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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN DIEGO
12

13 CALIFORNIA VALLEY MIWOK
14 TRIBE,

15 Plaintiff,

16 v.

17 CALIFORNIA GAMBLING CONTROL
18 COMMISSION, et al.,

19 Defendants.

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

NOTICE OF LODGMENT OF EXHIBITS
IN SUPPORT OF INTERVENORS'
REPLY RE MOTION FOR SUMMARY
JUDGMENT OR, IN THE
ALTERNATIVE, SUMMARY
ADJUDICATION

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

24 Intervenors.

Date: April 26, 2013

Time: 2:00 p.m.

Dept.: C-62

Judge: The Hon. Ronald L. Styn

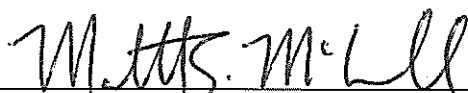
Intervenors hereby lodge the following exhibits in support of their reply re
motion for summary judgment or summary adjudication.

<u>Exhibit</u>	<u>Description</u>
A.	Transcript of Hearing for December 13, 2012 Oral Argument in <i>California Valley Miwok Tribe v. Superior Court</i> , Case No. D061811 (December 18, 2012)
B.	Portions of the Deposition Transcript for Yakima Dixie, Vol. 1
C.	Plaintiff's Ex Parte Application for Entry of Judgment (without Exhibits)
D.	October 21, 2011 Tentative Order Denying Plaintiff's Motion for Entry of Judgment

Dated: April 9, 2013

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By



MATTHEW S. McCONNELL

Attorneys for Intervenors

EXHIBIT A

EXHIBIT A

)
 CALIFORNIA VALLEY MIWOK TRIBE,)
 Petitioner,)
)
 vs.) D061811
) San Diego County No.
 THE SUPERIOR COURT OF) 37-2008-00075326-CU-CO-CTL
 SAN DIEGO COUNTY,)
 Respondent,)
 CALIFORNIA GAMBLING CONTROL)
 COMMISSION et al.,)
 Real Parties in Interest.)
)

TRANSCRIBED MARCH 18, 2013

1

1 (Transcript begins at 26:21
2 of the compact disc recording.)
3 UNIDENTIFIED SPEAKER: All rise. The Court of
4 Appeal, State of California, Fourth Appellate District,
5 Division One is now in session with the Honorable
6 Justice Nares presiding. Will you please be seated?
7 JUSTICE NARES: Good morning, ladies and
8 gentlemen. We have five cases on our calendar. We're
9 gonna take the Miwok Tribe case first and then there'll
10 be a change of panel and we'll hear the rest of the
11 cases in order.
12 As I understand that there's a party missing on
13 (inaudible) versus Bank of America?
14 UNIDENTIFIED SPEAKER: (Inaudible.)
15 JUSTICE NARES: You're calling? Okay.
16 To my right is Justice McIntyre. And to my
17 left is Justice Irion.
18 We've read the brief. We're familiar with the
19 facts and some of you are repeat customers so you do
20 recite everything. And by repeat customers, I'm
21 referring to the cases; seem to be coming back.
22 Okay. Counsel, let's proceed on California
23 Valley Miwok Tribe versus Superior Court, et cetera.
24 Please state your appearances when you make
25 your presentation. Let's hear from the appellant -

1 petitioner.
2 MR. CORRALES: Yes, your Honors. Manuel
3 Corrales and Terry Singleton for the appellants.
4 JUSTICE NARES: Have a seat.
5 MR. HOUSTON: Good morning, Justices. Neil
6 Houston, Deputy Attorney General appearing for the
7 respondent, California Gambling Control Commission.
8 JUSTICE NARES: Thank you. Because we have a
9 tape, we're going to have you make your appearance when
10 you start speaking.
11 Okay. Mr. Corrales, aren't you first as the
12 Petitioner?
13 MR. CORRALES: Yes, your Honor.
14 JUSTICE NARES: Okay.
15 MR. CORRALES: May it please the court,
16 Mr. Singleton asked that I conduct the oral argument on
17 this case. We're both on the case together. The --
18 There are two matters that we are requesting
19 and that is in this case. The first, we would like the
20 court to issue an order directing the trial court to
21 allow dispositive motions to be filed in light of
22 Mr. Dixie's recent deposition testimony and in the
23 alternative, direct judgment be entered.
24 The court previously signed an order granting
25 judgment on the pleadings and just -- is just holding

1 off on entering the judgment.
2 But the heart of the issue here is the -- the
3 recent deposition testimony of Yakima Dixie in which
4 he -- in which he admitted that he resigned as tribal
5 chairman. And he acknowledged that Silvia Burley was
6 the new tribal chairperson.
7 JUSTICE IRION: Well, let -- wait -- wait just
8 a minute, Counsel. I mean, all we're really here on is
9 a procedural matter. You asked and petitioned for a
10 writ that you -- that the trial court be ordered to lift
11 the stay and that you be allowed to file a dispositive
12 motion. So that the merits of the dispositive motion,
13 speaking only for myself, are not at issue. The
14 question is why should the court lift the stay and allow
15 you to file summary judgment motion procedure trial.
16 MR. CORRALES: Yes, your Honor, I understand
17 that.
18 Okay. Well, the -- the reason why we believe
19 that the stay should be lifted is because the federal
20 litigation has nothing to do with the -- the issue that
21 the trial court must decide with respect to the
22 commission's duties to release funds to the tribe.
23 JUSTICE IRION: It --
24 JUSTICE MCINTYRE: Is that true because they --
25 they say essentially that they'd rather let the feds

1 decide this issue and not give the money out until
2 that's been done. Now, without saying whether -- we
3 don't decide whether that's right or wrong -- at least
4 not now -- but that's their position so in a sense, they
5 can file a dispositive motion and say, you know, our
6 affirmative defense is that we should hold up on this
7 until the federal -- the federal government decides
8 whether this is a legitimate tribe or not. Now that may
9 be right, I don't know. But -- but either side, I
10 guess, feels like that issue should be decided one way
11 or the other.
12 MR. CORRALES: Yes, and -- and we don't believe
13 that -- that we need to wait until the federal
14 litigation is concluded. In fact, that's what the other
15 side wants. They want to continue --
16 JUSTICE IRION: Let me ask you this.
17 MR. CORRALES: -- to appeal.
18 JUSTICE IRION: Let me ask you this.
19 MR. CORRALES: Yes, your Honor.
20 JUSTICE IRION: If you -- Judge Styn ruled that
21 to stay the -- to stay until the federal litigation is
22 concluded. But if, in fact, that is the case, will --
23 will your -- what will your declaratory relief action --
24 if a rule -- will you ever be able to get a ruling from
25 the court as to whether or not the commission's position

1 is legally correct, that is, that they can or cannot as
 2 a fiduciary withhold the funds until the federal
 3 litigation is complete?
 4 MR. CORRALES: Yes, I believe so. I believe
 5 the -- the trial court has an independent duty, aside
 6 from what's going on in -- in -- in the federal
 7 litigation, to look at the -- the commission's reasons.
 8 And one of the things that the commission is
 9 saying is, well, we can't really release the money
 10 because there's a tribal leadership dispute.
 11 Well, it doesn't decide who is the tribal
 12 leader. The court decides whether or not in light of,
 13 for example, Dixie's recent deposition testimony, it's
 14 reasonable for the -- for the commission to continue to
 15 withhold the funds.
 16 Is that sufficient information for them to say,
 17 well, now we know who is the authorized representative
 18 for the tribe? It doesn't decide issues of membership.
 19 It doesn't decide issues of whether the tribe -- the
 20 tribe's --
 21 JUSTICE IRION: Okay. Well, in essence --
 22 isn't what you're saying in essence that the trial court
 23 can decide whether the affirmative defense put forth by
 24 the commission, that is, we cannot pay the petitioners
 25 because as a fiduciary they -- we -- we cannot release

1 the funds until we know who the correct members are?
 2 MR. CORRALES: Yes.
 3 JUSTICE IRION: So -- so your position is the
 4 trial court can decide whether or not that affirmative
 5 defense prevails under the compact and statutes.
 6 MR. CORRALES: Correct, that's exactly right.
 7 And it doesn't -- it doesn't -- it doesn't decide the
 8 merits of the issue -- issues that are being decided in
 9 the federal court. This is -- this is -- this is state
 10 money and -- and whether the commission --
 11 JUSTICE McINTYRE: State money? I thought it
 12 was gambling money.
 13 MR. CORRALES: Gambling -- it's license fees,
 14 your Honor, that -- that the -- that the tribes pay to
 15 the state treasury.
 16 JUSTICE McINTYRE: Right. So it's not taxpayer
 17 money, but it --
 18 MR. CORRALES: Not taxpayer money. It has
 19 nothing to do with the federal contract funds that are
 20 now frozen because of the -- of the stay of
 21 implementation language and the -- the ASI's recent
 22 decision. This is state money and -- and the commission
 23 has its own fiduciary duty to determine whether a
 24 non-compact tribe is entitled to get these funds.
 25 And -- and -- and -- and the reasons that the commission

1 is asserting, whether the non-compact tribes should --
 2 should have certain membership criteria. That's what
 3 the trial court decides. Is that -- is that -- is that
 4 something in -- in the language of the compact that
 5 permits the commission to withhold funds? Whether the
 6 tribe has a -- has a governing body recognized by the
 7 BIA, is that in the compact? Is that something that --
 8 that the commission can use to withhold funds?
 9 Well, again, the -- the -- the trial court --
 10 JUSTICE IRION: These are the issues that you
 11 want -- you want to be able to file a motion as to and
 12 have the trial court decide?
 13 MR. CORRALES: Yes. Yes, your Honor. And --
 14 and the trial court should --
 15 JUSTICE McINTYRE: (Inaudible) most certainly
 16 be back, won't it?
 17 MR. CORRALES: Well, it depends --
 18 JUSTICE NARES: You're always welcome to come
 19 back.
 20 MR. CORRALES: But -- but -- but the -- the
 21 trial court put a break on this and said, well, you've
 22 gotta wait till the federal case is -- is finished.
 23 Well, that can -- that can -- that can go on and on and
 24 on up to the Supreme Court. We -- we want resolution of
 25 this on state issues --

1 JUSTICE NARES: You know, I think --
 2 MR. CORRALES: -- declaratory relief on state
 3 matters.
 4 JUSTICE NARES: Speaking only for myself, I
 5 thought the judge implicitly determined that the
 6 commission was correct in withholding the funds until
 7 the leadership dispute is resolved.
 8 So if we send this case back, it will probably
 9 make what was implicit explicit because otherwise he
 10 wouldn't have done what he did, at least from my
 11 interpretation of what he did.
 12 MR. CORRALES: Yes.
 13 JUSTICE NARES: And I understand your position.
 14 MR. CORRALES: Yes. And -- and of course -- of
 15 course, this -- this recent deposition testimony of
 16 Yakima Dixie is what this court in the previous decision
 17 said needs to be litigated. What's the impact of -- of
 18 that and -- and not necessarily does that mean he's the
 19 tribal leader or -- or not the tribal leader. It's only
 20 whether or not there's sufficient information for the --
 21 for the commission to say we know now who is the
 22 authorized representative to receive these funds.
 23 This is what the trial court decides, not
 24 whether or not he's the right leader or not the right
 25 leader. It's a declaratory relief action based upon the

1 language of the compact.
2 JUSTICE NARES: Well, then what has taken the
3 federal courts so long to decide if it's so easy?
4 MR. CORRALES: Well, I don't know, your Honor.
5 But I know what they're determining has to do with
6 issues that have to do with the -- the -- the Indian --
7 JUSTICE NARES: (Inaudible) issue. Who gets
8 the money?
9 MR. CORRALES: That's always the -- always the
10 case, your Honor.
11 JUSTICE NARES: At the end of the day, that's
12 the issue.
13 MR. CORRALES: Yes.
14 JUSTICE NARES: I can understand the
15 commission's point of view and I understand your point
16 of view, but --
17 JUSTICE McINTYRE: I guess it's a problem of
18 which small group of people ought to get all this money.
19 Isn't that what it really comes down to?
20 MR. CORRALES: Well --
21 JUSTICE McINTYRE: Is the other side real --
22 very small, too?
23 MR. CORRALES: Well, the other side claims that
24 they have 250 -- now 240-some-odd people that they've
25 signed up. But we believe they -- they've done that for

1 litigation purposes.
2 The ASI has -- has -- has come down in its
3 decision that -- that the tribe is only composed of five
4 members and their -- their -- their governing body is a
5 resolution form of government that was established in
6 1998 under Resolution 9801.
7 JUSTICE McINTYRE: That's your side, the five
8 members?
9 MR. CORRALES: The five -- yes, your Honor,
10 that's our side.
11 JUSTICE McINTYRE: I get nervous about giving
12 all that money to five people, aren't they? Isn't that
13 what -- what's at the bottom of this?
14 MR. CORRALES: Well, again, this -- this is
15 Indian law. Sometimes you look at this as -- well, the
16 Anglo-Saxon law says this is unfair. Well, this -- this
17 is Indian law. And Indian law says that a tribe doesn't
18 have to admit any -- can't be forced to admit any
19 persons to its membership.
20 JUSTICE NARES: You're not saying that Indian
21 law doesn't require fairness?
22 MR. CORRALES: No, but the -- the assistant
23 secretary's decision said that it would be equitable for
24 the tribe to admit others, but it doesn't have to. It
25 can't be forced to.

1 JUSTICE IRION: Well, aren't those issues
2 better addressed to the trial court? For purposes of
3 your writ proceeding here, isn't the real only issue
4 that the trial court has to do is acknowledging that
5 there is a pending and as yet unresolved federal
6 lawsuit -- determine whether the commissioner has -- the
7 commission has a legally sufficient basis for continuing
8 to withhold the state funds?
9 MR. CORRALES: That would be one of the issues
10 that the trial court determines, yes.
11 JUSTICE NARES: You may think that's the only
12 issue.
13 MR. CORRALES: Well, I don't -- I don't believe
14 it is, your Honor. I think -- I think the trial court
15 can look at the compact and say is -- is the
16 commission's position of withholding funds based upon
17 these enumerated reasons: The BIA doesn't recognize it
18 as a -- as a -- doesn't recognize its governing body or
19 the -- the -- a non-compact tribe has to qualify for
20 federal funding under -- under Public Law 638 before we
21 give them revenue-sharing trust money.
22 JUSTICE IRION: Presumably the trial court --
23 you know, just hypothetically, but presumably the trial
24 court could take a look at this, look at the fact that
25 the commission has put forth an affirmative defense

1 saying we don't know who the right Miwok Tribe is and as
2 a fiduciary we cannot disperse these funds at the
3 present time. And the trial court could say, yep,
4 that's it. And that's -- end of the day, that's the end
5 of your lawsuit right there.
6 MR. CORRALES: Well, again, the trial court can
7 make that determination, but we want them -- excuse me.
8 We want the trial court to make that determination, not
9 put this thing on hold.
10 JUSTICE IRION: Okay.
11 MR. CORRALES: We want a decision.
12 JUSTICE IRION: And then that's the -- that
13 was --
14 JUSTICE McINTYRE: Well, then you're back here
15 again. Whether you win or -- either side that loses is
16 gonna appeal, aren't they?
17 MR. CORRALES: Perhaps. Perhaps. Depends upon
18 what language this court puts in its decision that would
19 be helpful to the trial court.
20 JUSTICE IRION: Well, your petition -- your
21 petition was solely based on the ground that you wanted
22 an opportunity to have -- you wanted this court to order
23 the trial court to lift the stay --
24 MR. CORRALES: Yes.
25 JUSTICE IRION: -- and allow the case -- and

1 allow you to file a dispositive motion.
 2 MR. CORRALES: Correct. And we also said
 3 alternatively enter judgment based upon the order
 4 granting judgment on the pleadings. And this court can
 5 perhaps look at that and say, well, how can we do that
 6 because he said it's based exclusively on the
 7 December 22nd, 2010, decision, but the -- the
 8 August 31st, 2011, decision affirmed that decision and
 9 I -- I -- I -- I think that there's a -- there's a
 10 potential there for the --
 11 JUSTICE IRION: Shouldn't that be decided in
 12 the first instance by the trial court?
 13 MR. CORRALES: We asked the court to -- to --
 14 to do that, yes. And that -- that's something that the
 15 trial court should -- should consider. I think the --
 16 the trial court said, no, I don't -- I don't know
 17 if we -- the stay -- they always go back -- it always
 18 goes back to the stay, but I think there's a --
 19 JUSTICE IRION: So at the end of the day, the
 20 only relief you need from this court is a decision as to
 21 whether or not -- whether or not we are going to order
 22 the trial court to lift the stay and allow you to file a
 23 motion?
 24 MR. CORRALES: Yes, your Honor. That's what we
 25 would like to do. Thank you.

1 JUSTICE NARES: Thank you.
 2 Who would like to be heard on behalf of the
 3 Respondent first?
 4 MR. HOUSTON: Good morning, Justices. Once
 5 again, my name is Neil Houston, Deputy Attorney General
 6 appearing for the California Gambling Control
 7 Commission.
 8 I am not going to belabor the points we made in
 9 our opposition brief, but there is one thing in
 10 particular I'd like to clear up and a couple of things
 11 I'd like to emphasize.
 12 The first thing is that the commission is
 13 essentially caught in the middle between these two
 14 competing factions.
 15 JUSTICE IRION: And the commission has put
 16 forth the affirmative defense that they are a -- they
 17 are a trustee and as a trustee, they have a fiduciary
 18 duty not to release these funds until the rightful tribe
 19 is decided or the rightful beneficiary is, correct?
 20 MR. HOUSTON: Yes, that -- that's exactly so.
 21 That is how the commission interprets its obligations as
 22 a trustee to ensure the right people get the money
 23 and --
 24 JUSTICE IRION: That's under the compact, isn't
 25 it, Mr. Houston? I mean --

1 MR. HOUSTON: Yes, it is.
 2 JUSTICE IRION: And so the question really for
 3 the trial court is -- is what are the rights and
 4 obligations of the commission as trustee within the
 5 meaning of the compact.
 6 MR. HOUSTON: I believe that's true, your
 7 Honor, yes.
 8 JUSTICE IRION: Okay.
 9 JUSTICE McINTYRE: Why do you object to having
 10 the trial court decide it?
 11 MR. HOUSTON: Well, the trial court has no
 12 jurisdiction to decide the underlying dispute between
 13 these tribal factions.
 14 JUSTICE McINTYRE: No, no, no, decide whether
 15 the commission should release or should not release the
 16 money pending the federal litigation.
 17 MR. HOUSTON: Because that involves reaching a
 18 decision between the two tribal factions because if the
 19 commission is compelled by state process to release the
 20 money to one group before the federal administrative
 21 proceeding has run its course and the BIA has achieved a
 22 final determination of the identity of the leadership
 23 group, it may turn out that the commission has dispersed
 24 the money to the wrong people. And the money's not
 25 being administered for the -- the entirety of the tribe.

1 That's what the commission is concerned about.
 2 And we feel that -- that this effort by the
 3 petitioner is really an end run around the federal
 4 administrative process partly because it's quicker to do
 5 it this way and partly because they would like --
 6 JUSTICE McINTYRE: Where is the federal
 7 litigation, do you know?
 8 MR. HOUSTON: It is -- it has been fully
 9 briefed. I think it was fully briefed as of roughly
 10 July.
 11 JUSTICE McINTYRE: The appeal or the -- you
 12 mean the trial court?
 13 MR. HOUSTON: It's -- it's the challenge to
 14 former Assistant Secretary Echo Hawks' decision which is
 15 stayed pending the outcome of the Salazar case.
 16 JUSTICE McINTYRE: District courts?
 17 MR. HOUSTON: It's in the district courts in
 18 the District of Columbia
 19 JUSTICE IRION: Mr. Houston, doesn't the --
 20 doesn't the trial court only have to acknowledge that
 21 the federal dispute is ongoing? In other words, it's
 22 not resolved and based on that factual predicate
 23 determine whether the commission has a legally
 24 sufficient basis for continuing to withhold the funds?
 25 Speaking only for myself, I am not sure that I

1 understand your position that they have to get into the
2 merits. If, in point of fact, you are able to -- you
3 tell the trial court there are these federal proceedings
4 and they have these ancillary issues and that based on
5 the unresolved federal lawsuit, you as a -- as a trustee
6 cannot release the funds, doesn't the trial court just
7 have to say yea or nay under the compact with that
8 decision?

9 MR. HOUSTON: Well, if the trial court were to
10 say nay and say you have to disburse the funds because
11 we have a claimant who has turned up here in court --

12 JUSTICE IRION: Then presumably you would be
13 back up here.

14 MR. HOUSTON: I -- presumably so, your Honor.

15 JUSTICE McINTYRE: And if they lose?

16 MR. HOUSTON: I'm sorry?

17 JUSTICE McINTYRE: Whoever loses is coming back
18 here anyway the way I see it. I don't see this case as
19 being settled, do you?

20 MR. HOUSTON: Not here today, no, your Honor.

21 JUSTICE McINTYRE: Or tomorrow.

22 JUSTICE NARES: I didn't ask Mr. Corrales this
23 question, but I'll ask you first and then when he speaks
24 again, I'll ask him.

25 I thought there was a federal appellate

1 proceeding, too, or is it just a district court
2 proceeding?

3 MR. HOUSTON: It is in the district court, but
4 it is the -- it is a challenge to the Echo Hawk
5 decision. It is part of the federal administrative
6 procedure.

7 JUSTICE NARES: Combined the two of them?

8 MR. HOUSTON: That springs from the activities
9 of the Department of the Interior.

10 JUSTICE NARES: And it's at -- what's the
11 status of it right now in terms of process?

12 MR. HOUSTON: The dispositive motions are fully
13 briefed and they're pending. They've been pending for
14 about six months, I think.

15 JUSTICE NARES: Okay. Anything else you wanted
16 to say?

17 MR. HOUSTON: No, your Honor.

18 JUSTICE NARES: Okay. Thank you.

19 Any other counsel who --

20 MR. McCONNELL: Good morning. Matthew
21 McConnell here on behalf of the interveners.

22 JUSTICE McINTYRE: Who are the interveners
23 again?

24 MR. McCONNELL: It's essentially the competing
25 group of people who believe that they are the

1 rightful --

2 JUSTICE McINTYRE: They're the proper tribe.

3 Yeah, okay.

4 MR. McCONNELL: -- tribal members.

5 JUSTICE McINTYRE: So what's your position?

6 MR. McCONNELL: Well, I think, as the justices
7 have pointed out, what we're here to -- to decide is a
8 writ. And to succeed plaintiff has to prove that the
9 trial court abused his discretion, that he acted beyond
10 all bounds of reason.

11 And the record, I believe, demonstrates the
12 exact opposite; that the trial court acted reasonably
13 and well within his discretion in issuing the stay that
14 he did.

15 This lawsuit here in state court addresses the
16 gambling commission's obligation to pay trust monies to
17 the California Valley Miwok Tribe. All parties agree
18 that the commission owes that duty.

19 Where this dispute lies is who is the tribe and
20 who are its authorized leaders? Plaintiff claims that
21 the tribe consists entirely of Silvia Burley, her two
22 daughters, her granddaughter, and sometimes Yakima
23 Dixie. We believe -- the interveners believe that the
24 tribe consists of 242 adults and about 300 of their
25 children.

1 JUSTICE IRION: Well, isn't the question,
2 though, given that dispute and given the pendency of the
3 federal litigation defining who is the rightful trial --
4 trial -- that -- who is the rightful tribe whether or
5 not the commission's policy of withholding payment is
6 reasonable and authorized under the compact?

7 MR. McCONNELL: I believe that that is an issue
8 that ultimately will be addressed.

9 JUSTICE IRION: But if -- but if -- if we do
10 not grant this writ at this point in time and -- and
11 instead we affirm the trial court's decision to stay the
12 lawsuit until the federal resolution is completely
13 resolved, district court, appellate court, wherever,
14 won't the commission -- will -- won't the issue of the
15 merits of the commission's policy of withholding funds
16 based upon the federal litigation completely evade
17 review?

18 MR. McCONNELL: I don't think it will
19 because --

20 JUSTICE IRION: Then you'll know what it is and
21 the question the -- the -- the plaintiffs here are
22 saying we don't believe that's a -- a -- a valid policy
23 of the commission under the language of the -- of the
24 compact.

25 MR. McCONNELL: And the problem is that I think

1 this is what the trial court -- one of the justices
2 mentioned implicitly has already made that ruling.
3 JUSTICE NARES: If he would have made it
4 explicit, we probably wouldn't be here on that issue,
5 but I think that's what implicitly he made in -- in
6 staying the matter. Any other conclusion doesn't appear
7 to make any sense to me.
8 MR. McCONNELL: The reality is is that, as
9 counsel indicated earlier, if the answer to that
10 question that you're asking is, no, that it's not
11 reasonable, you're still right back to where we believe
12 we are right now, which is who is the tribe, who does
13 the money go to?
14 You're not going to have that answer in this
15 proceeding. Everybody agrees this court doesn't have
16 jurisdiction to make that decision. So you have to wait
17 until that federal process is completed, those answers
18 are acquired, and then and only then can the commission
19 know who to pay.
20 So I -- I think -- I think -- to me, the trial
21 court's decision makes sense and is well-reasoned
22 because I -- I assume his thinking is: "There's no
23 point in me spending time and money litigating this
24 affirmative defense issue when ultimately I can't award
25 any relief at the end of the day because I don't know

1 who the tribe is and I don't know who its leaders are."
2 And I believe that --
3 JUSTICE IRION: But he didn't say that, did he?
4 MR. McCONNELL: Well, I think if you go back
5 and look at the records when we had -- when we had the
6 arguments on the plaintiff's ex parte in September of
7 2011 and then the motion for reconsideration several
8 months later -- I think if you look at the record that
9 those -- that is his thought process when he's talking
10 about why he's denying those, why the stay is going to
11 stay in effect, the fact that he doesn't have
12 jurisdiction to make the underlying decisions about who
13 is the tribe and where does the money go.
14 Again, his decision has to be beyond -- that he
15 acted beyond all bounds of reason and I think that he
16 has made one reasonable decision here. He is -- there
17 may be other options, but this is a reasonable option
18 that he has chosen and it -- and it achieves a lot of
19 things.
20 It saves judicial resources. There's no harm
21 one way or another. Until we know the tribe, the money
22 can't be disbursed. It would be a violation of the
23 commission's fiduciary obligations if he gives it to the
24 wrong group of people.
25 JUSTICE IRION: Isn't that the question before

1 the trial court?
2 MR. McCONNELL: But he can't answer the
3 ultimate question of where that money goes until the
4 federal process is over. I mean, that's this whole
5 chicken and egg.
6 JUSTICE IRION: I understand your position.
7 JUSTICE McINTYRE: But if -- if the judge
8 says -- what I think he was trying to say below
9 implicitly -- yes, the commission has a good reason not
10 to pay the money now because that -- the entitlement of
11 that money is still being litigated in the federal
12 courts. Therefore I'm gonna stay these proceedings.
13 And if he would have said -- and they have,
14 let's say, a fiduciary duty to do that -- it's the
15 trustee's duty not to pay money other than to the
16 recognized tribe -- that would have helped. I think
17 that's all he has to do if, in fact, that's what he
18 believes or was thinking.
19 We're just saying that they're entitled to
20 their day in court. And the trial court should do
21 whatever it believes it wants to do or has a reason to
22 do. I think -- I go back to the implicit because any
23 other reading of his decision doesn't make any sense to
24 me. As you pointed out, I think that's what he was
25 thinking.

1 MR. McCONNELL: And I guess just to touch on
2 that, again, we are here on a writ proceeding. There
3 are requirements of showings that need to be made:
4 Irreparable harm, inadequate legal remedies, abuse of
5 discretion.
6 And I don't believe -- whether the justices
7 believe at the end of the day the trial court should
8 have said a little bit more or should rule on this, I
9 don't think any of those requirements have been met.
10 There hasn't been a showing of irreparable harm here.
11 JUSTICE IRION: Well, wait a minute. Wait a
12 minute. If the trial court never rules as to whether
13 the commission's policy of withholding money while there
14 is litigation regarding who are the rightful members of
15 the Miwok Tribe and instead waits until the -- the issue
16 as to the rightful members of the Miwok Tribe is
17 decided, the question as to whether or not that policy
18 is a valid policy under the compact will never be
19 decided.
20 MR. McCONNELL: But -- but the only harm there
21 is delay in the ultimate remedy. And the cases say that
22 delay in the ultimate remedy does not meet the standard
23 for irreparable harm for purposes of a writ. I mean,
24 what we're talking about here is simply waiting for the
25 federal process to conclude.

1 JUSTICE McINTYRE: Well, I think the other
2 side's position is that -- that -- I think. They don't
3 articulate it quite this way, but to me, I think, in
4 essence Judge Styn's discussion takes your side of
5 the -- takes your position, that is, that we can't do
6 anything about this until the federal process is over.
7 And they're saying that's not right. And I think
8 Justice Irion's point is the effect of the current
9 status of it, the stay is to side with your view of it,
10 isn't it?

11 MR. McCONNELL: I think that's one way to read
12 it, but --

13 JUSTICE McINTYRE: Not -- not that he said that
14 that was his view. But the effect of his ruling is that
15 it's stayed until the feds are through with this and
16 then they'll -- they'll -- based on whatever the feds
17 decide, they'll give the money to whoever wins that
18 case. That -- that's the effect of it. So although he
19 hasn't explicitly ruled on the merits; by staying it,
20 he's taken their -- your position, hasn't he?

21 MR. McCONNELL: And -- and, again, I would go
22 back to the fact that -- that however you characterize
23 the -- the effect of the decision, it was not an abuse
24 of his discretion. He's managing --

25 JUSTICE McINTYRE: Well, that's -- that's true

1 only if we conclude he had a legal responsibility to
2 make the decision irrespective of the federal
3 litigation. He needs to make the decision now. That
4 would be the argument why some of you, discretion, but
5 that he can't put it off because that, in effect,
6 decides your way. And they don't ever get a chance to
7 say, well, that's not right. You shouldn't decide it
8 that way; you should decide it the other way, that he
9 can determine whether the commission is right in
10 withholding the funds. I don't know. Maybe I -- that's
11 how I see it speaking for myself only.

12 MR. McCONNELL: Just very briefly there was a
13 mention about this court's prior decision. This court
14 was very careful not to wade into the merits of the
15 case. They were dealing with a demurrer and very
16 specific legal issues. And this court very clearly
17 indicated that it was up to the trial court to -- that
18 was the person in the trenches and that would be the
19 person to weigh the effect of these issues, these tribal
20 disputes on the litigation.

21 And, again, I believe that's exactly what the
22 trial court has done here. He's been in the trenches.
23 He's -- he's seen the assistant secretary's letters.
24 He's seen the federal litigation. He's gotten mountains
25 of briefing and arguments from counsel.

1 JUSTICE NARES: All we're saying is rule on the
2 affirmative defense. That's all. The trustees'
3 affirmative defense. And I think implicitly he did
4 that, but that's reading between the lines and speaking
5 only for myself, we want an explicit ruling.

6 MR. McCONNELL: And if I understand your Honor
7 correctly then that -- that the concept at least that
8 you're thinking of is -- is limiting any motions after
9 this just to the affirmative defense relative to the
10 commission's obligations.

11 JUSTICE NARES: I -- I wouldn't limit lawyers
12 to anything because they're very creative and there may
13 be something that we overlook. And we need to hear from
14 everybody so, no, I'm not limiting it.

15 MR. McCONNELL: Okay. Certainly if you have
16 any other questions...

17 JUSTICE NARES: I only have one -- actually I
18 have two. Do you have any different update on the
19 federal litigation?

20 MR. McCONNELL: Counsel was accurate. We --
21 we -- the parties and -- and plaintiff is a party there.
22 Interveners are a party. The U.S. government is a
23 party.

24 JUSTICE NARES: Just to make sure I understand,
25 are all of you appearing in the federal court?

1 MR. McCONNELL: Different -- well, some -- some
2 of plaintiff's counsel may be appearing there. There --
3 there are different lawyers on -- on my side, but --

4 JUSTICE IRION: So it's at the trial court
5 level right now fully briefed on a dispositive motion
6 at -- at the District Court level?

7 MR. McCONNELL: Correct. There --

8 JUSTICE IRION: And then there is an appeal to
9 this Circuit Court?

10 MR. McCONNELL: No, the -- this -- this
11 District Court lawsuit originated from an agency
12 decision that was appealed under the Administrative
13 Procedures Act. Then that -- that initial decision was
14 rescinded and replaced so the complaint was amended.

15 So it's at the District Court level. There are
16 cross motions for summary judgment. There's a motion to
17 dismiss. They were -- completed briefing in mid-May.
18 They've been under submission with a judge who we
19 understand this is how -- how he works and --

20 JUSTICE McINTYRE: It's another world.

21 MR. McCONNELL: It is another world and we
22 expect that -- and we have been expecting a decision in
23 the near future. But -- but that's where we're at as
24 far as the federal litigation.

25 JUSTICE IRION: Near future is always a fluid

1 concept, Counsel.

2 JUSTICE NARES: I forgot to ask the trustee

3 this so I'll ask you and maybe the trustee after that.

4 Do you know what the current balance of the money is

5 that is owed?

6 MR. McCONNELL: I don't know exactly. I think

7 it's over 8 million.

8 JUSTICE NARES: I'll ask him, so... Anything

9 else that you want to...

10 MR. McCONNELL: Not unless you have any

11 questions.

12 JUSTICE NARES: There appear none. Thank you.

13 MR. McCONNELL: Thank you.

14 JUSTICE NARES: Before we hear from you,

15 Mr. Corrales, could you go to the podium?

16 MR. HOUSTON: Your Honor, at the time the --

17 this matter was briefed, the amount of the accrued RSTF

18 payments was approximately \$8 million. And that would

19 have gone up to about \$8.5 million by now. I don't have

20 the exact figures, but that's -- that's pretty close.

21 JUSTICE NARES: Thank you.

22 Mr. Corrales?

23 MR. CORRALES: That is accurate. There's a

24 public document --

25 JUSTICE McINTYRE: I was gonna ask you the

30

1 same.

2 MR. CORRALES: Yes, I checked it. It's 8.5

3 million and then they indicate that there's interest

4 accruing. So it's close to nine, nine and a half

5 million dollars.

6 Just to respond to what counsel has said about

7 who is the tribe. Well, it's undisputed that the -- the

8 Miwok Tribe is a federally recognized tribe. There's

9 only one tribe here.

10 JUSTICE IRION: That's true, Mr. Corrales, but

11 let's be frank. There's a question as to who the

12 members of the tribe are.

13 MR. CORRALES: Yes, yes. There's a question

14 about governance, the governing body, and whether or not

15 the tribe composes of 5 or 240, but again --

16 JUSTICE McINTYRE: That's a big difference.

17 MR. CORRALES: Yes, but that -- those --

18 that -- those issues were decided in -- in the

19 plaintiff's favor by these two letters, by the --

20 JUSTICE IRION: We -- we understand. We --

21 MR. CORRALES: Okay. But -- but the point --

22 the point here is that the -- the trial court doesn't

23 decide those issues. The trial court decides whether or

24 not the -- the commission's reasons for withholding

25 funds because it claims it should have more than five

31

1 members or because the BIA should recognize the

2 governing body or because the -- the tribe should

3 qualify for federal contract funding. Whether or not

4 those reasons --

5 JUSTICE IRION: The question is as a fiduciary,

6 you know -- isn't the question before the trial court:

7 What are the rightful obligations and duties of the

8 trustee?

9 MR. CORRALES: Yes, that is exactly correct.

10 And that's what we want the court to decide. We

11 want the -- we want to be able to file dispositive

12 motions in light of Dixie's deposition, in light of the

13 language of the compact, in light of all the surrounding

14 circumstances and let the trial court make the decision

15 based upon the language of the compact and the -- and

16 what he is being briefed on, the fiduciary duties and

17 responsibilities of the commission. And that's all we

18 want.

19 JUSTICE NARES: Thank you very much. The

20 matter is submitted. We'll be in recess for a panel

21 change.

22 * * *

23 (End of the compact disc recording.)

24

25

32

1 I, JENELLE K. BARTEL, RPR, Certified Shorthand Reporter

2 For the State of California, do hereby certify:

3

4 That the compact disc recording of the above proceedings was

5 taken down by me in machine shorthand to the best of my

6 ability and transcribed through computer-aided transcription

7 and that the foregoing is a true record of the said compact

8 disc recording.

9

10 Dated: This _____ day of _____, 20____,

11 at San Diego, California.

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15 _____

16 JENELLE K. BARTEL, RPR

17 CSR NO. 12687

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EXHIBIT B

EXHIBIT B

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA.

2 COUNTY OF SAN DIEGO - CENTRAL DISTRICT

3 --oOo--

4

5 CALIFORNIA VALLEY MIWOK TRIBE,

6 Plaintiff,

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

8 CALIFORNIA GAMBLING CONTROL
9 COMMISSION,

10 Defendants.

_____/

11 --oOo--

12 TUESDAY, JUNE 28, 2011

13 --oOo--

14 VIDEO DEPOSITION OF

15 YAKIMA DIXIE

16 --oOo--

17

18

19

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21

22

23 Ref. No. 31-10000

24 Reported By: PATRICIA MCCARTHY, CSR No. 12888
Registered Professional Reporter

25

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09:57:02 1 VIDEOGRAPHER: We are going off the record at
 09:57:05 2 9:57 AM.
 09:57:07 3 (Break taken.)
 10:03:49 4 MR. CORRALES: Back on the record.
 10:07:11 5 VIDEOGRAPHER: We are back on the record at
 10:07:19 6 10:07 A.M.
 10:07:20 7 BY MR. CORRALES:
 10:07:21 8 Q. Mr. Dixie, may we proceed? May we continue
 10:07:24 9 with your deposition?
 10:07:25 10 A. Yes.
 10:07:28 11 Q. All right. Now, I want to show you what I
 10:07:33 12 will have marked as Exhibit No. 27 next in order.
 10:07:33 13 (Exhibit Number 27 Was Marked For
 10:07:33 14 Identification.)
 10:07:33 15 BY MR. CORRALES:
 10:07:44 16 Q. This purports to be the declaration of Yakima
 10:07:48 17 Dixie. So a one-, two-, three-, four-page document,
 10:07:55 18 dated October 2010.
 10:08:00 19 Have you ever seen this document before?
 10:08:04 20 MR. FREEMAN: Counsel, if we can let the
 10:08:06 21 witness review the document.
 10:08:07 22 MR. CORRALES: Please review the document.
 10:08:10 23 MR. FREEMAN: Take your time and read it,
 10:08:13 24 okay.
 10:08:13 25 THE WITNESS: Fine.

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10:08:11 1 MR. FREEMAN: Take your time and read this.
 10:08:11 2 You signed it.
 10:08:14 3 THE WITNESS: 2010,
 10:08:19 4 (Off-the-record discussion.)
 10:08:19 5 THE WITNESS: Okay, you can continue.
 10:08:50 6 BY MR. CORRALES:
 10:08:51 7 Q. Is this your signature on the last page? Is
 10:08:54 8 that your signature on the last page?
 10:08:56 9 A. Yes, it is.
 10:08:58 10 MR. FREEMAN: Excuse me, counsel.
 10:08:59 11 Do you need reading glasses?
 10:09:01 12 THE WITNESS: I am okay.
 10:09:02 13 BY MR. CORRALES:
 10:09:03 14 Q. Okay.
 10:09:04 15 MR. FREEMAN: Counsel, do you have one for me?
 10:09:06 16 MR. CORRALES: I thought I did. She has one.
 10:09:08 17 There you go.
 10:09:10 18 BY MR. CORRALES:
 10:09:11 19 Q. All right. So this is your declaration that
 10:09:15 20 you signed?
 10:09:15 21 A. I guess it is.
 10:09:18 22 Q. I want you to go to page 2, second page, and
 10:09:26 23 it is paragraph five, number five.
 10:09:30 24 It says, "In 1999, I allowed Ms. Burley into
 10:09:36 25 the tribe. Shortly thereafter, Ms. Burley alleged that

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10:09:40 1 I resigned as Tribal Chairman, that she represented that
 10:09:45 2 she spoke for the Sheepbranch Miwok people and that she
 10:09:49 3 was the leader and chairperson of the tribe. I have
 10:09:53 4 never consented to her claim of leadership. The
 10:09:56 5 document allegedly showing my resignation as tribal
 10:10:00 6 chairman is a forgery."
 10:10:03 7 What document is that, sir?
 10:10:05 8 A. I do believe that is true. Exactly what you
 10:10:10 9 read right there. Read.
 10:10:11 10 Q. What documents do you claim to be a forgery?
 10:10:16 11 What is that document?
 10:10:17 12 A. There was something, a document that someone
 10:10:19 13 had forged.
 10:10:21 14 Q. Do you know what that was? Was it your letter
 10:10:24 15 of resignation you are referring to?
 10:10:26 16 A. I don't have no knowledge of that. I do
 10:10:29 17 believe there is an individual, not here, though. He
 10:10:35 18 had to go to a hospital or something, that has all of
 10:10:39 19 the records and files and stuff.
 10:10:41 20 Q. Okay. And one of them is a document that you
 10:10:45 21 claim to be a forgery in that file?
 10:10:48 22 A. Repeat that one.
 10:10:53 23 Q. I will repeat it.
 10:10:54 24 You said somebody that had to go to the
 10:10:57 25 hospital had the files. Are you saying that the

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10:11:00 1 document that you claim to be a forgery is in those
 10:11:05 2 files?
 10:11:05 3 A. Yes.
 10:11:08 4 Q. Okay.
 10:11:09 5 Do you remember what that document was?
 10:11:11 6 A. At this time, I will not answer that question.
 10:11:19 7 It may incriminate me.
 10:11:20 8 Q. You think it would incriminate you?
 10:11:23 9 A. Uh-huh.
 10:11:24 10 Q. Okay, all right. Did you resign as the
 10:11:30 11 chairperson of the tribe in the valley?
 10:11:33 12 A. With my --
 10:11:43 13 MR. FREEMAN: I am going to object.
 10:11:44 14 Ambiguity.
 10:11:46 15 THE WITNESS: On my knowledge, as far as some
 10:11:48 16 concern, and no. I never resigned.
 10:11:53 17 BY MR. CORRALES:
 10:11:55 18 Q. Okay. When you say that you didn't resign,
 10:12:00 19 never resigned. When did you discover that Ms. Burley
 10:12:08 20 was the chairperson?
 10:12:09 21 A. I --
 10:12:12 22 MR. FREEMAN: I am going to object. Assumes
 10:12:14 23 facts not in evidence.
 10:12:16 24 THE WITNESS: I don't recall.
 10:12:17 25 BY MR. CORRALES:

		Page 34			Page 36
10:12:18	1	Q. Okay. Did you -- do you claim that she forged	10:15:25	1	busted open. It is kind of hard for me, a little bit --
10:12:27	2	a letter that said that you resigned?	10:15:29	2	Q. Okay.
10:12:33	3	A. I have no knowledge of that.	10:15:30	3	A. -- to remember, to go down here.
10:12:46	4	Q. In your declaration when you say the document	10:15:34	4	Q. Sure, okay. That is okay. Just do the best
10:12:50	5	showing my resignation is a forgery, is it a letter	10:15:37	5	you can.
10:12:55	6	saying that you resigned that you claim is a forgery?	10:15:38	6	Now, did you meet Mr. Everone before or after
10:12:58	7	A. I believe that is what it was, yeah.	10:15:48	7	you found out about what you believe to be this forgery?
10:13:01	8	Q. Okay. When did you discover that? When did	10:15:54	8	A. Before, I do believe, yeah.
10:13:04	9	you find out about that?	10:16:08	9	Q. Okay, all right. And did he help you discover
10:13:05	10	A. Again, again, I refuse to answer that question	10:16:11	10	the forgery?
10:13:17	11	on the grounds it may incriminate myself. I have no	10:16:12	11	A. Again, I am going to stand on the Fifth
10:13:23	12	knowledge at this time.	10:16:28	12	Amendment.
10:13:25	13	Q. Okay. So you don't know when you first found	10:16:29	13	Q. Okay. All right. That's okay. That's okay.
10:13:28	14	out about that. Is that what you are saying?	10:16:32	14	What did Mr. Everone tell you about the forged
10:13:31	15	A. True.	10:16:42	15	document?
10:13:32	16	Q. Let me see if I can ask it a little	10:16:45	16	MR. FREEMAN: I will just object. Assumes
10:13:34	17	differently to help you.	10:16:49	17	facts in evidence -- not in evidence.
10:13:35	18	Did you at some point meet Mr. Everone, Chadd	10:16:49	18	BY MR. CORRALES:
10:13:41	19	Everone? I mean you didn't know him your entire life,	10:16:49	19	Q. Go ahead.
10:13:46	20	right? You met him at some point, correct?	10:16:52	20	A. I believe that is the same question. But you
10:13:50	21	A. I don't have one, no. But there is	10:16:54	21	are just turning it around and around here. Again, I
10:13:53	22	approximately around five or six people that do have	10:16:56	22	will refuse to answer that, that question.
10:13:56	23	those, that I am acquainted with.	10:16:59	23	BY MR. CORRALES:
10:13:59	24	Q. We are not tracking here. Do you know Mr.	10:16:59	24	Q. Okay. All right. You are refusing to answer
10:14:02	25	Everone, Chadd Everone?	10:17:02	25	because?
		Page 35			Page 37
10:14:04	1	A. Sure.	10:17:02	1	A. Yes.
10:14:05	2	Q. When did you first meet him?	10:17:04	2	Q. Why?
10:14:07	3	A. Quite some time ago.	10:17:04	3	A. I do believe that is my right.
10:14:12	4	Q. Okay.	10:17:08	4	Q. Okay.
10:14:12	5	A. He is an attorney.	10:17:13	5	Did Mr. Everone tell you that he thought that
10:14:14	6	Q. A few years ago? Many years ago?	10:17:16	6	the document was forged?
10:14:16	7	A. Yeah.	10:17:18	7	A. Again, I am going to stand on the Fifth.
10:14:18	8	Q. You didn't know him when you were growing up,	10:17:24	8	MR. FREEMAN: Counsel, I would like to take
10:14:21	9	right? You did not know him when you were growing up as	10:17:27	9	another break with my client.
10:14:25	10	a child?	10:17:27	10	MR. CORRALES: Yes. Okay, maybe we --
10:14:25	11	A. No.	10:17:25	11	MR. FREEMAN: I think he may not understand
10:14:26	12	Q. You met him some time in your later years,	10:17:31	12	what the Fifth Amendment is.
10:14:32	13	correct?	10:17:31	13	MR. CORRALES: Let us take a break. We'll
10:14:32	14	A. I am trying to think. Was it --	10:17:31	14	come back. He wants to talk to you.
10:14:46	15	Q. If you don't remember the exact date, that is	10:17:38	15	MR. FREEMAN: Let us chat for a second.
10:14:50	16	okay. I just want you to tell me about when you met him	10:17:39	16	VIDEOGRAPHER: We are going off the record at
10:15:00	17	in relationship to certain things that happened to you	10:17:42	17	10:17 A.M.
10:15:03	18	in your life. Did you meet him --	10:17:43	18	(Break taken.)
10:15:10	19	A. Again --	10:22:46	19	VIDEOGRAPHER: We are back on the record at
10:15:11	20	Q. Follow my question here. Listen up.	10:23:35	20	10:23 A.M.
10:15:11	21	A. Again, for the record --	10:23:37	21	MR. CORRALES: Okay. Mr. Freeman, are you
10:15:12	22	Q. Yes.	10:23:38	22	instructing him not to answer on the grounds of the
10:15:13	23	A. You have to bear with me.	10:23:41	23	Fifth Amendment?
10:15:15	24	Q. Okay.	10:23:42	24	MR. FREEMAN: I am not.
10:15:18	25	A. I was badly injured. I had my head opened,	10:23:37	25	MR. CORRALES: Okay. Can he answer the

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10:28:52	1 the Fifth.	10:37:52	1 THE COURT REPORTER: Sure.
10:28:53	2 MR. CORRALES: Mr. Freeman, are you	10:37:52	2 (Record read.)
10:28:56	3 instructing him not to answer the question based upon	10:38:20	3 THE WITNESS: On that right there, on our
10:28:58	4 the Fifth Amendment?	10:38:24	4 Miwok, tradition-wise, the chief does -- never resigns.
10:28:59	5 MR. FREEMAN: No.	10:38:34	5 And I do mention that about a document. If
10:29:01	6 BY MR. CORRALES:	10:38:46	6 there was a document I'd like to see that document. Can
10:29:02	7 Q. Will you answer the question, sir?	10:38:53	7 you prove it? Do you guys have the document here?
10:29:04	8 A. I am not going to incriminate myself. So I am	10:38:57	8 BY MR. CORRALES:
10:29:13	9 still going to stand on the Fifth Amendment.	10:38:59	9 Q. Do you claim that a document that says that
10:29:16	10 MR. FREEMAN: Counsel, I do believe I could	10:39:05	10 you resigned as the chairperson is forged?
10:29:18	11 assist in the progress of the deposition if I could ask	10:39:08	11 A. Do you have it?
10:29:21	12 him a few questions to just get the ball rolling. I	10:39:09	12 Q. I am asking you, sir, if you claim that?
10:29:24	13 know you want to ask your questions.	10:39:12	13 A. No, I don't.
10:29:27	14 MR. CORRALES: No. This is my deposition,	10:39:16	14 Q. And you have seen that document before?
10:29:29	15 Counsel, and he is required to answer my questions; and	10:39:20	15 A. No.
10:29:32	16 it is clear that he is refusing to answer my questions.	10:39:21	16 Q. When you say that you are the chief and you
10:29:36	17 And we'll just have to move on, and come back, after we	10:39:31	17 never resign, what do you mean by that?
10:29:42	18 speak with the judge.	10:39:33	18 A. That is our traditional ways.
10:29:45	19 BY MR. CORRALES:	10:39:40	19 Q. You claim in your declaration on paragraph
10:29:45	20 Q. Why is it that you claim the document to be a	10:39:52	20 two, it says, "I am seeking to intervene in this
10:29:52	21 forgery that says that Ms. Burley is the chairperson and	10:39:55	21 litigation because I am the Heredity Chief and
10:29:58	22 not you? Why do you claim that to be a forgery?	10:40:00	22 Traditional Authority for the Federally Recognized Tribe
10:30:00	23 A. Again, I am going to stand on the Fifth until	10:40:05	23 known as the California Valley Miwok Tribe..."
10:30:08	24 I talk to my attorneys here.	10:40:11	24 MR. FREEMAN: Counsel --
10:30:10	25 Q. Until you talk to your attorneys. Okay.	10:40:12	25 THE WITNESS: California Valley Miwok --
Page 43		Page 45	
10:30:14	1 Why don't we -- I am going to break with the	10:40:14	1 MR. FREEMAN: Don't answer. Can you finish
10:30:18	2 rule that prohibits a deponent from taking a break and	10:40:17	2 reading the entire sentence?
10:30:28	3 asking, asking his attorney questions before answering.	10:40:19	3 MR. CORRALES: No. I don't want to.
10:30:35	4 I will make an exception to that in order to facilitate	10:40:24	4 MR. FREEMAN: Well, then. I think you need to
10:30:39	5 the deposition.	10:40:26	5 be clear.
10:30:40	6 So I am going to allow you to talk to Mr.	10:40:27	6 BY MR. CORRALES:
10:30:42	7 Freeman for a couple of minutes. Then we'll come back	10:40:27	7 Q. I am going to ask a question, sir.
10:30:45	8 and I want you to answer the question.	10:40:29	8 Mr. Dixie, when you say that you are the
10:30:51	9 MR. FREEMAN: Let us take a break.	10:40:33	9 heredity chief; when you say that you are the heredity
10:30:53	10 VIDEOGRAPHER: We are going off the record at	10:40:44	10 chief; when did you first make that assertion?
10:30:57	11 10:30 A.M.	10:40:51	11 A. Oh, boy. It has been years and years ago.
10:30:58	12 (Break taken.)	10:41:13	12 That is even before my mom died.
10:36:54	13 VIDEOGRAPHER: We are back on the record at	10:41:17	13 Q. Okay. So at the time that you met Mr. Everone
10:37:11	14 10:37 A.M.	10:41:26	14 did you tell him that you were the heredity chief? That
10:37:12	15 MR. CORRALES: Mme. Court Reporter, could you	10:41:33	15 you had the right to be the chairperson because you were
10:37:12	16 repeat the question, please?	10:41:36	16 the heredity chief?
10:37:14	17 (Record read.)	10:41:38	17 A. I don't recall.
10:37:32	18 THE WITNESS: Did you hear what she said?	10:41:39	18 Q. Did you ever, when you first discovered this
10:37:47	19 MR. FREEMAN: Yes.	10:41:45	19 forged document, did you ever tell Ms. Burley that it
10:37:48	20 THE WITNESS: Real good?	10:41:52	20 didn't matter about the forged document you were the
10:37:50	21 MR. FREEMAN: Yes.	10:41:55	21 heredity chief anyway. Did you ever tell her that?
10:37:51	22 THE WITNESS: I didn't hear her, so I am going	10:41:58	22 A. Did I tell her what?
10:37:52	23 to ask --	10:42:00	23 Q. Did you ever tell Ms. Burley that it didn't
10:37:52	24 MR. CORRALES: Can you repeat that again,	10:42:03	24 matter about whether the document was forged, your
10:37:52	25 please?	10:42:06	25 resignation, you are still the chief because you are the

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10:42:09 1 heredity chief. Did you ever tell Ms. Burley that when
 10:42:13 2 you first discovered what you believe to be a forged
 10:42:18 3 document?
 10:42:18 4 A. I do believe that I only talked to her just
 10:42:29 5 once when she came up to the rancheria.
 10:42:41 6 Q. Did you ever write her a letter, or
 10:42:46 7 communicate to her in any way after you first discovered
 10:42:50 8 what you believed to be a forged resignation?
 10:42:54 9 A. Not that I know of.
 10:42:56 10 Q. Okay. Why didn't you communicate with her
 10:43:01 11 when you first discovered what you believed to be a
 10:43:04 12 forged resignation?
 10:43:05 13 A. Will you repeat that again, please.
 10:43:09 14 Q. Why didn't you communicate with her when you
 10:43:13 15 first discovered what you believed to be a forged
 10:43:15 16 resignation?
 10:43:35 17 THE WITNESS: Could you help me on that
 10:43:37 18 question a little bit? What he just asked me?
 10:43:42 19 MR. FREEMAN: Do you understand the question?
 10:43:44 20 THE WITNESS: No, I didn't.
 10:43:46 21 MR. CORRALES: Okay.
 10:43:47 22 MR. FREEMAN: Would you like him to explain to
 10:43:50 23 you better? Explain?
 10:43:51 24 BY MR. CORRALES:
 10:43:52 25 Q. I will rephrase the question. Why didn't you

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10:43:54 1 talk to Ms. Burley when you first discovered what you
 10:44:00 2 believed to be a forged resignation?
 10:44:03 3 A. I still don't understand that question.
 10:44:22 4 MR. FREEMAN: Maybe he can explain it further.
 10:44:25 5 BY MR. CORRALES:
 10:44:26 6 Q. You said that you didn't talk to Ms. Burley
 10:44:28 7 after you discovered that your resignation was forged,
 10:44:37 8 correct?
 10:44:37 9 A. I don't know.
 10:44:50 10 Q. So, you are not sure whether you talked to Ms.
 10:44:56 11 Burley when you first discovered that your resignation
 10:44:59 12 was forged?
 10:45:00 13 A. It might have been afterwards.
 10:45:07 14 Q. Okay.
 10:45:07 15 A. That, I found that out.
 10:45:09 16 Q. Yes. So then did you speak to Ms. Burley
 10:45:13 17 about that some time afterwards?
 10:45:14 18 A. The forgery?
 10:45:17 19 Q. Yes. Did you confront her with it? Talk to
 10:45:22 20 her?
 10:45:22 21 A. I am too sure if I did or not.
 10:45:25 22 Q. Do you believe that you would have confronted
 10:45:31 23 her about that?
 10:45:37 24 MR. FREEMAN: I am going to object,
 10:45:38 25 speculation.

10:45:39 1 THE WITNESS: I don't think I would have
 10:45:41 2 because -- yeah, I don't think I would have.
 10:45:46 3 BY MR. CORRALES:
 10:45:46 4 Q. Why not?
 10:45:47 5 A. Well, for the simple reason that she was
 10:45:55 6 invited to our meetings. She doesn't come to our
 10:45:58 7 meetings. She doesn't want to be a part of it. And
 10:46:03 8 that is why I don't think I would do that.
 10:46:10 9 Q. Did you arrange to have a letter sent to her
 10:46:17 10 to tell her that you objected to what you believe to be
 10:46:26 11 a forged resignation?
 10:46:28 12 A. No.
 10:46:30 13 Q. Any reason why you didn't do that?
 10:46:32 14 A. No.
 10:46:35 15 Q. If you claim to be the heredity chief --
 10:46:52 16 A. Uh-huh.
 10:46:53 17 Q. Of the tribe, why do you believe it is
 10:46:56 18 important now that the -- that your resignation was
 10:47:05 19 forged? Why do you believe that is important?
 10:47:08 20 MR. FREEMAN: Objection. I think you are
 10:47:09 21 asking for a legal conclusion.
 10:47:15 22 BY MR. CORRALES:
 10:47:16 23 Q. Go ahead.
 10:47:19 24 A. Repeat that again.
 10:47:25 25 Q. Let me rephrase it. If you are claiming to be

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10:47:28 1 the heredity chief --
 10:47:30 2 A. Yeah.
 10:47:30 3 Q. What difference does it make to you, whether
 10:47:35 4 the document you believe to be forged?
 10:47:46 5 A. The only way I can look at that is somebody
 10:47:50 6 wanted the authority and signed that piece of paper
 10:47:54 7 saying that I resigned, which traditionally I cannot
 10:47:59 8 resign.
 10:48:00 9 Q. If it wasn't, if you believed that it didn't
 10:48:07 10 mean anything, why didn't you communicate that to Ms.
 10:48:17 11 Burley and tell her that you are the heredity chief
 10:48:20 12 anyway? Why didn't you tell her that?
 10:48:27 13 A. Repeat that one again.
 10:48:31 14 Q. Did you ever tell Ms. Burley that you were the
 10:48:35 15 heredity chief and it didn't make any difference whether
 10:48:39 16 your resignation was forged. Did you ever tell her
 10:48:42 17 that?
 10:48:42 18 A. I don't recollect on that one.
 10:48:42 19 Q. Okay.
 10:48:47 20 A. Whether I did or not.
 10:48:48 21 Q. Okay. So is it correct that some time later
 10:48:51 22 on through the years, you first began to tell Ms. Burley
 10:49:00 23 that you were the heredity chief?
 10:49:03 24 MR. FREEMAN: Objection. Misstates the
 10:49:04 25 testimony.

1 I, PATRICIA MCCARTHY, a Certified Shorthand
2 Reporter of the State of California, duly authorized to
3 administer oaths, do hereby certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth; that
6 any witnesses in the foregoing proceedings, prior to
7 testifying, were duly sworn; that a record of the
8 proceedings was made by me using machine shorthand which
9 was thereafter transcribed under my direction; that the
10 foregoing transcript is a true record of the testimony
11 given.

12 Further, that if the foregoing pertains to the
13 original transcript of a deposition in a Federal Case,
14 before completion of the proceedings, review of the
15 transcript () was () was not required.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee of
18 any attorney or party to this action.

19 IN WITNESS WHEREOF, I have this date subscribed
20 my name.

21 Dated: _____

22

23

PATRICIA MCCARTHY CSR 12888

24

--000--

25

EXHIBIT C

EXHIBIT C

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Attorneys for Plaintiff

CALIFORNIA VALLEY MIWOK TRIBE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO - CENTRAL DISTRICT**

CALIFORNIA VALLEY MIWOK TRIBE

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

Plaintiff,

vs.

**PLAINTIFF'S EX PARTE
APPLICATION FOR ENTRY OF
JUDGMENT AGAINST DEFENDANT
CALIFORNIA GAMBLING CONTROL
COMMISSION; DECLARATION OF
MANUEL CORRALES, JR.**

**CALIFORNIA GAMBLING CONTROL
COMMISSION,**

Date: September 7, 2011

Time: 8:30 a.m.

Dept. 62

Judge: Hon. Ronald Styn

Defendant.

1 Plaintiff CALIFORNIA VALLEY MIWOK TRIBE ("the Tribe" or
2 "Plaintiff") hereby applies ex parte for entry of judgment
3 against the Defendant CALIFORNIA GAMBLING CONTROL
4 COMMISSION ("the Commission") on the following grounds:

5
6 **THE ASSISTANT SECRETARY OF THE U.S. DEPARTMENT OF INTERIOR,**
7 **LARRY ECHO HAWK, HAS ISSUED HIS RECONSIDERED DECISION**
8 **AFFIRMING HIS PRIOR DECEMBER 22, 2010 DECISION IN FAVOR OF**
9 **THE TRIBE**

10 1. On August 31, 2011, the Assistant Secretary of the
11 U.S. Department of Interior, Larry Echo Hawk, issued his
12 long-awaited reconsidered decision. In it, he reaffirmed
13 his December 22, 2010, decision letter that the Tribe is a
14 federally-recognized tribe consisting of five (5) members
15 which operates under a General Council form of government
16 pursuant to Resolution #CG-98-01, which effectively
17 recognized Silvia Burley as the Chairperson of the Tribe.
18 He further reaffirmed that the Tribe is not required to
19 expand its five (5) adult membership to so-called
20 "potential citizens", and that it is not required to
21 organize its present form of government under the Indian
22 Reorganization Act of 1934 ("IRA").

23 2. On March 11, 2011, Plaintiff successfully sought
24 and obtained an order granting judgment on the pleadings as
25 to the Commission. The Court ruled that the Commission's
26 Answer did not state facts sufficient to constitute a
27 defense to the Complaint, in light of the Assistant
28 Secretary's December 22, 2010 decision letter. The
Commission's sole defense in withholding Revenue Sharing

1 Trust Fund ("RSTF") money paid out for the Tribe since 2005
2 was that the Tribe purportedly did not have a governing
3 body recognized by the U.S. government, that a leadership
4 dispute called into question Silvia Burley's right to act
5 as Chairperson for the Tribe, and that the Tribe was
6 required to be organized under the IRA and include within
7 its membership other "potential" members in the surrounding
8 community. The Assistant Secretary's December 22, 2011
9 decision letter, however, refuted each one of these
10 defenses. The Court then took judicial notice of that
11 decision and, on March 11, 2011, granted the motion, and
12 directed Plaintiff's counsel to prepare the judgment. The
13 Court also directed Plaintiff's counsel to prepare a
14 separate order giving the Commission a statutory, temporary
15 stay of execution on the judgment.

16 3. In accordance with the Court's order, Plaintiff's
17 counsel circulated a proposed judgment to defense counsel
18 for the Commission. When the parties could not agree on
19 the language of both the proposed judgment and the proposed
20 order staying enforcement of the judgment, the parties
21 submitted their respective versions to the Court.

22 4. On March 25, 2011, the Court signed Plaintiff's
23 proposed order staying enforcement of the judgment, and
24 modified Plaintiff's proposed judgment. The modifying
25 language dealt with how the Commission would release the
26 presently withheld RSTF money. It then directed
27
28

1 Plaintiff's counsel to submit a revised judgment reflecting
2 this modifying language for signature.

3 5. On March 25, 2011, Plaintiff's counsel revised the
4 proposed judgment in accordance with the Court's order and
5 submitted it to the Court, together with a copy for the
6 Court Clerk to conform and return. Plaintiff's counsel
7 served a copy of the revised, proposed judgment on defense
8 counsel.

9 6. In accordance with the Court's policy, the Court
10 held the proposed, revised judgment for ten (10) days, so
11 as to allow the opposing party an opportunity to object.
12 Before the Court could sign the judgment, the Assistant
13 Secretary issued a letter dated April 1, 2011, setting
14 aside his December 22, 2010, letter, and advised that he
15 would issue a reconsidered decision letter, after giving
16 the parties an opportunity to brief the issues before him
17 in more detail. As a result, the parties appeared before
18 the San Diego Superior Court on April 6, 2011, advising of
19 this development, prompting the Court to hold off on
20 signing the judgment. In the event the Assistant Secretary
21 reaffirmed his December 22, 2010 decision, the Court
22 indicated that it was only staying the effect of the prior
23 orders granting judgment on the pleadings and denying
24 intervention, and would therefore simply stay entry of
25 judgment until the Assistant Secretary issued his new
26 decision. It indicated it would hold on to the unsigned
27 judgment papers until the Assistant Secretary issued his
28

1 reconsidered decision. If the reconsidered decision
2 reaffirmed the December 22, 2010 decision letter, then the
3 Court indicated it would enter judgment. The Court,
4 however, permitted the parties to conduct discovery, in the
5 event the Assistant Secretary completely reverses himself.
6 The parties estimated that the Assistant Secretary would
7 issue his reconsidered decision in mid-July 2011. As it
8 turned out, the decision came down on August 31, 2011.

9 7. When the parties could not decide on a proposed
10 order with respect to the Court's April 6, 2011, ex parte
11 ruling staying entry of judgment, they submitted their
12 respective versions to the Court. The Court signed the
13 Intervenor/Commission's proposed order, a copy of which is
14 attached and marked as Exhibit "4", which provides that
15 "[t]he entry of judgment against the Commission shall be
16 stayed pending further order of this Court."

17 8. That the August 31, 2011 letter from the Assistant
18 Secretary reaffirms his December 22, 2010 decision letter
19 is clear from the following language in the letter:

20 "Obviously, the December 2010 decision, and today's
21 reaffirmation of that decision..." (Page 2 of August 31st
22 Letter) (Emphasis added).

23 * * *

24 "Based upon the foregoing analysis, I re-affirm the
25 following:

1 * CVMT is a federally-recognized tribe whose entire
2 citizenship, as of this date, consists of the five
3 acknowledged citizens;

4 * The 1998 Resolution established a General Council
5 form of government, comprised of all the adult citizens of
6 the Tribe, with whom the Department may conduct government-
7 to-government relations;

8 * The Department shall respect the validly enacted
9 resolutions of the General Council; and

10 * Only upon a request from the General Council will
11 the Department assist the Tribe in refining or expanding
12 its citizenship criteria, or developing and adopting other
13 governing documents." (Page 8, August 31st Letter) (Emphasis
14 added).

15 9. Since the August 31, 2011 reconsidered decision by
16 the Assistant Secretary reaffirms his December 22, 2010,
17 decision letter, judgment should be entered against the
18 Commission forthwith.

19
20 **THE ASSISTANT SECRETARY'S STAY IMPLEMENTING HIS DECISION**
21 **DOES NOT PREVENT ENTRY OF JUDGMENT AGAINST THE COMMISSION**

22 The August 31, 2011, decision letter states that it is
23 "final for the Department and effective immediately."
24 (Page 8 of Letter). Contrary to what the Commission may
25 argue, this is a far cry from being of "no force and
26 effect." Because of Dixie's pending litigation in federal
27 court challenging the December 22, 2010, decision, the
28

1 Assistant Secretary stayed implementation of his August 31,
2 2011, decision pending resolution of that federal
3 litigation. The word "effective" means OPERATIVE (as the
4 tax becomes *effective* next year. (Merriam-Webster,
5 www.meriam-webster.com). Thus, by its own terms, the
6 August 31, 2011 letter is operative immediately, permitting
7 this Court to take judicial notice of the substance of that
8 decision with respect to this California State Court
9 action.

10 The word "implement" means CARRY OUT, ACCOMPLISH;
11 *especially*: to give practical effect to and ensure of
12 actual fulfillment by concrete measures. (Merriam-Webster,
13 www.meriam-webster.com). By taking judicial notice of the
14 August 31, 2011, decision letter, this Court is not
15 "implementing" the terms of that decision. The utility of
16 judicially noticing that decision for purposes this
17 California State litigation is to refute the affirmative
18 defenses asserted by the Commission on why it is
19 withholding RSTF money from the Tribe. There is now a
20 final agency action on those issues. Thus, all the
21 Assistant Secretary did was to stay the practical means of
22 carrying out his decision on the federal issues he decided,
23 pending resolution of Dixie's challenges to those issues in
24 federal court, something the federal court was going to do
25 anyway. However, the substance of his decision is still
26 effective and a final agency action. It was not a victory
27
28

1 for Dixie, because he chooses to appeal that decision ad
2 nauseam.

3 Neither the Assistant Secretary nor the federal court
4 hearing Dixie's challenge to the December 22, 2010 decision
5 letter has any authority to stay the present California
6 State Court action over Revenue Sharing Trust Fund ("RSTF")
7 money belonging to the Tribe.


8 **CONCLUSION**

9 For the foregoing reasons, Plaintiff requests that this
10 Court take judicial notice of the August 31, 2011, letter
11 from the Assistant Secretary and enter judgment against the
12 Commission.

13 Plaintiff also requests that the Court put back on
14 calendar its motion for pre-judgment interest.

15
16 Dated:

9/5/2011

17 
18 Manuel Corrales, Jr., Esq.
19 Attorney for Plaintiff
20 CALIFORNIA VALLEY MIWOK
21 TRIBE

22 **DECLARATION OF MANUEL CORRALES, JR.**

23 I, Manuel Corrales, Jr., declare that if called as a
24 witness in this case, I could and would testify as follows:

25 1. I am an attorney at law duly licensed to practice
26 in the State of California, the State of Utah and the State
27 of New Mexico, and I am one of the attorneys of record for
28 Plaintiff CALIFORNIA VALLEY MIWOK TRIBE. I have personal
knowledge of the facts set forth herein.

1 2. Attached herewith and marked as Exhibit "1" is a
2 true and correct copy of a letter dated March 25, 2011,
3 from me to the Honorable Ronald L. Styn, enclosing the
4 revised, proposed judgment for entry against the
5 Commission.

6 3. Attached herewith and marked as Exhibit "22" is a
7 true and correct copy of the "Order Staying Enforcement of
8 Judgment under CCP Section 918(b) and (c)", signed and
9 filed March 25, 2011.

10 4. Attached herewith and marked as Exhibit "3" is a
11 true and correct copy of a letter dated April 1, 2011, from
12 the Assistant Secretary setting aside his December 22,
13 2010, letter.

14 5. Attached herewith and marked as Exhibit "4" is a
15 true and correct copy of an "Order Granting in Part Ex
16 Parte Applications for Stay of Entry of Judgment", which
17 was prepared by Mr. Matthew McConnell and submitted to the
18 Court for signature. I never received a conformed copy of
19 this order, but the Court informed the parties at a hearing
20 thereafter that it had signed Mr. McConnell's proposed
21 order over the one submitted by Plaintiff.

22 6. Attached herewith and marked as Exhibit "5" is a
23 true and correct copy of an Email dated August 31, 2011,
24 from me to Ms. Sylvia Cates and other counsel, attaching
25 the August 31, 2011, letter from the Assistant Secretary,
26 and advising of the ex parte hearing on September 7, 2011,
27 at 8:30 a.m. in Department 62, for purposes of having
28 judgment entered against the Commission.

1 7. Attached herewith and marked as Exhibit "6" is a
2 true and correct copy of a letter dated September 1, 2011,
3 from me to Ms. Cates and all counsel further advising of
4 the ex parte hearing on September 7, 2011.

5 I declare under penalty of perjury under the laws of
6 the State of California that the foregoing is true and
7 correct.

8 Executed this 5 day of September, 2011, at San
9 Diego, California.

10
11 
12 _____
13 MANUEL CORRALES, JR.
14
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EXHIBIT D

EXHIBIT D

SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SAN DIEGO

HALL OF JUSTICE

TENTATIVE RULINGS - October 20, 2011

EVENT DATE: 10/21/2011

EVENT TIME: 08:30:00 AM

DEPT.: C-62

JUDICIAL OFFICER: Ronald L. Styn

CASE NO.: 37-2008-00075326-CU-CO-CTL

CASE TITLE: CALIFORNIA VALLEY MIWOK TRIBE VS. THE CALIFORNIA GAMBLING CONTROL COMMISSION

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Contract - Other

EVENT TYPE: Motion Hearing (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion - Other, 09/15/2011

Plaintiff California Valley Miwok Tribe's motion for entry of judgment against Defendant California Gambling Control Commission is denied.

The court finds Plaintiff's motion is jurisdictionally barred as an improper motion for reconsideration of this court's September 7, 2011, ex parte ruling via Minute Order. See, *Gilberd v. AC Transit* (1995) 32 Cal.App.4th 1494, 1500. ["According to the plain language of the statute, a court acts in excess of jurisdiction when it grants a motion to reconsider that is not based upon "new or different facts, circumstances, or law." Although Intervenor's raise this issue, Plaintiff fails to respond to this argument or to initially provide any "new or different facts, circumstances, or law" as required to support a motion for reconsideration under CCP § 1008(b).

Even if Plaintiff was able to overcome this jurisdictional hurdle, Plaintiff's motion would still be denied. On the merits, the court is not persuaded by Plaintiff's "independent grounds" argument. While the court took judicial notice of several other documents in its ruling, the March 11, 2011, Minute Order reflects that the court granted Plaintiff's motion for judgment on the pleadings based exclusively on the December 22, 2010, decision by Assistant Secretary Larry Echo Hawk. ["The court also finds that, in light of the December 22, 2010 decision by Assistant Secretary Larry Echo Hawk of the United States Department of the Interior –Indian Affairs, of which this court takes judicial notice, [Evidence Code § 452(c)], the Commission's answer does not state facts sufficient to constitute a defense to the complaint. CCP §438(c)(1)(A)."] There is no other basis stated for the court's ruling. The court's reference to the January 12, 2011, letter Troy Burdick letter is only to demonstrate that it had no effect on the court's ruling.

The stay subsequently issued by this court, and still in effect, is based on the April 1, 2011, decision of Assistant Secretary Hawk rescinding the December 22, 2010, decision.

The August 31, 2011, decision by Assistant Secretary Hawk re-affirms certain portions of the December 22, 2010, decision but specifically provides that:

This decision is final for the Department and effective immediately, but implementation shall be stayed pending resolution of the litigation in the District court for the District of Columbia. *California Valley Miwok Tribe v. Salazar*, C.A. No. 1:11-cv-00160-RWR (filed 03/16/11)."

Implementation of the August 31, 2011, decision is stayed pending resolution of the pending federal action brought by Intervenor's. The Assistant Secretary also stipulated in *California Valley Miwok Tribe v.*

CASE TITLE: CALIFORNIA VALLEY MIWOK TRIBE CASE NUMBER: 37-2008-00075326-CU-CO-CTL
VS. THE CALIFORNIA GAMBLING

Salazar that: "the August 31, 2011 decision will have no force and effect until such time as this court renders a decision on the merits of plaintiffs' claims or grants a dispositive motion of the Federal Defendants." Both the December 20, 2010 decision and the August 31, 2011, decision are under judicial review in the federal action. This court's ruling on Plaintiff's motion for judgment on the pleadings is dependent on the final outcome of the judicial review of the decisions by Assistant Secretary Hawk. Therefore, the court orders that this matter remain stayed, with all previous orders remaining in effect, pending final resolution of *California Valley Miwok Tribe v. Salazar*.

For these same reasons the court denies the Commission and the Intervenor's requests to vacate the court's previous rulings. Intervenor's request that the court ordered stay extend to discovery is denied. The court's order of April 20, 2011, allowing the parties to conduct discovery "unless and until otherwise ordered by the Court" remains in effect.

The court rejects Plaintiff's standing argument with respect to Intervenor. This court's April 20, 2011, order clearly provides that "Intervenor is reinstated as fully participating parties to this case."

Plaintiff fails to establish how the Intervenor's attorney's purported conflict of interest warrants the relief Plaintiff seeks via this motion – entry of judgment.

Plaintiff's request for judicial notice is granted. The Commission's request for judicial notice is granted. Intervenor's request for judicial notice is granted.