

CIVIL COVER SHEET

Case 2:13-cv-02179-GEF-EBF Document 6 Filed 10/18/13 Page 1 of 2

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

THE CALIFORNIA VALLEY MIWOK TRIBE, a federally recognized Indian Tribe, and SILVIA BURLEY, in her official capacity as Chairwoman,

(b) County of Residence of First Listed Plaintiff _____

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Robert Rosette, Alex Lozada, Rosette LLP, 193 Blue Ravine Rd., Suite 255, Folsom, CA 95630 (916) 353-1084

DEFENDANTS

SAN JOAQUIN COUNTY SHERIFF'S OFFICE, et al.

County of Residence of First Listed Defendant _____

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROFESSIONAL FEES <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
<input type="checkbox"/> 210 Land Condemnation <input checked="" type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 950 Constitutionality of State Statutes	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (Specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:
Declaratory and Injunctive Relief

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
0.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/18/2013

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Case 2:13-cv-02179-GEF-FFB Document 6 Filed 10/18/13 Page 2 of 2

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. **Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Robert A. Rosette (CA SBN 224437)
Alex Lozada (CA SBN 275416)
ROSETTE, LLP
193 Blue Ravine Rd., Suite 255
Folsom, California 95630
Telephone: (916) 353-1084
Facsimile: (916) 353-1085
rosette@rosettela.com
alozada@rosettela.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

**THE CALIFORNIA VALLEY MIWOK
TRIBE**, a federally recognized Indian Tribe;
and **SILVIA BURLEY**, in her official
capacity as Chairwoman,

Plaintiffs,

vs.

**SAN JOAQUIN COUNTY SHERIFF'S
OFFICE; SAN JOAQUIN COUNTY
SHERIFF STEVE MOORE**, in his official
capacity; **INDYMAC BANK, F.S.B.**, a
federally chartered savings bank; **DEUTSCHE
BANK NATIONAL TRUST COMPANY**, as
trustee of the IndyMac INDA Mortgage Loan
Trust 2007-AR3, Mortgage Pass Through
Certificates, Series 2007-AR3; **ONEWEST
BANK**, a federally chartered savings bank; and
MERIDIAN FORECLOSURE SERVICE, a
California corporation, dba Meridian Trust
Deed Service,

Defendants.

Case No.:

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF TO
STAY FORECLOSURE SALE**

Date:

Time:

Courtroom:

INTRODUCTION

The California Valley Miwok Tribe ("the Tribe") and its Chairwoman, Silvia Burley (hereafter collectively referred to as "Plaintiffs") move this Court for its issuance of a temporary

1 restraining order and injunctive relief that will prevent the San Joaquin County Sheriff's Office,
 2 San Joaquin County Sheriff Steve Moore, IndyMac Bank, F.S.B., a federally chartered savings
 3 bank, Deutsche Bank National Trust Company, as trustee of the IndyMac INDA Mortgage Loan
 4 Trust 2007-AR3, Mortgage Pass Through Certificates, Series 2007-AR3, OneWest Bank, a
 5 federally chartered savings bank, and Meridian Foreclosure Service, a California Corporation, dba
 6 Meridian Trust Deed Service (collectively referred to herein as "Defendants"), from acting in any
 7 manner in furtherance of any seizure, trustee sale, public auction, or similar effort to dispossess
 8 Plaintiffs of possession of the Tribe's property and assets located at 10601 Escondido Place in
 9 Stockton, California—which property includes all of the structures, assets, records, and property
 10 of all types located at and on the Tribal Property (collectively, the "Tribal Property")—because
 11 that Property is essential to the resolution of the litigation pending in the United States District
 12 Court for the District of Columbia, Case No. 1:11-cv-00160-RWR, in the matter styled *California*
 13 *Valley Miwok Tribe, et al. v. Salazar, et al.* ("the Action") and belongs to a federally-recognized
 14 Indian Nation which this Court must also recognize, through declaratory judgment, as a sovereign
 15 Indian Nation that is not subject to Defendants' seizure, taking, claim, or foreclosure auction.

16 Defendants' planned sale of the Tribal Property at auction will cause severe harm to
 17 Plaintiffs, as it will essentially paralyze the Tribe's ability to continue governmental operations
 18 and administer essential Tribal benefits to its members. To be sure, courts have found that the
 19 seizure of tribal assets is sufficient, as a matter of law, to demonstrate irreparable harm for
 20 purposes of issuing a preliminary injunction. *See Kiowa Indian Tribe of Oklahoma v. Hoover*,
 21 150 F.3d 1163, 1171-72 (10th Cir. 1998) (citing *Seneca-Cayuga Tribe v. Oklahoma*, 874 F.2d
 22 709, 716 (10th Cir. 1989) (holding that the seizure of tribal assets "significantly interferes with the
 23 Tribe's self-government"). In addition, allowing the seizure of the Tribal Property is in direct
 24 contravention of the Tribe's sovereignty and tramples on the Tribe's ability to properly and
 25 meaningfully exercise its sovereign authority.

26 Further, because granting injunctive relief is also in the interest of both the Tribal
 27 membership as well as the greater non-Tribal general public, the Court should immediately protect

1 those interests by granting said relief. The balance of equities therefore tips clearly in favor of
2 issuing a temporary restraining order and granting the Plaintiffs' requested relief.

3 **PARTIES**

4 1. Plaintiff California Valley Miwok Tribe ("the Tribe") is a federally recognized
5 Indian Tribe located in Stockton, California.

6 2. Plaintiff Silvia Burley ("Burley") is the Chairwoman of the Tribe.

7 3. Defendant San Joaquin County Sheriff's Office is the public agency for San
8 Joaquin County charged with enforcing the law and maintaining peace and order for that County,
9 with a principal place of business located at 7000 Michael Canlis Blvd, French Camp, CA 95231
10 ("Sheriff's Office").

11 4. Defendant San Joaquin County Sheriff Steve Moore, sued in his official capacity
12 ("Sheriff"), is the elected law enforcement official for San Joaquin County and is responsible for
13 the oversight of the Sheriff's Office.

14 5. IndyMac Bank, F.S.B. ("IndyMac"), is a federally chartered savings bank that had
15 funded, in part, the loan upon which Plaintiffs had purchased the Tribal Property.

16 6. Deutsche Bank National Trust Company ("Deutsche Bank") serves as the trustee
17 of the IndyMac Mortgage Loan Trust 2007-AR3, Mortgage Pass Through Certificates, Series
18 2007-AR3, under the certain Pooling and Servicing Agreement dated May 1, 2007 ("the P&S
19 Agreement").

20 7. OneWest Bank ("OneWest") is a federally-chartered savings bank that had
21 funded, in part, the loan upon which Plaintiffs had purchased the Tribal Property.

22 8. Meridian Foreclosure Service, a California Corporation, dba Meridian Trust Deed
23 Service ("Meridian"), identified as the trustee for beneficiary IndyMac under the Deed of Trust
24 dated April 20, 2007, has acted as an agent for Defendants IndyMac, Deutsche Bank, and
25 OneWest (hereafter collectively referred to as "the Bank Defendants") assigned to conduct the
26 scheduled auction of the Tribal Property.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and § 1362 in that the issues before this Court raise a federal question and are brought by a federally recognized Indian Tribe.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(1) and (2) in that Defendants reside in or operate in this District and have committed a substantial part of the acts alleged in this District.

11. Venue is also proper here as the property, parties, and legal issues which are the subject of this action are located in and inextricably tied with the Tribe and Tribal entities.

FACTUAL ALLEGATIONS

12. The California Valley Miwok Tribe is a self-governing Indian Tribe possessing inherent sovereignty that predates the founding of the United States and the ratification of the United States Constitution. The Tribe possesses a distinct political society capable of managing its own affairs and, through its sovereignty, is generally immune from state laws and administrative actions that would interfere with those rights of self-government and sovereign immunity. *See Cherokee Nation v. Georgia*, 30 U.S. 1, 16 (1831); *Worcester v. Georgia*, 31 U.S. 515 (1832).

13. The Tribe owns property located at 10601 Escondido Place in Stockton, California ("the Tribal Property"). *See* Exhibit A, Quitclaim Deed from Silvia Burley to the California Valley Miwok Tribe, dated June 18, 2008; *see also* Declaration of Silvia Burley ("Burley Decl."), ¶ 4.

14. All Defendants should have been aware that the Tribe owned the Tribal Property prior to initiating their Notice of Default and Election to Sell Under Deed of Trust ("Default Notice"). *See* Exhibit B, Default Notice.

15. The Tribe possesses no real property other than the Tribal Property. *See* Burley Decl. ¶ 12. The Tribe is recognized by the State of California as a landless Tribe. *See* Exhibit C, Letter from State Board of Equalization to the Tribe, dated July 6, 2012.

1 16. Although the Tribe does not possess land held in trust by the federal government,
2 the Tribal Property is recognized by the State of California as the Tribe's principal place of
3 business. *See id.* and Exhibit D, State Board of Equalization List of Eligible Tribal Governments
4 and Eligible Delivery Locations.

5 17. On or about June 30, 2013, Burley received the Default Notice from Meridian,
6 advising that if Plaintiffs did not pay the entire amount of \$411,659.69 then due, Meridian would
7 sell the Tribal Property at auction.

8 18. On September 25, 2013, Burley received a Notice of Trustee's Sale from Meridian
9 ("Sale Notice"). The Sale Notice stated that the Tribe was in default under a deed of trust dated
10 April 20, 2007 and that the Tribal Property would be sold at public auction on October 21, 2013
11 (the "Foreclosure Auction"). *See* Exhibit E, Sale Notice, dated September 25, 2013.

12 19. The scheduled Foreclosure Auction will result in the removal of the Tribe's real
13 property and the displacement of its tribal government headquarters, its government property, and
14 in essence terminate all governmental operations. Moreover, such auction will impair – if not
15 prevent – the Tribe's ability to continue to protect its interests in the litigation currently pending in
16 the United States District Court for the District of Columbia, Case No. 1:11-cv-00160-RWR, in
17 the matter styled *California Valley Miwok Tribe v. Salazar* ("the Action"), which involves the
18 distribution of millions of dollars of Revenue Sharing Trust Funds ("RSTFs") owed to the Tribe.

19 20. The RSTFs are currently being held in an interest-bearing account pending the
20 aforementioned Action. The RSTFs are currently being held in the Tribe's name, and the Tribe
21 has committed to providing the Bank Defendant with these monies, which will be freed as soon as
22 the Action is over.

23 21. Bank Defendants have asserted – without verification – that Deutsche Bank is the
24 trustee for IndyMac. OneWest, through the Default Notice, has also made a blanket claim to an
25 interest in the Tribal Property, without describing or properly identifying the extent or nature of
26 said interest.

27 22. Furthermore, as the alleged trustee for unnamed "Certificateholders" of a series of
28

1 mortgage-backed securities, Deutsche Bank has failed to demonstrate that it – and not the
2 Certificateholders – holds any true ownership interest in the Tribal Property. It has also failed to
3 demonstrate that the Certificateholders have acceded or legally assigned their rights to even assert
4 an interest in the Tribal Property and, more specifically, the right to seek foreclosure.

5 23. Accordingly, the Bank Defendants have not demonstrated that they will suffer
6 actual or threatened injury as a consequence of any default, which distinct and palpable injury is
7 required in order for the Bank Defendants to satisfy the legal prerequisite to prove that they,
8 individually, have a sufficient personal stake in and legal standing to institute the Foreclosure
9 Auction involving the Tribal Property.

10 24. Plaintiffs have made numerous good faith attempts to negotiate an amicable
11 resolution with the Bank Defendants towards resolving any outstanding debt on the Tribal
12 Property. Although the Bank Defendants have attempted to negotiate with the Plaintiffs in
13 forbearing the debt, they have refused to delay the Foreclosure Auction prior to the resolution of
14 the Action. By said refusal, they, in turn, are improperly interfering in the Action and taking steps
15 to render the Action and any resulting decision thereon essentially moot, if the Tribal Property –
16 or all of the Tribe's current assets – are sold at auction.

17 25. Unless the Defendants are enjoined from selling the Tribal Property at their
18 planned Foreclosure Auction, the Tribe will face a sudden cessation of its Tribal government
19 operations, its business opportunities and operations, and a consequent inability to provide
20 essential services such as public safety, education, health care, and basic infrastructure critical to
21 its members.

22 **FIRST CAUSE OF ACTION**

23 **Declaratory Relief Recognizing That the California Valley Miwok Tribe is a**
24 **Federally Recognized Indian Tribe and It Would Suffer Irreparable Harm if Its**
25 **Citizens Were Forcibly Removed from the Property**

26 26. Plaintiffs repeat and incorporate, as though fully set forth herein, each and every
27 allegation set forth in paragraphs 1 through 25 above.

28 27. The California Valley Miwok Tribe is a federally recognized Indian Tribe. See

1 Exhibit C.

2 28. The Tribe is fully entitled to govern its own resources, interests, and rights.
3 An actual controversy has arisen and now exists between the Plaintiffs and the Defendants
4 concerning their respective rights and duties.

5 28. The Bank Defendants' planned Foreclosure Auction, if permitted to proceed,
6 would irreparably damage the Tribe, its members, its governmental operations, and its sovereignty
7 because the Tribal Property scheduled for auction is where the day-to-day Tribal governmental
8 operations take place; without the use and access to such Property, said operations would
9 inevitably shut down, thereby denying Tribal members vital services and benefits.

10 29. Pursuant to 28 U.S.C. §§ 2201 and 2202, a judicial determination of the respective
11 rights of the parties with respect to the legality of the planned Foreclosure Auction is necessary
12 and appropriate under the circumstances.

13 **SECOND CAUSE OF ACTION**
14 **Defendants' Violations of State Law (Cal. Civ. Code § 2924)**

15 30. Plaintiffs repeat and incorporate, as though fully set forth herein, each and
16 every allegation set forth in paragraphs 1 through 31 above.

17 31. Pursuant to California Civil Code Section 2924(f), Defendants are required to
18 provide the Default Notice and Sale Notice to the Tribe.

19 32. Defendants have failed to provide Plaintiffs with the required statutory notice and
20 have failed to provide any proof that they have properly complied with Section 2924(f); such
21 failures are fatal to the Foreclosure Auction that Defendants have scheduled to take place on
22 October 21, 2013.

23 33. As a result of the foregoing, Plaintiffs, as a federally recognized Indian Tribe, are
24 entitled to a declaratory finding that Defendants' failure to comply with the required statutory
25 notice mandated under California law prevents the Defendants' from selling the Tribal Property.
26

27 **THIRD CAUSE OF ACTION**
28 **Injunctive Relief**

1 34. Plaintiffs repeat and incorporate, as though fully set forth herein, each and
2 every allegation set forth in paragraphs 1 through 35 above.

3 35. This is an action for emergency preliminary injunctive relief which is brought
4 pursuant to applicable law.

5 36. Plaintiffs have a clear legal right to seek preliminary injunctive relief because the
6 Tribal Property that Defendants have scheduled for auction constitutes the property on which the
7 Tribe's day-to-day governmental responsibilities and functions take place, and because
8 Defendants are seeking, without satisfying the necessary legal standing requirements, to institute
9 foreclosure against an Indian Nation and its property and are attempting to take possession,
10 custody, and control of the Tribal Property.

11 37. Plaintiffs have no adequate remedy at law to redress the harm complained of, and
12 the sale of the Tribal Property, under the circumstances, is contrary to equity and good conscience
13 in that such sale is being instituted by parties who have no legal standing to institute or maintain
14 the foreclosure *ab initio* against the Tribe and the property utilized by its government.

15 38. The specific facts set forth in this Complaint demonstrate that, unless an
16 emergency preliminary injunction against Defendants' foreclosure sale is granted, the Tribe will
17 suffer irreparable injury, loss, and damage to their sovereign status as an Indian Nation, and to its
18 daily governmental operations necessary for the proper functioning of the Tribal government and
19 the needs of Tribal members.

20 39. Defendants will not be harmed if Plaintiffs' requested relief is granted, and any
21 claimed harm is substantially outweighed by the irreparable harm that a foreclosure sale would
22 have on the Tribe and its members.

23 40. The granting of the requested relief is in the public interest because it will allow the
24 Tribe to continue to serve its members and it will prevent the harm that would otherwise come to
25 them from Defendants' illegal and unlawful conduct should the requested relief not be granted.

26 41. Under the circumstances, there is no harm to Defendants if Plaintiffs' requested
27 relief is granted because all applicable terms of the underlying mortgage to the Tribal Property
28

1 remain in effect; further, Plaintiffs have pledged and continue to pledge their commitment to
2 satisfy all outstanding delinquencies and fees associated with the Tribal Property that are owed to
3 Defendants once the Action is resolved and they gain access to the RSTFs reserved in the Tribe's
4 name.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray that this Court will grant them the following relief:

7 1. A judgment declaring that the California Valley Miwok Tribe is a federally
8 recognized Indian tribe and the property at issue is utilized by the Tribal government and its
9 citizens for official Tribal purposes. An injunction restraining and enjoining Defendants' attempt
10 to conduct a foreclosure sale of the Tribal Property and an accompanying finding that such
11 attempts are legally defective and shall not be enforced until further hearing and subsequent order;
12 and

13 2. Damages on the Tribe's causes of action pursuant to equitable relief; and

14 3. An order awarding the Tribe its costs, expenses, and reasonable attorney's fees as
15 provided by law; and

16 4. For such other costs and further relief as the Court deems equitable and just.

17
18 Dated: October 18, 2013

RESPECTFULLY SUBMITTED,

19 ROSETTE, LLP
20

21
22 
23 Robert A. Rosette
24 Alex Lozada

25 Attorneys for Plaintiff
26
27
28