, Angelica Paulk, is presumably not yet an adult.
6	Verification at p. 14 of FAC.]	by Yakima Dixie in his recent deposition admitting	The fact states that Plaintiff
7		that he resigned as Tribal Chairman and	contends Silvia Burley is the "selected spokesperson" of the
8 9		acknowledging Burley as the Tribal Chairperson, and as acknowledged by the	Tribe. Again, this is a direct quote from Silvia Burley's Verification of the FAC.
10		BIA in January 2011, after the ASI's December 22,	Plaintiff's arguments about the
11		2010 decision was rendered. (pRJN, Ex. "21", "31" and	rescinded December 22, 2010 letter and the stayed August 31, 2011
12		("32")	letter have nothing to do with the fact which pertains solely to
13			Plaintiff's contentions. Similarly, Mr. Dixie's conflicted testimony also has nothing to do with
14			Plaintiff's contentions.
15	58. Intervenors contend that: (1) the Tribe consists of	Disputed. Intervenors' contentions are false and	Plaintiff fails to contradict the actual fact which is nothing more
16	more than 200 adult	fraudulent. See No. 9	than Intervenors' contentions.
17	members and their children; (2) the Tribe is governed by	above.	Plaintiff's assertion that these contentions are false and fraudulent
18	a Tribal council consisting of seven members; and (3)		is unsupported by any admissible evidence and is irrelevant. Plaintiff
19	Silvia Burley is neither a Tribal official, Tribal		Intervenors contend the Tribe is
20	representative nor member of the Tribal government.		governed by a seven person Tribal council, not by Yakima Dixie.
21	[WhiteBear Decl., ¶¶ 1-8:		
22	Complaint in Intervention, ¶¶ 4, 8, 13, 15, 22.]		
23		Disputed. The BIA's actions were legally	Plaintiff's entire argument is non-
24	of decisions in which it	erroneous, since they failed	responsive and irrelevant. The fact simply reiterates various
25	1 4	to recognize the undisputed fact that the Tribe had since 1998 a resolution form of	determinations by BIA commencing in 2004. Many of these determinations are reiterated
26	Tribe. BIA further stated	government established under Resolution #GC-98-	in Plaintiff's own complaint.
27	Tribe in identifying its full	01, which was drafted by	Plaintiff attempts to argue the
28		the BIA, and that the BIA had no legal basis to force	validity of BIA's prior determinations. First, such
		-26-	

4			
1	Intervenors' Undisputed Material Facts and	Plaintiff's Response and	
2	Supporting Evidence	Supporting Evidence	Intervenors' Reply
3 4	valid Tribal government.  [Exhibits 4, 5, 29, 30, 31;	the Tribe under Burley's leadership to "reorganize" under the Indian	arguments are entirely irrelevant to the fact or this litigation. Second, this Court has no jurisdiction to
5	FAC, ¶¶ 12-17.]	Reorganization Act of 1934 ("IRA"), condition federal contract funding on the	decide the validity of BIA's prior determinations. Third, all of Plaintiff's arguments have
6		Tribe being organized under	previously been litigated and
7	1000	the IRA, or force the Tribe to add to its membership	rejected in federal court. See  California Valley Miwok Tribe v.
8 9		against its will. (pRJN, Ex. "3")	USA, 424 F.Supp.2d 197, 197, 202 (D.D.C. 2006); California Valley Miwok Tribe v. United States, 515
	60 0		F.3d 1262, 1267 (D.C. Cir. 2008).
10 11	60. Commencing in July 2005, BIA issued a series of decisions in which it denied	<u>Disputed</u> . <u>See</u> No. 11 above.	Plaintiff's entire argument is non- responsive and irrelevant. The fact simply recites BIA's decision to
12	funding to Plaintiff and Silvia Burley under Public		cease providing PL-638 funding to Plaintiff and Silvia Burley
13	Law 93-638 ("PL-638"), the Indian Self-		commencing in 2005. There is no dispute that this occurred. There is
14	Determination and Education Assistance Act,		also no dispute that Silvia Burley challenged this decision and lost.
15	through which the BIA supports recognized tribal		Plaintiff attempts to argue the
16	governments in providing services to their members.		validity of BIA's prior determinations. First, such
17	Burley challenged those decisions, and the Interior Board of Indian Appeals		arguments are entirely irrelevant to the fact or this litigation. Second,
18	upheld the decision.		this Court has no jurisdiction to decide the validity of BIA's prior
19	[Exhibits 6, 7; FAC, ¶¶ 15-		determinations. Third, all of Plaintiff's arguments have
20	17; 25 U.S.C. § 450 et seq.;  California Valley Miwok		previously been litigated and rejected in federal court. See
21	Tribe v. Central California Superintendent, 47 IBIA 91		California Valley Miwok Tribe v. USA, 424 F.Supp.2d 197, 197, 202
22	(June 10, 2008).]		(D.D.C. 2006); California Valley Miwok Tribe v. United States, 515
23			F.3d 1262, 1267 (D.C. Cir. 2008); California Valley Miwok Tribe v.
24			Central California Superintendent, 47 IBIA 91 (June 10, 2008).
25	61.Plaintiff filed a federal	Disputed. See No. 11	Plaintiff's entire argument is non-
26		above.	responsive and irrelevant. There is no dispute that Plaintiff filed a
27	recognize its tribal government. The district		lawsuit in district court and lost. Plaintiff cites to its response to Fact
28	court dismissed its		no. 11, but that fact dealt with prior
_		27	

1	Interveners' Undianuted		
1	Intervenors' Undisputed Material Facts and	Plaintiff's Response and	
2	Supporting Evidence	Supporting Evidence	Intervenors' Reply
3	that the Burley government was not entitled to		BIA determinations.
4	recognition because it did		Regardless, Plaintiff's arguments
5	not "reflect the will of a majority of the tribal		are entirely irrelevant to the fact or this litigation. This Court has no
	community." The Court of		jurisdiction to decide the validity of
6	Appeals for the District of Columbia Circuit affirmed		BIA's prior determinations. Finally, all of Plaintiff's arguments
7	in 2008, holding that		have previously been litigated and
8	Burley's "antimajoritarian gambit deserves no stamp		rejected in federal court. See California Valley Miwok Tribe v.
9	of approval from the Secretary."		USA, 424 F.Supp.2d 197, 197, 202
			(D.D.C. 2006); California Valley Miwok Tribe v. United States, 515
10	[California Valley Miwok Tribe v. USA, 424		F.3d 1262, 1267 (D.C. Cir. 2008).
11	F.Supp.2d 197, 197, 202 (D.D.C. 2006); California		
12	Valley Miwok Tribe v.		
13	United States, 515 F.3d 1262, 1267 (D.C. Cir.		
	2008).]		
14	62. On December 22, 2010, the	Undisputed.	Undisputed.
15	AS-IA issued a decision in response to a federal		1
16	administrative appeal that		
17	Silvia Burley had filed before the Interior Board of		
	Indian Appeals.		
18	[Exhibit 8.]		
19	63.Intervenors filed an	Disputed. The letter the	The underlying fact is undisputed.
20	administrative appeal with	Intervenors attempted	The underlying fact is undisputed.
21		appeal was not a "decision" for purposes of appeal.	
22	Regional Director has never responded to this appeal.		
23	[Exhibit 11; Uram Decl., ¶ 2.]		·
24		TT 1.	***
25	64 Intervenors filed suit in federal district court for the	<u>Undisputed</u> .	Undisputed.
26	District of Columbia, challenging the December		
	22 Decision.		
27	[Uram Decl., ¶ 4;		
28	California Valley Miwok		
- 1		20	

1 2	Intervenors' Undisputed Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
3 4	Tribe v. Salazar, No. 1:11-cv-00160-RWR (Jan. 24, 2011).]		
5	65. The AS-IA rescinded the December 22 Decision and	Disputed. The ASI never used the word "rescind."	While Plaintiff argues semantics over "set aside" versus "rescind,"
6	announced that he would	He set aside the decision and later reaffirmed it in his	the undisputed reality is that the December 22, 2010 ceased to have
7		August 31, 2011 decision. (pRJN, Ex. "3").	any force or effect as of April 1, 2011.
8	[Exhibit 12.]	Q,	Plaintiff's assertion that the August
9			11, 2011 decision "reaffirmed" the December 22, 2010 decision is entirely irrelevant to Intervenors'
11			fact and should be disregarded.  Moreover, it is not accurate. While
12			portions of the December 22, 2010 decision were affirmed, other
13			portions were not.
14	AS-IA issued a new	<u>Undisputed</u> .	Undisputed.
15	decision. However, the AS-IA specifically stayed		
16	the implementation of his decision pending resolution of Intervenors' federal		The property of the state of th
17	lawsuit.		
18	[Exhibit 13, p. 8; see also Exhibits 14, 15, 16;		The state of the s
19	California Valley Miwok Tribe v. California		
20	Gambling Control Commission, No. D061811,		
21 22	p. 9 (12/18/12) (unpublished) ("The		1
23	implementation of the August 31, 2011 decision was stayed.").]		
24		Undisputed.	Undignuted
25	amended complaint in the federal litigation, and	Citatopuca.	Undisputed.
26	Plaintiff intervened.		
27	[Exhibits 17, 19; Uram Decl., ¶ 5-6.]		
28			

1 2	Intervenors' Undisputed  Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
	Supporting Evidence	Supporting Lymence	intervenors Reply
3	68. Intervenors' federal lawsuit directly challenges the AS-	<u>Disputed</u> . The Intervenors' federal challenge is	The fact itself is undisputed.
4	IA's findings regarding the membership and leadership	irrelevant to the proceedings in this case, as	Plaintiff's argument is non- responsive and irrelevant. The
5	of the Tribe, including the validity of Ms. Burley's	ruled by the Court of Appeal. (pRJN, Ex. "23").	Court of Appeal did not hold that the <i>Salazar</i> case was irrelevant. To
6	general council and the governing documents it is		the contrary, the Court of Appeal made it clear that the existence of
7	based on. If the federal court grants Intervenors'		Salazar case goes to the core question to be decided in this case:
8	motion for summary judgment, it will invalidate		"whether the current uncertainty in the federal government's
9	the August 31 Decision, and the prior BIA decisions		relationship to the Miwok Tribe – including the pendency of the
10	denying recognition of any Tribal government would		Salazar case – constitutes a legally sufficient basis for the Commission,
11	remain in effect.		as trustee of the RSTF, to withhold the RSTF funds from the Miwok
12	[Exhibits 18-19; Uram Decl., ¶ 6, 8.]		Tribe." Miwok IV at p. 17.
13	69.Intervenors, Plaintiff, and	Disputed. The Intervenors'	The fact itself is undisputed.
14	the BIA each have filed dispositive motions and	federal challenge is irrelevant to the	Plaintiff's argument is non-
15	await the district court's ruling.	proceedings in this case, as ruled by the Court of	responsive and irrelevant. The Court of Appeal did not hold that
16	Exhibit 17; Uram Decl., ¶	Appeal. (pRJN, Ex. "23").	the Salazar case was irrelevant. To the contrary, the Court of Appeal
17	7.]		made it clear that the existence of Salazar case goes to the core
18			question to be decided in this case: "whether the current uncertainty in
19	, and the state of		the federal government's relationship to the Miwok Tribe –
20			including the pendency of the Salazar case – constitutes a legally
21			sufficient basis for the Commission, as trustee of the RSTF, to withhold
22			the RSTF funds from the Miwok Tribe." Miwok IV at p. 17.
23	70.In 2005, in response to the	Disputed. The Commission	The fact itself is undisputed.
24	ongoing Tribal dispute and	never said, and never did, pay any of the subject	Plaintiff's argument is non-
25	that the Tribe did not have	RSTF money to Burley	responsive and irrelevant. It also
26	government, the	individually. The Commission has been	misstates the evidence and ignores Plaintiff's own allegations in the
27	RSTF payments to the	withholding RSTF payments to the Tribe	FAC.
28	1 1	because it claimed an ongoing Tribal leadership	
		-30-	

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1	Intervenors' Undisputed Material Facts and	Plaintiff's Response and	
2	Supporting Evidence	Supporting Evidence	Intervenors' Reply
3	status under the Compact	dispute between Dixie and	
4	demands that we ensure the RSTF distributions go to	Burley called into question who is authorized to accept	
5	the Tribe for the benefit of the Tribe and not merely to	the RSTF payments on behalf of the Tribe, even	
	an individual member," and	though it had previously	
6	therefore it could no longer release RSTF money to Ms.	made RSTRF payments to the Tribe in care of Burley	
7	Burley. The Commission	in the midst of the same	
8	informed Ms. Burley and Mr. Dixie that the withheld	leadership dispute. The Commission then later	
9	funds would be forwarded to the Tribe, with interest,	claimed that since the Tribe under Burley's leadership	
	when the BIA	did not qualify for federal	
10	acknowledged a Tribal government and	contract funding under P.L. 638, the Tribe also could	
11	reestablished government- to-government relations	not qualify for RSTF money either. The Commission	
12	with the Tribe.	also erroneously claimed	
13	Exhibit 20; Exhibit 32 at ¶	that the Tribe needed to be "reorganized" under the	
14	14; FAC, ¶¶ 15-17.]	IRA, and admit more	
		Indians as members of the Tribe, before the Tribe	
15		could qualify for RSTF payments. The	
16		Commission also ignored	
17		the Tribe's right to operate outside the IRA under its	
18		present resolution form of government. (pRJN, Ex.	
		"6" and "7").	
19		Disputed. See No. 22	The fact itself is undisputed.
20	and leadership of the Tribe remains in dispute pending	above.	Plaintiff's argument is non-
21	the outcome of <u>CVMT v.</u>	;   	responsive and irrelevant. It also
22	Salazar, the Commission continues to hold the		misstates the evidence and ignores Plaintiff's own allegations in the
23	Tribe's RSTF money in trust and refuses payment		FAC.
	to Plaintiff.		
24	[Exhibits 4, 5, 6, 7, 11, 12,		
25	14, 19, 20, 21, 22, 23, 24, 25, 29, 30, 31, 33, and 34		
26	(California Gambling		
27	Control Commission Response to CVMT Form		
28	Interrogatories, Set Two, Response to Requests for		
	15555511155 55 155940515 101		

1 2	Intervenors' Undisputed Material Facts and Supporting Evidence	Plaintiff's Response and Supporting Evidence	Intervenors' Reply
3	Admission Nos. 86, 97, 98, 101, 102, 106, 112-114,		
4	119, 121); FAC, ¶¶ 15-17; see also Miwok III at *2, *8		
5	("The Commission contends that because it has		
6 7	a fiduciary duty as trustee of the RSTF, the current uncertainties regarding the		
8	Miwok Tribe's government and membership require it	1000	
9	to withhold the RSTF funds and hold them in trust until		
10	it can be assured that the funds, if released, will be		
11	going to the proper parties."); California Valley		
12	Miwok Tribe v. USA, 424 F.Supp.2d 197, 197, 202		
13	(D.D.C. 2006); California Valley Miwok Tribe v. United States, 515 F.3d		
14	1262, 1267 (D.C. Cir. 2008).]		
15	72.In 2005, after suspending	Disputed. The Intervenors'	The fact itself is undisputed.
16	RSTF payments to the	evidence is irrelevant and misleading. The	Plaintiff's argument misstates the
17	in state court, asking the	Commission never sought declaratory relief with	evidence and fails to explain what portion of this fact it specifically
18	the Commission should	respect to the same issues presented in this case.	disputes. A review of the Exhibits cited by Intervenors demonstrates
20	release the Tribe's RSTF money. Silvia Burley successfully opposed that		that the fact is exactly correct. See also Miwok III at *4 ("In December
21	action, arguing that neither the court nor the		2005 the Commission filed an interpleader action in superior court
22	Commission had any authority to determine the		concerning the proper disposition of the RSTF funds payable to the Miwok Tribe. The suit was
23	proper representative of the Tribe for purposes of RSTF		dismissed on demurrer.").
24	distribution.		
25	[Exhibits 26-28.]		
26			

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1	Dated: April 4, 2013	
2		SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
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4		By MATTHEW S. McCONNELL
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