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Attorney for Defendants

SILVIA BURLEY, ANGELICA PAULK, TIGER PAULK, RASHEL REZNOR, MILDRED
BURLEY, and TRISTIAN WALLACE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE OF THE
INDYMAC INDA MORTGAGE LOAN
TRUST 2007-AR3, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES
2007-AR3 UNDER THE POOLING AND
SERVICING AGREEMENT DATED MAY
1, 2007,

Plaintiff,

v.

SILVIA BURLEY, ANGELICA PAULK,
TIGER PAULK, RASHEL REZNOR,
MILDRED BURLEY, TRISTIAN
WALLACE, and DOES 1 through 5,
inclusive,

Defendants.

CASE NO.:

NOTICE OF REMOVAL

**28 U.S.C. §§ 1441(a)(b) Principal Federal
Removal Statute, Federal Question**

[Removed from San Joaquin Superior Court, Case
Number 39-2014-00307582-CL-UD-STK]

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE THAT pursuant to 28 U.S.C. §§1441 and 1446, Defendant Silvia
Burley, as chairperson of the California Valley Miwok Tribe ("the Tribe"), along with co-Defendants
Angelica Paulk, Tiger Paulk, Rashel Reznor, Mildred Burley, and Tristian Wallace, hereby remove the
above-captioned action from the Superior Court of California, County of San Joaquin, to the United

NOTICE OF REMOVAL

1 States Eastern District Court of California and sets forth in support of her Notice of Removal of the
2 Action the following:

3 1. On February 13, 2014, an unlawful detainer action was commenced in the San Joaquin
4 Superior Court entitled *DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE OF THE*
5 *INDYMAC INDA MORTGAGE LOAN TRUST 2007-AR3, MORTGAGE PASS-THROUGH*
6 *CERTIFICATES, SERIES 2007-AR3 UNDER THE POOLING AND SERVICING AGREEMENT*
7 *DATED MAY 1, 2007 v. SILVIA. BURLEY AS INDIVIDUAL*. True and correct copies of the Summons
8 and Complaint are attached hereto as Exhibits, *Case No. 39-2014-00307582-CL-UD-STK*, which
9 constitutes "all process, pleadings and orders" served upon only Silvia Burley pursuant to 28 U.S.C. §
10 1446(a).
11

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13 2. A copy of the Notice of Removal is being filed with the Clerk of the Eastern District
14 Court of California and is being served on the Plaintiffs' counsel of record pursuant to 28 U.S.C. §§
15 1446(a) and (d).
16

17 **A Federal Question Exists that Warrants Removal to Federal Court**

18 3. This action is a civil action of which this Court has original jurisdiction under 28 U.S.
19 Code § 1331, and is one which may be removed to this Court by the Tribe and the defendants named
20 individually, pursuant to the provisions of 28 U.S. Code § 1441 (b).
21

22 4. This court has jurisdiction pursuant to 28 U.S. Code § 1362. The district courts shall
23 have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body
24 duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the
25 Constitution, laws, or treaties of the United States. This case arises under the Indian commerce clause
26 (Article I, Section 8, Clause 3). The principal federal removal statute, 28 U.S.C. § 1441(a), authorizes a
27 defendant to remove from state court to federal court "any civil action brought in a State court of which
28

1 the district courts of the United States have original jurisdiction” This action is a civil action of
2 which this court has original jurisdiction under 28 U.S.C. § 1331, and is one which may be moved to
3 this court by the Defendants, officers of the Tribe and the Tribe, pursuant to the provisions of 28 U.S.C.
4 § 1441(b) in that it arises under the federal common law doctrine of tribal sovereign immunity as set
5 forth below.
6

7 5. Any civil action brought in a state court of which the district courts of the United States
8 have original jurisdiction may be removed by the defendant or defendants to the district court of the
9 United States for the district and division embracing the place where such action is pending. 28 U.S.C.
10 § 1441(a). Any civil action of which the district court have original jurisdiction founded on a claim or
11 right arising under the Constitution, treaties or laws of the United States shall be removable without
12 regard to the citizenship or residence of the parties. 28 U.S.C. § 1441(b).
13

14 6. The jurisdictional statute invoked by the Defendants, 28 U.S.C. § 1331, authorizes
15 federal district courts to hear civil actions “arising under the Constitution, laws or treaties of the United
16 States” and 28 U.S.C. § 1441, authorizes a state court defendant to remove a case “when a federal court
17 would have jurisdiction if the case had been filed there originally.” See *Topeka Housing Auth. v.*
18 *Johnson*, 404 F.3d 1245, 1247 (10th Cir. 2005); see also *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392
19 (1987). This Court has subject matter jurisdiction over this action and all claims asserted against the
20 Defendants pursuant to 28 U.S. Code § 1332(a).
21

22 7. The Complaint is in regard to property Silvia Burley, the officially recognized
23 chairperson of the California Valley Miwok Tribe, purchased in Stockton using tribal money for the use
24 and privilege of the California Valley Miwok Tribe as its tribal office and quitclaimed the Deed to the
25 California Miwok Tribe.
26

27 8. The Miwok Tribe is a sovereign, self-governing, federally-recognized Indian Tribe; and
28

1 the General Council is the governing body of the Tribe, pursuant to Board of Indian recognition, dated
2 September 24, 2008. The Tribe was reaffirmed as a federally recognized tribe by the US Government in
3 2011. The tribe is one of about a dozen federally recognized Miwok bands in California and is located
4 on aboriginal lands in the San Joaquin Valley. The tribe operates by resolution, a form of government
5 exercised by other tribes and upheld by the Department of the Interior. On November 5, 1998, by
6 Resolution # GC-98-01, the Tribe established the tribal council.
7

8 9. Tribes continue to have a government to government relationship with the United States
9 and they continue to be sovereign governments with primary control over their citizens and their
10 territory.
11

12 10. Tribal sovereignty ensures that any decisions about the tribes with regard to their
13 property and citizens are made with their participation and consent. Businesses such as banks must
14 recognize tribal sovereignty when doing business with an Indian tribe or its members because the
15 Supreme Court has recognized that Indian tribes have authority to license and regulate non-Indians
16 engaging in commercial transactions with the tribe or its members.
17

18 11. The General Council affirms Silvia Burley as Tribal Chairperson with the authority to
19 conduct government to government relations with the federal government and the State of California,
20 including all of their instrumentalities and subdivisions, and represent the Tribe in such a capacity
21

22 12. On or about March 29, 2002, the California Valley Miwok Tribe bought the subject
23 property, which has become the tribal land. The subject property was not only owned and paid by the
24 Tribe, but also used as residence and office for the body of the Tribe since 2002 until present.
25

26 13. The California State Board of Equalization has accepted and approved the address where
27 the tribe conducts tribal government business and is eligible for tax exemption status.
28

14. On October 11, 2006, a Deed of Trust was recorded in the Official Records of San

1 Joaquin County. The transaction was requested on behalf of the California Valley Miwok Tribe to
2 refinance the subject property using tribal money.

3
4 15. Defendants conveniently chose to ignore the existence of sovereign immunity and the
5 governing body of the Tribe at the subject property. Tribal sovereign immunity is a well-established
6 doctrine of federal Indian law by the Congress. There is nothing in California's organic act (9 Stat.
7 452), nor in any other federal law, which grants California any special power over Indian tribes. *See*
8 *Long v. Chemehuevi Indian Reservation* (1981) 115 Cal.App.3d 853. It is well established that Indian
9 tribes possess sovereign immunity from suit that existed at common law. *Rosebud Sioux Tribe v. A & P*
10 *Steel, Inc.*, 874 F.2d 550, 552 (8th Cir.1989). Presently, sovereign immunity is the strongest defense to
11 litigation attacks against tribal treasuries and the assertion of state regulatory authority on tribal lands.
12 *See Oklahoma Tax Comm'n v. Citizen Band of Potawatomi*, 498 U.S. 505 (1991). "[I]n the absence of
13 federal authorization, tribal immunity, like all aspects of tribal sovereignty, is privileged from
14 diminution by the States." *Three Affiliated Tribes v. Wold Engineering* (1986) 476 U.S. 877, 890.

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16
17 16. Further, this sovereign immunity protects not only the tribe but also persons acting as
18 arms of the tribe. *American Property Management Corp. v. Superior Court* (2012) 206 Cal.App.4th
19 491, 500. Individual Indians are protected by tribal immunity if they were "acting within the scope of
20 their authority" in their actions. *Great Western Casinos, Inc. v. Morongo Band of Mission Indians*
21 (1999) 74 Cal.App.4th 1407, 1421. In *Michigan v. Bay Mills Indian Community*, No 12-515, the U.S.
22 Supreme Court on May 26, 2014, re-affirmed its 1998 holding in *Kiowa Tribe v. Manufacturing*
23 *Technologies, Inc.* 523 U.S. 751 (1998) that tribal sovereign immunity extends to tribes' governmental
24 and commercial activities, both on reservation and off.

25
26
27 17. Silva Burley acted on behalf of the Tribe and at the direction of the Tribe when she
28 purchased the subject property. She then conveyed title to the Tribe. The subject property is owned and

1 is used by the California Miwok Tribe, in which the Tribe sustains their livelihood and maintains their
2 governing body. The subject property has been and is currently used as a tribal land; been served as a
3 tribal office, housing, and storage for the Tribe. The subject property has been and currently is under
4 the direct management and control by the Tribal governing body, especially the named Defendants.
5

6 18. All of the Defendants are not just individuals residing at the subject property, but rather
7 a part of governing body of the tribe. The General Council affirms Anjelica Paulk as Vice Chairperson
8 of the Tribe, Tiger Paulk as the Tribal member, Rashel Reznor as Secretary and Treasurer of the Tribe,
9 Mildred Burley as Tribal Elder and Indian Arts and Crafts Representative, and Tristian Wallace as
10 Tribal member; they represent the Tribe in such capacities. The subject property has become the Tribal
11 land, as well as place for Defendants to live and work. They are entitled to the Tribal Immunity.
12

13 19. Removal is also proper because if Plaintiff could state a claim under state law, such
14 claim(s) implicate important federal rights and defenses. *See Grable & Sons Metal Prods., Inc. v.*
15 *Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005) (“[A] federal court ought to be able to hear claims
16 recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify
17 resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal
18 issues.”).
19

20 20. Plaintiff filed the Summons and Complaint in this matter against Silvia Burley only as
21 an individual, seeking possession of the subject property while fully aware of the subject property being
22 the tribal land with other tribal officials living on the property. Plaintiff is hoping to remove the Tribe,
23 bypassing the sovereign immunity issue, by evicting governing body of the Tribe.
24

25 21. When filing the Summons and Complaint, Plaintiff was in possession of the title record
26 that shows that the subject property was owned by the Miwok Tribe; however, Plaintiff improperly
27 included an outdated recording of title under Silvia Burley's name. Plaintiff cannot defeat removal of a
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1 federal claim by disguising or 'artfully pleading' it as a state claim.

2 **The Other Requirements for Removal Are Met**

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4 22. This Notice of Removal is being timely filed within thirty (30) days of receipt by the
5 defendants that the pending superior court action would not be dismissed, through service or otherwise,
6 of an order to ascertain that the case is one which is or has become removable, on or about June 3,
7 2014, setting forth the claim for relief upon which such action or proceeding is based. Also the
8 Removal is based on principal removal statute, subject matter jurisdiction and federal law. Therefore,
9 this Notice of Removal is timely filed under 28 U.S.C. § 1446(a)(b) and (c).
10

11 23. Removal to the United States District Court, Eastern District of California is proper
12 because the Superior Court, where the above-captioned action was originally filed is located within the
13 Eastern District Court of California. 28 U.S.C. § 1446(a).

14 24. Defendants are providing written notice of the removal of this action to counsel of
15 record for the plaintiff and to the clerk of the San Joaquin County Superior Court, as required. (28
16 U.S.C. § 1446(d).)
17

18 25. Copies of the pleadings filed in the State Court Action before removal are attached
19 hereto as follows:

20 Exhibit 1: Summons and Complaint

21 Exhibit 2: Defendant Silvia Burley's Motion to Quash

22 Exhibit 3: Plaintiff's Opposition to Defendant Silvia Burley's Motion to Quash

23 Exhibit 4: Prejudgment Right to Possession filed on behalf of Tiger Paulk

24 Exhibit 5: Prejudgment Right of Possession filed on behalf of Anjelica Paulk

25 Exhibit 6: Prejudgment Right of Possession filed on behalf of Mildred Burley

26 Exhibit 7: Prejudgment Right of Possession filed on behalf of Rashel Reznor
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1 Exhibit 8: Prejudgment Right of Possession filed on behalf of Tristian Wallace

2 Exhibit 9: Silvia Burley's Notice of Demurrer and Demurrer to Complaint, hearing date of
3 April 29, 2014

4 Exhibit 10: Plaintiff's Opposition to Silvia Burley's Demurrer, hearing date of April 29, 2014

5 Exhibit 11: Notice of Demurrer and Demurrer to Complaint, hearing date of May 13, 2014

6 Exhibit 12: Plaintiff's Opposition to Defendants' Demurrer, hearing date of May 13, 2014

7 Exhibit 13: Ex Parte Application to Advance and Deny Defendants' Motion to Strike

8 Exhibit 14: Notice and Motion to Strike Plaintiff's Complaint, hearing date of June 3, 2014

9 Exhibit 15: Notice of Motion to Strike Plaintiff's Complaint, hearing date of June 19, 2014

10 Exhibit 16: Answer to Complaint

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RESPECTFULLY SUBMITTED,

DATED: July 1, 2014

SAUNDERS LAW GROUP, LTD.

By: /s/ Gary Saunders

GARY SAUNDERS, ESQ.

Attorney for Defendants

SILVIA BURLEY, ANGELICA PAULK, TIGER
PAULK, RASHEL REZNOR, MILDRED BURLEY, and
TRISTIAN WALLACE

PROOF OF SERVICE

I am employed in the County of Riverside, State of California. I am over the age of 18 and not a party to the within action. My business address is 1891 California Avenue, Suite 102, Corona, CA 92881.

On July 2, 2014, I served the foregoing document described as Notice of Removal on all interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as stated on the attached service list.

- ☒ [X] BY MAIL – I deposited such envelope in the mail at Corona, California. The envelope was mailed with postage thereon fully prepaid. I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that day with postage thereon fully prepaid at Corona, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.
- ☐ [] BY PERSONAL SERVICE – I caused such envelope to be delivered by a process server employed by _____.
- ☐ [] VIA FACSIMILE – I faxed said document to the office(s) of the addressee(s) shown above, and the transmission was reported as complete and without error.
- ☐ [] BY ELECTRONIC TRANSMISSION – I transmitted a PDF version of this document by electronic mail to the party(s) identified on the attached service list by using the e-mail address(es) indicated.
- ☐ [] BY OVERNIGHT DELIVERY – I deposited such envelope for collection and delivery _____ with delivery fees paid or provided for in accordance with ordinary business practices. I am “readily familiar” with the firm’s practice of collection and processing packages for overnight delivery by _____. They are deposited with the facility regularly maintained by _____ for receipt on the same day in the ordinary course of business.
- ☐ [] (State) I declare under penalty of perjury under the laws of the State of California that the above
is true and correct.
- ☐ [] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 2, 2014, at Corona, Riverside County, California.

/s/ Renee Fyfe
Renee Fyfe

SERVICE LIST

Deutsche Bank v. Silvia Burley, et al.

Case No. Temp. 14-385, Eastern District Court

Stockton Superior Court Case #39-2014-00307582-CL-UD-STK

Hadi Raul Seyed-Ali, Esq Law Offices of Les Zieve 30 Corporate Park, Suite 450 Irvine, CA 92606	