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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN DIEGO
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13 CALIFORNIA VALLEY MIWOK TRIBE,

14 Plaintiff,

15 v.

16 CALIFORNIA GAMBLING CONTROL
COMMISSION, et al.,

17 Defendants.

No: 37-2008-00075326-CU-CO-CTL

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

18 CALIFORNIA VALLEY MIWOK TRIBE,
19 CALIFORNIA (a.k.a. SHEEP RANCH
RANCHERIA OF ME-WUK INDIANS,
20 CALIFORNIA), YAKIMA K. DIXIE,
VELMA WHITEBEAR, ANTONIA LOPEZ,
21 ANTONE AZEVEDO, MICHAEL
MENDIBLES, AND EVELYN WILSON,

22 Intervenors.
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Date: April 26, 2013

Time: 2:00 p.m.

Dept.: C-62

Judge: The Hon. Ronald L. Styn

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

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
1. Plaintiff's first cause of action for injunctive relief seeks an order compelling defendant California Gambling Control Commission ("Commission") to immediately disburse Revenue Sharing Trust Funds held in trust for the California Valley Miwok Tribe to Plaintiff in care of Silvia Burley. [First Amended Complaint ("FAC"), ¶ 30; <i>California Valley Miwok Tribe v. California Gambling Control Commission</i> , No. D061811 (December 18, 2012), pp. 5, 17.]	Undisputed.	Undisputed.
2. Intervenors filed a Complaint in Intervention in which they joined in with the Commission in opposition to Plaintiff's FAC. [Complaint in intervention.]	Undisputed.	Undisputed.
3. In 1999, California entered into a Tribal-State Gaming Compact ("Compact") with various Indian tribes authorized to conduct gaming in California. [FAC, ¶ 5; <i>Cates v. Chiang</i> , 154 Cal.App.4th 1302, 1305 (2007).]	Undisputed.	Undisputed.

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, 2010 WL 1511744, *2 (4th Dist. 2010) (unpublished) (“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

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
		<p>According to 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" <i>California Valley Miwok Tribe v. California Gambling Control Commission</i>, Case No. D061811, pp. 5-6 (4th Dist. Dec. 18, 2012) (unpublished) ("<i>Miwok IV</i>") (emphasis added); see also <i>Miwok III</i> at *1, 2, 4, 8; <i>Miwok IV</i> at pp. 3, 4, 5, 6, 12, 16, 17, 19.</p>
<p>7. As a trustee, the Commission owes a fiduciary duty to the Non-Compact tribes with respect to the RSTF.</p> <p>[FAC, ¶¶ 6, 25, 30, 34; <i>Miwok III</i> at *9-10.]</p>	<p><u>Disputed.</u> The Compact describes the Commission as a trustee of the RSTF money in an administrative capacity with <u>no discretion</u> as to the use or disbursement of those funds. Thus, by the express terms of the Compacts, the Commission can make no decisions on how the RSTF money is to be distributed to Non-Compact tribes. It serves as a mere depository. (pRJN, Ex. "5")(Section 4.3.2.1(b))</p>	<p>Plaintiff misstates and ignores the evidence.</p> <p>Plaintiff's own First Amended 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." <i>Gibbs v. American Airlines, Inc.</i>, 74 Cal.App.4th 1, 12 (1999).</p> <p>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" <i>Miwok IV</i> at pp. 5-6 (emphasis added); see also <i>Miwok III</i> at *1, 2, 4, 8; <i>Miwok IV</i></p>

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
		at pp. 3, 4, 5, 6, 12, 16, 17, 19.
<p>8. The California Valley Miwok Tribe (the "Tribe") is a Non-Compact tribe.</p> <p>[FAC, ¶¶ 6-7; <i>Miwok III</i> at *2.]</p>	Undisputed.	Undisputed.
<p>9. Plaintiff contends that the Tribe consists of four adult members (Silvia Burley, her two daughters Rashel Reznor and Anjelica Paulk, and Intervenor Yakima Dixie) and that Silvia Burley is the "selected spokesperson" for the Tribe.</p> <p>[Ex. 3, Burley Declaration at ¶ 3; FAC, ¶¶ 8-9 and Verification at p. 14 of FAC.]</p>	<p>Disputed. Plaintiff consists of five members as confirmed by the Assistant Secretary of the Interior, Larry Echo Hawk, in his August 31, 2011 decision, which reaffirmed his December 22, 2010 decision letter declaring the same thing. (pRJN, Ex. "2" and "3"). Silvia Burley is the authorized Chairperson of the Tribe, as confirmed by Yakima Dixie in his recent deposition admitting that he resigned as Tribal Chairman and acknowledging Burley as the Tribal Chairperson, and as acknowledged by the BIA in January 2011, after the ASI's December 22, 2010 decision was rendered. (pRJN, Ex. "21", "31" and "32")</p>	<p>Plaintiff fails to contradict the stated fact which is based entirely on the FAC and Silvia Burley's declaration.</p> <p>The fact states that Plaintiff contends there are only four adult members. This is straight out of Silvia Burley's declaration. (Ex. 3, Burley Declaration at ¶ 3.) The fifth purported member, Angelica Paulk, is presumably not yet an adult.</p> <p>The fact states that Plaintiff contends Silvia Burley is the "selected spokesperson" of the Tribe. Again, this is a direct quote from Silvia Burley's Verification of the FAC.</p> <p>Plaintiff's arguments about the rescinded December 22, 2010 letter and the stayed August 31, 2011 letter have nothing to do with the fact which pertains solely to Plaintiff's contentions. Similarly, Mr. Dixie's conflicted testimony also has nothing to do with Plaintiff's contentions.</p>
<p>10. Intervenors contend that: (1) the Tribe consists of more than 200 adult members and their children; (2) the Tribe is governed by a Tribal council consisting of seven members; and (3) Silvia Burley is neither a Tribal official, Tribal representative nor member</p>	<p>Disputed. Intervenors' contentions are false and fraudulent. <u>See</u> No. 9 above.</p>	<p>Plaintiff fails to contradict the actual fact which is nothing more than Intervenors' contentions. Plaintiff's assertion that these contentions are false and fraudulent is unsupported by any admissible evidence and is irrelevant. Plaintiff continues to ignore the reality that Intervenors contend the Tribe is governed by a seven person Tribal</p>

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

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
<p><i>California Valley Miwok Tribe v. Central California Superintendent</i>, 47 IBIA 91 (June 10, 2008).]</p>		<p>rejected in federal court. <i>See California Valley Miwok Tribe v. USA</i>, 424 F.Supp.2d 197, 197, 202 (D.D.C. 2006); <i>California Valley Miwok Tribe v. United States</i>, 515 F.3d 1262, 1267 (D.C. Cir. 2008); <i>California Valley Miwok Tribe v. Central California Superintendent</i>, 47 IBIA 91 (June 10, 2008).</p>
<p>13. Plaintiff filed a federal lawsuit in 2005 challenging the BIA's refusal to recognize its tribal government. The district court dismissed its complaint in 2006, finding that the Burley government was not entitled to recognition because it did not "reflect the will of a majority of the tribal community." The Court of Appeals for the District of Columbia Circuit affirmed in 2008, holding that Burley's "antimajoritarian gambit deserves no stamp of approval from the Secretary."</p> <p>[<i>California Valley Miwok Tribe v. USA</i>, 424 F.Supp.2d 197, 197, 202 (D.D.C. 2006); <i>California Valley Miwok Tribe v. United States</i>, 515 F.3d 1262, 1267 (D.C. Cir. 2008).]</p>	<p><u>Disputed.</u> <u>See</u> No. 11 above.</p>	<p>Plaintiff's entire argument is non-responsive and irrelevant. There is no dispute that Plaintiff filed a lawsuit in district court and lost. Plaintiff cites to its response to Fact no. 11, but that fact dealt with prior BIA determinations.</p> <p>Regardless, Plaintiff's arguments are entirely irrelevant to the fact or this litigation. This Court has no 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. <i>See California Valley Miwok Tribe v. USA</i>, 424 F.Supp.2d 197, 197, 202 (D.D.C. 2006); <i>California Valley Miwok Tribe v. United States</i>, 515 F.3d 1262, 1267 (D.C. Cir. 2008).</p>
<p>14. On December 22, 2010, the AS-IA issued a decision in response to a federal administrative appeal that Silvia Burley had filed before the Interior Board of Indian Appeals.</p> <p>[Exhibit 8.]</p>	<p><u>Undisputed.</u></p>	<p>Undisputed.</p>

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

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
<p><i>Tribe v. California Gambling Control Commission</i>, No. D061811, p. 9 (12/18/12) (unpublished) ("The implementation of the August 31, 2011 decision was stayed.".)]</p>		
<p>19. Intervenors filed an amended complaint in the federal litigation, and Plaintiff intervened.</p> <p>[Exhibits 17, 19; Uram Decl., ¶¶ 5-6.]</p>	<p><u>Undisputed.</u></p>	<p>Undisputed.</p>
<p>20. Intervenors' federal lawsuit directly challenges the AS-IA's findings regarding the membership and leadership of the Tribe, including the validity of Ms. Burley's general council and the governing documents it is based on. If the federal court grants Intervenors' motion for summary judgment, it will invalidate the August 31 Decision, and the prior BIA decisions denying recognition of any Tribal government would remain in effect.</p> <p>[Exhibits 18-19; Uram Decl., ¶¶ 6, 8.]</p>	<p><u>Disputed.</u> The Intervenors' federal challenge is irrelevant to the proceedings in this case, as ruled by the Court of Appeal. (pRJN, Ex. "23").</p>	<p>The fact itself is undisputed.</p> <p>Plaintiff's argument is non-responsive and irrelevant. The Court of Appeal did not hold that the <i>Salazar</i> case was irrelevant. To the contrary, the Court of Appeal made it clear that the existence of <i>Salazar</i> case goes to the core question to be decided in this case: "whether the current uncertainty in the federal government's relationship to the Miwok Tribe – including the pendency of the <i>Salazar</i> 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.</p>
<p>21. Intervenors, Plaintiff, and the BIA each have filed dispositive motions and await the district court's ruling.</p> <p>[Exhibit 17; Uram Decl., ¶ 7.]</p>	<p><u>Disputed.</u> The Intervenors' federal challenge is irrelevant to the proceedings in this case, as ruled by the Court of Appeal. (pRJN, Ex. "23").</p>	<p>The fact itself is undisputed.</p> <p>Plaintiff's argument is non-responsive and irrelevant. The Court of Appeal did not hold that the <i>Salazar</i> case was irrelevant. To the contrary, the Court of Appeal made it clear that the existence of <i>Salazar</i> case goes to the core question to be decided in this case: "whether the current uncertainty in the federal government's relationship to the Miwok Tribe –</p>

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
		including the pendency of the <i>Salazar</i> 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.
<p>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.</p> <p>[Exhibit 20; Exhibit 32 at ¶ 14; FAC, ¶¶ 15-17.]</p>	<p>Disputed. The Commission never said, and never did, pay any of the subject RSTF money to Burley individually. The Commission has been withholding RSTF payments to the Tribe because it claimed an ongoing Tribal leadership dispute between Dixie and Burley called into question who is authorized to accept the RSTF payments on behalf of the Tribe, even though it had previously made 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 federal contract funding under P.L. 638, the Tribe also could not qualify for RSTF money either. The Commission also erroneously claimed that the Tribe needed to be “reorganized” under the IRA, and admit more Indians as members of the Tribe, before the Tribe could qualify for RSTF payments. The Commission also ignored the Tribe’s right to operate outside the IRA under its present resolution form of government. (pRJN, Ex. “6” and “7”).</p>	<p>The fact itself is undisputed.</p> <p>Plaintiff’s argument is non-responsive and irrelevant. It also misstates the evidence and ignores Plaintiff’s own allegations in the FAC.</p>

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
<p>23. Because the membership and leadership of the Tribe remains in dispute pending the outcome of <i>CVMT v. Salazar</i>, the Commission continues to hold the Tribe's RSTF money in trust and refuses payment to Plaintiff.</p> <p>[Exhibits 4, 5, 6, 7, 11, 12, 14, 19, 20, 21, 22, 23, 24, 25, 29, 30, 31, 33, and 34 (California Gambling Control Commission Response to CVMT Form Interrogatories, Set Two, Response to Requests for Admission Nos. 86, 97, 98, 101, 102, 106, 112-114, 119, 121); FAC, ¶¶ 15-17; <i>see also Miwok III</i> at *2, *8 ("The Commission contends that because it has a fiduciary duty as trustee of the RSTF, the current uncertainties regarding the Miwok Tribe's government and membership require it to withhold the RSTF funds and hold them in trust until it can be assured that the funds, if released, will be going to the proper parties."); <i>California Valley Miwok Tribe v. USA</i>, 424 F.Supp.2d 197, 197, 202 (D.D.C. 2006); <i>California Valley Miwok Tribe v. United States</i>, 515 F.3d 1262, 1267 (D.C. Cir. 2008).]</p>	<p>Disputed. <u>See</u> No. 22 above.</p>	<p>The fact itself is undisputed.</p> <p>Plaintiff's argument is non-responsive and irrelevant. It also misstates the evidence and ignores Plaintiff's own allegations in the FAC.</p>
<p>24. In 2005, after suspending RSTF payments to the Tribe, the Commission filed an interpleader action in state court, asking the court to determine to whom</p>	<p>Disputed. The Intervenors' evidence is irrelevant and misleading. The Commission never sought declaratory relief with respect to the same issues</p>	<p>The fact itself is undisputed.</p> <p>Plaintiff's argument misstates the evidence and fails to explain what portion of this fact it specifically disputes. A review of the Exhibits</p>

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

ISSUE NO. 2

PLAINTIFF'S SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF HAS NO MERIT

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
<p>25. Plaintiff's second cause of action for declaratory relief seeks an order declaring that defendant California Gambling Control Commission ("Commission") has a duty to immediately disburse Revenue Sharing Trust Funds held in trust for the California Valley Miwok Tribe to Plaintiff in care of Silvia Burley.</p> <p>[First Amended Complaint ("FAC"), ¶ 35; <i>California Valley Miwok Tribe v. California Gambling Control Commission</i>, No. D061811 (December 18, 2012), pp. 5, 17.]</p>	<p>Undisputed.</p>	<p>Undisputed.</p>
<p>26. Intervenors filed a Complaint in Intervention in which they joined in with the Commission in</p>	<p>Undisputed.</p>	<p>Undisputed.</p>

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
<p>opposition to Plaintiff's FAC.</p> <p>[Complaint in Intervention.]</p>		
<p>27. In 1999, California entered into a Tribal-State Gaming Compact ("Compact") with various Indian tribes authorized to conduct gaming in California.</p> <p>[FAC, ¶ 5; <i>Cates v. Chiang</i>, 154 Cal.App.4th 1302, 1305 (2007).]</p>	Undisputed.	Undisputed.
<p>28. Under the Compact, a Non-Compact tribe is a federally recognized Indian tribe in California that operates fewer than 350 gaming devices.</p> <p>[Ex.2, Compact § 4.3.2(a)(i); <i>California Valley Miwok Tribe v. California Gambling Control Commission</i>, 2010 WL 1511744, *2 (4th Dist. 2010) (unpublished) ("<i>Miwok III</i>").]</p>	Undisputed.	Undisputed.
<p>29. Under the Compact, each eligible Non-Compact tribe is entitled to \$1.1 million per year from the Revenue Sharing Trust Fund ("RSTF").</p> <p>[FAC, ¶¶ 6-7; Ex. 2, Compact § 4.3.2.1; <i>Miwok III</i> at *2.]</p>	Undisputed.	Undisputed.
<p>30. The Commission serves as the trustee of the RSTF.</p> <p>[FAC, ¶¶ 6, 22, 29, 34; Ex. 2, Compact § 4.3.2.1(b); <i>Miwok III</i> at *3.]</p>	Disputed. The Compact describes the Commission as a trustee of the RSTF money in an administrative capacity with <u>no discretion</u> as to the use or disbursement of those	<p>Plaintiff misstates and ignores the evidence.</p> <p>First, the Compact expressly states: "The Commission shall serve as the trustee of the fund." (Compact, §</p>

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
	funds. Thus, by the express terms of the Compacts, the Commission can make no decisions on how the RSTF money is to be distributed to Non-Compact tribes. It serves as a mere depository. (pRJN, Ex. "5")(Section 4.3.2.1(b))	<p>4.3.2.1(b).)</p> <p>Second, Plaintiff's own First Amended Complaint repeatedly states that the Commission serves 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 contractually and statutorily designated to 'serve as the trustee of the fund.'" (FAC, ¶ 29.) "A complaint's factual allegations constitute judicial admissions binding on the plaintiff." <i>Gibbs v. American Airlines, Inc.</i>, 74 Cal.App.4th 1, 12 (1999).</p> <p>According to 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" <i>California Valley Miwok Tribe v. California Gambling Control Commission</i>, Case No. D061811, pp. 5-6 (4th Dist. Dec. 18, 2012) (unpublished) ("<i>Miwok IV</i>") (emphasis added); see also <i>Miwok III</i> at *1, 2, 4, 8; <i>Miwok IV</i> at pp. 3, 4, 5, 6, 12, 16, 17, 19.</p>
<p>31. As a trustee, the Commission owes a fiduciary duty to the Non-Compact tribes with respect to the RSTF.</p> <p>[FAC, ¶¶ 6, 25, 30, 34; <i>Miwok III</i> at *9-10.]</p>	<p><u>Disputed.</u> The Compact describes the Commission as a trustee of the RSTF money in an administrative capacity with <u>no discretion</u> as to the use or disbursement of those funds. Thus, by the express terms of the Compacts, the Commission can make no decisions on how the RSTF money is to be distributed to Non-Compact tribes. It serves as a mere depository. (pRJN, Ex. "5")(Section</p>	<p>Plaintiff misstates and ignores the evidence.</p> <p>Plaintiff's own First Amended 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</p>

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
	4.3.2.1(b))	<p>complaint's factual allegations constitute judicial admissions binding on the plaintiff." <i>Gibbs v. American Airlines, Inc.</i>, 74 Cal.App.4th 1, 12 (1999).</p> <p>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" <i>Miwok IV</i> at pp. 5-6 (emphasis added); see also <i>Miwok III</i> at *1, 2, 4, 8; <i>Miwok IV</i> at pp. 3, 4, 5, 6, 12, 16, 17, 19.</p>
<p>32. The California Valley Miwok Tribe (the "Tribe") is a Non-Compact tribe.</p> <p>[FAC, ¶¶ 6-7; <i>Miwok III</i> at *2.]</p>	<u>Undisputed.</u>	Undisputed.
<p>33. Plaintiff contends that the Tribe consists of four adult members (Silvia Burley, her two daughters Rashel Reznor and Anjelica Paulk, and Intervenor Yakima Dixie) and that Silvia Burley is the "selected spokesperson" for the Tribe.</p> <p>[Ex. 3, Burley Declaration at ¶ 3; FAC, ¶¶ 8-9 and Verification at p. 14 of FAC.]</p>	<p><u>Disputed.</u> Plaintiff consists of five members as confirmed by the Assistant Secretary of the Interior, Larry Echo Hawk, in his August 31, 2011 decision, which reaffirmed his December 22, 2010 decision letter declaring the same thing. (pRJN, Ex. "2" and "3"). Silvia Burley is the authorized Chairperson of the Tribe, as confirmed by Yakima Dixie in his recent deposition admitting that he resigned as Tribal Chairman and acknowledging Burley as the Tribal Chairperson, and as acknowledged by the BIA in January 2011, after the ASI's December 22, 2010 decision was rendered. (pRJN, Ex. "21", "31" and</p>	<p>Plaintiff fails to contradict the stated fact which is based entirely on the FAC and Silvia Burley's declaration.</p> <p>The fact states that Plaintiff contends there are only four adult members. This is straight out of Silvia Burley's declaration. (Ex. 3, Burley Declaration at ¶ 3.) The fifth purported member, Angelica Paulk, is presumably not yet an adult.</p> <p>The fact states that Plaintiff contends Silvia Burley is the "selected spokesperson" of the Tribe. Again, this is a direct quote from Silvia Burley's Verification of the FAC.</p> <p>Plaintiff's arguments about the rescinded December 22, 2010 letter and the stayed August 31, 2011 letter have nothing to do with the</p>

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
	"32")	fact which pertains solely to Plaintiff's contentions. Similarly, Mr. Dixie's conflicted testimony also has nothing to do with Plaintiff's contentions.
<p>34. Intervenors contend that: (1) the Tribe consists of more than 200 adult members and their children; (2) the Tribe is governed by a Tribal council consisting of seven members; and (3) Silvia Burley is neither a Tribal official, Tribal representative nor member of the Tribal government.</p> <p>[WhiteBear Decl., ¶¶ 1-8; Complaint in Intervention, ¶¶ 4, 8, 13, 15, 22.]</p>	<p><u>Disputed.</u> Intervenors' contentions are false and fraudulent. <u>See</u> No. 9 above.</p>	<p>Plaintiff fails to contradict the actual fact which is nothing more than Intervenors' contentions. Plaintiff's assertion that these contentions are false and fraudulent is unsupported by any admissible evidence and is irrelevant. Plaintiff continues to ignore the reality that Intervenors contend the Tribe is governed by a seven person Tribal council, not by Yakima Dixie.</p>
<p>35. Commencing in February 2005, BIA issued a series of decisions in which it stated that there was no recognized government or governing body of the Tribe. BIA further stated that it would assist the Tribe in identifying its full membership and forming a valid Tribal government.</p> <p>[Exhibits 4, 5, 29, 30, 31; FAC, ¶¶ 12-17.]</p>	<p><u>Disputed.</u> The BIA's actions were legally erroneous, since they failed to recognize the undisputed fact that the Tribe had since 1998 a resolution form of government established under Resolution #GC-98-01, which was drafted by the BIA, and that the BIA had no legal basis to force the Tribe under Burley's leadership to "reorganize" under the Indian Reorganization Act of 1934 ("IRA"), condition federal contract funding on the Tribe being organized under the IRA, or force the Tribe to add to its membership against its will. (pRJN, Ex. "3")</p>	<p>Plaintiff's entire argument is non-responsive and irrelevant. The fact simply reiterates various determinations by BIA commencing in 2004. Many of these determinations are reiterated in Plaintiff's own complaint.</p> <p>Plaintiff attempts to argue the validity of BIA's prior determinations. First, such arguments are entirely irrelevant to the fact or this litigation. Second, this Court has no jurisdiction to decide the validity of BIA's prior determinations. Third, all of Plaintiff's arguments have previously been litigated and rejected in federal court. <i>See California Valley Miwok Tribe v. USA</i>, 424 F.Supp.2d 197, 197, 202 (D.D.C. 2006); <i>California Valley Miwok Tribe v. United States</i>, 515 F.3d 1262, 1267 (D.C. Cir. 2008).</p>

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
<p>36. Commencing in July 2005, BIA issued a series of decisions in which it denied funding to Plaintiff and Silvia Burley under Public Law 93-638 ("PL-638"), the Indian Self-Determination and Education Assistance Act, through which the BIA supports recognized tribal governments in providing services to their members. Burley challenged those decisions, and the Interior Board of Indian Appeals upheld the decision.</p> <p>[Exhibits 6, 7; FAC, ¶¶ 15-17; 25 U.S.C. § 450 et seq.; <i>California Valley Miwok Tribe v. Central California Superintendent</i>, 47 IBIA 91 (June 10, 2008).]</p>	<p>Disputed. See No. 11 above.</p>	<p>Plaintiff's entire argument is non-responsive and irrelevant. The fact simply recites BIA's decision to cease providing PL-638 funding to Plaintiff and Silvia Burley commencing in 2005. There is no dispute that this occurred. There is also no dispute that Silvia Burley challenged this decision and lost.</p> <p>Plaintiff attempts to argue the validity of BIA's prior determinations. First, such arguments are entirely irrelevant to the fact or this litigation. Second, this Court has no jurisdiction to decide the validity of BIA's prior determinations. Third, all of Plaintiff's arguments have previously been litigated and rejected in federal court. See <i>California Valley Miwok Tribe v. USA</i>, 424 F.Supp.2d 197, 197, 202 (D.D.C. 2006); <i>California Valley Miwok Tribe v. United States</i>, 515 F.3d 1262, 1267 (D.C. Cir. 2008); <i>California Valley Miwok Tribe v. Central California Superintendent</i>, 47 IBIA 91 (June 10, 2008).</p>
<p>37. Plaintiff filed a federal lawsuit in 2005 challenging the BIA's refusal to recognize its tribal government. The district court dismissed its complaint in 2006, finding that the Burley government was not entitled to recognition because it did not "reflect the will of a majority of the tribal community." The Court of Appeals for the District of Columbia Circuit affirmed in 2008, holding that Burley's "antimajoritarian gambit deserves no stamp of approval from the Secretary."</p>	<p>Disputed. See No. 11 above.</p>	<p>Plaintiff's entire argument is non-responsive and irrelevant. There is no dispute that Plaintiff filed a lawsuit in district court and lost. Plaintiff cites to its response to Fact no. 11, but that fact dealt with prior BIA determinations.</p> <p>Regardless, Plaintiff's arguments are entirely irrelevant to the fact or this litigation. This Court has no 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 <i>California Valley Miwok Tribe v. USA</i>, 424 F.Supp.2d 197, 197, 202 (D.D.C. 2006); <i>California Valley Miwok Tribe v. United States</i>, 515</p>

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

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

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

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

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
going to the proper parties."); <i>California Valley Miwok Tribe v. USA</i> , 424 F.Supp.2d 197, 197, 202 (D.D.C. 2006); <i>California Valley Miwok Tribe v. United States</i> , 515 F.3d 1262, 1267 (D.C. Cir. 2008).]		
48. In 2005, after suspending RSTF payments to the Tribe, the Commission filed an interpleader action in state court, asking the court to determine to whom the Commission should release the Tribe's RSTF money. Silvia Burley successfully opposed that action, arguing that neither the court nor the Commission had any authority to determine the proper representative of the Tribe for purposes of RSTF distribution. [Exhibits 26-28.]	<u>Disputed.</u> The Intervenors' evidence is irrelevant and misleading. The Commission never sought declaratory relief with respect to the same issues presented in this case.	The fact itself is undisputed. Plaintiff's argument misstates the evidence and fails to explain what portion of this fact it specifically disputes. A review of the Exhibits cited by Intervenors demonstrates that the fact is exactly correct. <i>See also Miwok III</i> at *4 ("In December 2005 the Commission filed an interpleader action in superior court concerning the proper disposition of the RSTF funds payable to the Miwok Tribe. The suit was dismissed on demurrer.").

ISSUE NO. 3

PLAINTIFF'S FOURTH CAUSE OF ACTION FOR WRIT OF MANDATE HAS NO MERIT

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
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.

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
<p>California Valley Miwok Tribe to Plaintiff in care of Silvia Burley.</p> <p>[First Amended Complaint ("FAC"), ¶¶ 30, 35, 44, and Prayer for Relief no. 3; <i>California Valley Miwok Tribe v. California Gambling Control Commission</i>, No. D061811 (December 18, 2012), pp. 5, 17.]</p>		
<p>50. Intervenors filed a Complaint in Intervention in which they joined in with the Commission in opposition to Plaintiff's FAC.</p> <p>[Complaint in Intervention.]</p>	Undisputed.	Undisputed.
<p>51. In 1999, California entered into a Tribal-State Gaming Compact ("Compact") with various Indian tribes authorized to conduct gaming in California.</p> <p>[FAC, ¶ 5; <i>Cates v. Chiang</i>, 154 Cal.App.4th 1302, 1305 (2007).]</p>	Undisputed.	Undisputed.
<p>52. Under the Compact, a Non-Compact tribe is a federally recognized Indian tribe in California that operates fewer than 350 gaming devices.</p> <p>[Ex.2, Compact § 4.3.2(a)(i); <i>California Valley Miwok Tribe v. California Gambling Control Commission</i>, 2010 WL 1511744, *2 (4th Dist. 2010) (unpublished) ("<i>Miwok III</i>").]</p>	Undisputed.	Undisputed.

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
<p>53. Under the Compact, each eligible Non-Compact tribe is entitled to \$1.1 million per year from the Revenue Sharing Trust Fund ("RSTF").</p> <p>[FAC, ¶¶ 6-7; Ex. 2, Compact § 4.3.2.1; <i>Miwok III</i> at *2.]</p>	<p>Undisputed.</p>	<p>Undisputed.</p>
<p>54. The Commission serves as the trustee of the RSTF.</p> <p>[FAC, ¶¶ 6, 22, 29, 34; Ex. 2, Compact § 4.3.2.1(b); <i>Miwok III</i> at *3.]</p>	<p>Disputed. The Compact describes the Commission as a trustee of the RSTF money in an administrative capacity with <u>no discretion</u> as to the use or disbursement of those funds. Thus, by the express terms of the Compacts, the Commission can make no decisions on how the RSTF money is to be distributed to Non-Compact tribes. It serves as a mere depository. (pRJN, Ex. "5")(Section 4.3.2.1(b))</p>	<p>Plaintiff misstates and ignores the evidence.</p> <p>First, the Compact expressly states: "The Commission shall serve as the trustee of the fund." (Compact, § 4.3.2.1(b).)</p> <p>Second, Plaintiff's own First Amended Complaint repeatedly states that the Commission serves 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 contractually and statutorily designated to 'serve as the trustee of the fund.'" (FAC, ¶ 29.) "A complaint's factual allegations constitute judicial admissions binding on the plaintiff." <i>Gibbs v. American Airlines, Inc.</i>, 74 Cal.App.4th 1, 12 (1999).</p> <p>According to 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" <i>California Valley Miwok Tribe v. California Gambling Control Commission</i>, Case No. D061811, pp. 5-6 (4th Dist. Dec. 18, 2012) (unpublished) ("<i>Miwok IV</i>") (emphasis added); see also <i>Miwok III</i> at *1, 2, 4, 8; <i>Miwok</i></p>

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
		<i>IV</i> at pp. 3, 4, 5, 6, 12, 16, 17, 19.
<p>55. As a trustee, the Commission owes a fiduciary duty to the Non-Compact tribes with respect to the RSTF.</p> <p>[FAC, ¶¶ 6, 25, 30, 34; <i>Miwok III</i> at *9-10.]</p>	<p><u>Disputed.</u> The Compact describes the Commission as a trustee of the RSTF money in an administrative capacity with <u>no discretion</u> as to the use or disbursement of those funds. Thus, by the express terms of the Compacts, the Commission can make no decisions on how the RSTF money is to be distributed to Non-Compact tribes. It serves as a mere depository. (pRJN, Ex. "5")(Section 4.3.2.1(b))</p>	<p>Plaintiff misstates and ignores the evidence.</p> <p>Plaintiff's own First Amended 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." <i>Gibbs v. American Airlines, Inc.</i>, 74 Cal.App.4th 1, 12 (1999).</p> <p>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" <i>Miwok IV</i> at pp. 5-6 (emphasis added); see also <i>Miwok III</i> at *1, 2, 4, 8; <i>Miwok IV</i> at pp. 3, 4, 5, 6, 12, 16, 17, 19.</p>
<p>56. The California Valley Miwok Tribe (the "Tribe") is a Non-Compact tribe.</p> <p>[FAC, ¶¶ 6-7; <i>Miwok III</i> at *2.]</p>	<p><u>Undisputed.</u></p>	<p>Undisputed.</p>
<p>57. Plaintiff contends that the Tribe consists of four adult members (Silvia Burley, her two daughters Rashel Reznor and Anjelica Paulk, and Intervenor Yakima Dixie) and that Silvia</p>	<p><u>Disputed.</u> Plaintiff consists of five members as confirmed by the Assistant Secretary of the Interior, Larry Echo Hawk, in his August 31, 2011 decision, which reaffirmed his</p>	<p>Plaintiff fails to contradict the stated fact which is based entirely on the FAC and Silvia Burley's declaration.</p> <p>The fact states that Plaintiff contends there are only four adult</p>

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
<p>Burley is the "selected spokesperson" for the Tribe.</p> <p>[Ex. 3, Burley Declaration at ¶ 3; FAC, ¶¶ 8-9 and Verification at p. 14 of FAC.]</p>	<p>December 22, 2010 decision letter declaring the same thing. (pRJN, Ex. "2" and "3"). Silvia Burley is the authorized Chairperson of the Tribe, as confirmed by Yakima Dixie in his recent deposition admitting that he resigned as Tribal Chairman and acknowledging Burley as the Tribal Chairperson, and as acknowledged by the BIA in January 2011, after the ASI's December 22, 2010 decision was rendered. (pRJN, Ex. "21", "31" and "32")</p>	<p>members. This is straight out of Silvia Burley's declaration. (Ex. 3, Burley Declaration at ¶ 3.) The fifth purported member, Angelica Paulk, is presumably not yet an adult.</p> <p>The fact states that Plaintiff contends Silvia Burley is the "selected spokesperson" of the Tribe. Again, this is a direct quote from Silvia Burley's Verification of the FAC.</p> <p>Plaintiff's arguments about the rescinded December 22, 2010 letter and the stayed August 31, 2011 letter have nothing to do with the fact which pertains solely to Plaintiff's contentions. Similarly, Mr. Dixie's conflicted testimony also has nothing to do with Plaintiff's contentions.</p>
<p>58. Intervenors contend that: (1) the Tribe consists of more than 200 adult members and their children; (2) the Tribe is governed by a Tribal council consisting of seven members; and (3) Silvia Burley is neither a Tribal official, Tribal representative nor member of the Tribal government.</p> <p>[WhiteBear Decl., ¶¶ 1-8: Complaint in Intervention, ¶¶ 4, 8, 13, 15, 22.]</p>	<p><u>Disputed.</u> Intervenors' contentions are false and fraudulent. <u>See</u> No. 9 above.</p>	<p>Plaintiff fails to contradict the actual fact which is nothing more than Intervenors' contentions. Plaintiff's assertion that these contentions are false and fraudulent is unsupported by any admissible evidence and is irrelevant. Plaintiff continues to ignore the reality that Intervenors contend the Tribe is governed by a seven person Tribal council, not by Yakima Dixie.</p>
<p>59. Commencing in February 2005, BIA issued a series of decisions in which it stated that there was no recognized government or governing body of the Tribe. BIA further stated that it would assist the Tribe in identifying its full membership and forming a</p>	<p><u>Disputed.</u> The BIA's actions were legally erroneous, since they failed to recognize the undisputed fact that the Tribe had since 1998 a resolution form of government established under Resolution #GC-98-01, which was drafted by the BIA, and that the BIA had no legal basis to force</p>	<p>Plaintiff's entire argument is non-responsive and irrelevant. The fact simply reiterates various determinations by BIA commencing in 2004. Many of these determinations are reiterated in Plaintiff's own complaint.</p> <p>Plaintiff attempts to argue the validity of BIA's prior determinations. First, such</p>

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

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<p>that the Burley government was not entitled to recognition because it did not "reflect the will of a majority of the tribal community." The Court of Appeals for the District of Columbia Circuit affirmed in 2008, holding that Burley's "antimajoritarian gambit deserves no stamp of approval from the Secretary."</p> <p>[<i>California Valley Miwok Tribe v. USA</i>, 424 F.Supp.2d 197, 197, 202 (D.D.C. 2006); <i>California Valley Miwok Tribe v. United States</i>, 515 F.3d 1262, 1267 (D.C. Cir. 2008).]</p>		<p>BIA determinations.</p> <p>Regardless, Plaintiff's arguments are entirely irrelevant to the fact or this litigation. This Court has no 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. <i>See California Valley Miwok Tribe v. USA</i>, 424 F.Supp.2d 197, 197, 202 (D.D.C. 2006); <i>California Valley Miwok Tribe v. United States</i>, 515 F.3d 1262, 1267 (D.C. Cir. 2008).</p>
<p>62. On December 22, 2010, the AS-IA issued a decision in response to a federal administrative appeal that Silvia Burley had filed before the Interior Board of Indian Appeals.</p> <p>[Exhibit 8.]</p>	<u>Undisputed.</u>	<u>Undisputed.</u>
<p>63. Intervenors filed an administrative appeal with the BIA on February 9, 2011. As of today, BIA's Regional Director has never responded to this appeal.</p> <p>[Exhibit 11; Uram Decl., ¶ 2.]</p>	<u>Disputed.</u> The letter the Intervenors attempted appeal was not a "decision" for purposes of appeal.	The underlying fact is undisputed.
<p>64. Intervenors filed suit in federal district court for the District of Columbia, challenging the December 22 Decision.</p> <p>[Uram Decl., ¶ 4; <i>California Valley Miwok</i></p>	<u>Undisputed.</u>	<u>Undisputed.</u>

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
<p><i>Tribe v. Salazar</i>, No. 1:11-cv-00160-RWR (Jan. 24, 2011).]</p>		
<p>65. The AS-IA rescinded the December 22 Decision and announced that he would issue a new decision after briefing by both parties.</p> <p>[Exhibit 12.]</p>	<p><u>Disputed.</u> The ASI never used the word "rescind." He set aside the decision and later reaffirmed it in his August 31, 2011 decision. (pRJN, Ex. "3").</p>	<p>While Plaintiff argues semantics over "set aside" versus "rescind," the undisputed reality is that the December 22, 2010 ceased to have any force or effect as of April 1, 2011.</p> <p>Plaintiff's assertion that the August 11, 2011 decision "reaffirmed" the December 22, 2010 decision is entirely irrelevant to Intervenors' fact and should be disregarded. Moreover, it is not accurate. While portions of the December 22, 2010 decision were affirmed, other portions were not.</p>
<p>66. On August 31, 2011, the AS-IA issued a new decision. However, the AS-IA specifically stayed the implementation of his decision pending resolution of Intervenors' federal lawsuit.</p> <p>[Exhibit 13, p. 8; <i>see also</i> Exhibits 14, 15, 16; <i>California Valley Miwok Tribe v. California Gambling Control Commission</i>, No. D061811, p. 9 (12/18/12) (unpublished) ("The implementation of the August 31, 2011 decision was stayed.").]</p>	<p><u>Undisputed.</u></p>	<p>Undisputed.</p>
<p>67. Intervenors filed an amended complaint in the federal litigation, and Plaintiff intervened.</p> <p>[Exhibits 17, 19; Uram Decl., ¶¶ 5-6.]</p>	<p><u>Undisputed.</u></p>	<p>Undisputed.</p>

<u>Intervenors' Undisputed Material Facts and Supporting Evidence</u>	<u>Plaintiff's Response and Supporting Evidence</u>	<u>Intervenors' Reply</u>
<p>68. Intervenor's federal lawsuit directly challenges the AS-IA's findings regarding the membership and leadership of the Tribe, including the validity of Ms. Burley's general council and the governing documents it is based on. If the federal court grants Intervenor's motion for summary judgment, it will invalidate the August 31 Decision, and the prior BIA decisions denying recognition of any Tribal government would remain in effect.</p> <p>[Exhibits 18-19; Uram Decl., ¶¶ 6, 8.]</p>	<p><u>Disputed.</u> The Intervenor's federal challenge is irrelevant to the proceedings in this case, as ruled by the Court of Appeal. (pRJN, Ex. "23").</p>	<p>The fact itself is undisputed.</p> <p>Plaintiff's argument is non-responsive and irrelevant. The Court of Appeal did not hold that the <i>Salazar</i> case was irrelevant. To the contrary, the Court of Appeal made it clear that the existence of <i>Salazar</i> case goes to the core question to be decided in this case: "whether the current uncertainty in the federal government's relationship to the Miwok Tribe – including the pendency of the <i>Salazar</i> 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.</p>
<p>69. Intervenor, Plaintiff, and the BIA each have filed dispositive motions and await the district court's ruling.</p> <p>[Exhibit 17; Uram Decl., ¶ 7.]</p>	<p><u>Disputed.</u> The Intervenor's federal challenge is irrelevant to the proceedings in this case, as ruled by the Court of Appeal. (pRJN, Ex. "23").</p>	<p>The fact itself is undisputed.</p> <p>Plaintiff's argument is non-responsive and irrelevant. The Court of Appeal did not hold that the <i>Salazar</i> case was irrelevant. To the contrary, the Court of Appeal made it clear that the existence of <i>Salazar</i> case goes to the core question to be decided in this case: "whether the current uncertainty in the federal government's relationship to the Miwok Tribe – including the pendency of the <i>Salazar</i> 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.</p>
<p>70. 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</p>	<p><u>Disputed.</u> 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</p>	<p>The fact itself is undisputed.</p> <p>Plaintiff's argument is non-responsive and irrelevant. It also misstates the evidence and ignores Plaintiff's own allegations in the FAC.</p>

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<p>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.</p> <p>[Exhibit 20; Exhibit 32 at ¶ 14; FAC, ¶¶ 15-17.]</p>	<p>dispute between Dixie and Burley called into question who is authorized to accept the RSTF payments on behalf of the Tribe, even though it had previously made 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 federal contract funding under P.L. 638, the Tribe also could not qualify for RSTF money either. The Commission also erroneously claimed that the Tribe needed to be "reorganized" under the IRA, and admit more Indians as members of the Tribe, before the Tribe could qualify for RSTF payments. The Commission also ignored the Tribe's right to operate outside the IRA under its present resolution form of government. (pRJN, Ex. "6" and "7").</p>	
<p>71. Because the membership and leadership of the Tribe remains in dispute pending the outcome of <u>CVMT v. Salazar</u>, the Commission continues to hold the Tribe's RSTF money in trust and refuses payment to Plaintiff.</p> <p>[Exhibits 4, 5, 6, 7, 11, 12, 14, 19, 20, 21, 22, 23, 24, 25, 29, 30, 31, 33, and 34 (California Gambling Control Commission Response to CVMT Form Interrogatories, Set Two, Response to Requests for</p>	<p><u>Disputed</u>. See No. 22 above.</p>	<p>The fact itself is undisputed.</p> <p>Plaintiff's argument is non-responsive and irrelevant. It also misstates the evidence and ignores Plaintiff's own allegations in the FAC.</p>

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

1 Dated: April 9, 2013

2 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

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4 By



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5 Attorneys for Intervenors
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