

Manuel Corrales, Jr., Esq. SBN 117647
ATTORNEY AT LAW
17140 Bernardo Center Drive, Suite 358
San Diego, California 92128
Tel: (858) 521-0634
Fax: (858) 521-0633
Email: mannycorrales@yahoo.com

Attorney for Plaintiffs
CALIFORNIA VALLEY MIWOK TRIBE,
THE GENERAL COUNCIL, SILVIA BURLEY,
RASHEL REZNOR, ANJELICA PAULK and
TRISTIAN WALLACE

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CALIFORNIA VALLEY MIWOK TRIBE, a) Case No.: 2:16-cv-01345-WBS-CKD
federally-recognized Indian)
tribe, **THE GENERAL COUNCIL,**) **MEMORANDUM OF POINTS AND**
SILVIA BURLEY, RASHEL REZNOR;) **AUTHORITIES IN SUPPORT OF**
ANJELICA PAULK; and TRISTIAN) **PLAINTIFFS' MOTION FOR**
WALLACE) **SUMMARY JUDGMENT**

Plaintiffs,

vs.

SALLY JEWELL, in her official
capacity as U.S. Secretary of
Interior, et al.,

Defendants

THE CALIFORNIA VALLEY MIWOK
TRIBE, et al.

Intervenor-Defendants.

) Date: May 30, 2017
) Time: 1:30 p.m.

) Judge: Hon. William B. Shubb
) Courtroom 5

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1 Plaintiffs CALIFORNIA VALLEY MIWOK TRIBE ("the Tribe" or
2 "the Miwok Tribe"), THE GENERAL COUNCIL, SILVIA BURLEY
3 ("Burley"), RASHEL REZNOR ("Rashel"), ANJELICA PAULK
4 ("Angelica"), and TRISTIAN WALLACE ("Tristian") (collectively
5 "the Burley Faction"), submit the following Memorandum of Points
6 and Authorities in Support of their Motion for Summary Judgment.

7 **I.**

8 **INTRODUCTION**

9 In 1998, Yakima Dixie ("Dixie") enrolled Burley, his
10 distant cousin, and her two family members into the Tribe. At
11 the time, the Tribe had dwindled down to Yakima Dixie and his
12 brother, Melvin Dixie, as the last known remaining Tribal
13 members. Melvin Dixie's whereabouts were unknown at the time.
14 The Bureau of Indian Affairs ("BIA") recognized this and
15 encouraged Dixie and his newly adopted Tribal members to
16 organize the Tribe with a governing body known as a "General
17 Council." The BIA directed that Dixie do so by resolution and
18 provided Dixie with a sample resolution to follow. Both Dixie
19 and Burley prepared the document and called it Resolution #GC-
20 98-01 (herein after sometimes called "the 1998 Resolution"),
21 which established the General Council as the governing body of
22 the Tribe. The Tribe had only five (5) members and the General
23 Council was comprised of Dixie as Tribal Chairman, Burley as
24 Vice Chairperson, and Rashel Reznor as Secretary.

25 Sometime after the General Council was established and the
26 Tribe began engaging in government-to-government relations with
27 the federal government, Dixie voluntarily resigned as Tribal
28 Chairman, and signed a written resignation to that effect.
Burley was elected as the new Tribal Chairperson, and Dixie
signed a written document consenting to that as well. Soon
after Dixie's resignation, a white, non-Indian by the name of
Chadd Everone contacted Dixie and told him about the new 1999

1 California State Compacts the Governor had signed, allowing
2 various tribes in California to build and operate gambling
3 casinos and generate high amounts of income. Because the Tribe
4 was a federally-recognized tribe and qualified to have a
5 gambling casino, no matter how small it was, Everone was
6 interested in using Dixie's name to build and operate a gambling
7 casino to enrich Everone and other non-Indian investors. The
8 only problem at the time was that Dixie had already resigned,
9 and control of the Tribe was with Burley.

10 To accomplish his scheme of taking over control of the
11 Tribe for his own personal, financial gain of building a casino,
12 Everone conspired with Dixie to have him falsely claim that he
13 never resigned as Tribal Chairman, and that Dixie's resignation
14 was forged. This created the Tribal leadership dispute that
15 Everone used to further his scheme of creating uncertainty in
16 the Tribal governing body and working toward trying to get the
17 Tribe "re-organized" through the Dixie faction which he
18 continues to control. This Tribal leadership dispute has
19 crippled the Tribe over the years and has caused havoc in its
20 ability to function and operate as a federally-recognized tribe.
21 Dixie ultimately admitted in 2012 in a sworn deposition that he
22 in fact resigned and that his resignation was never forged. By
23 the time Dixie was forced to admit he in fact resigned, he had
24 filed numerous declarations, pleadings and other documents in
25 both state and federal court falsely stating under penalty of
26 perjury that he never resigned and that his resignation was
27 forged.

28 Faced with this damning evidence, the Dixie faction has
attempted to downplay Dixie's false statements about his
resignation and fraud he perpetrated on the courts, by arguing
the issue is "irrelevant," because the General Council
established under the 1998 Resolution was purportedly invalid at

1 the outset. This argument misses the point that but for Everone
2 and Dixie's fraud in creating a false and fraudulent Tribal
3 leadership dispute, the Tribe would be functioning today under
4 the General Council and receiving federal contract funding and
5 Revenue Sharing Trust Fund ("RSTF") payments under the
6 California State Compacts without interruption.

7 Everone sought and obtained sympathy from the BIA, which
8 was led to believe, falsely, that Burley "stole" the Tribe from
9 Dixie. The BIA sought to accommodate Everone's claims, and took
10 it upon itself to "re-organize" the Tribe in an attempt to
11 indirectly resolve the ongoing Tribal leadership dispute. The
12 Burley faction challenged the BIA's efforts to do so, and the
13 matter was taken up to the Interior Board of Indian Appeals
14 ("IBIA") who then in turn referred the issue to the Assistant
15 Secretary of Interior, Indian Affairs ("AS-IA"). The AS-IA
16 Larry Echo Hawk decided the issue in August 2011 and concluded
17 that the BIA had no right to attempt to re-organize the Tribe
18 against its wishes, that the Tribe was not required to re-
19 organize under the Indian Reorganization Act of 1934 ("IRA") in
20 order to receive federal funding, or for any reason, that its
21 governing body comprising of the General Council established
22 under the 1998 Resolution would be recognized as the Tribe's
23 governing body having a government-to-government relationship
24 with the federal government, and that the Tribe consisted of
25 five (5) enrolled members subject to enlargement as to be
26 determined by the General Council without interference by the
27 BIA.

28 The Dixie faction controlled by Everone challenged Echo
Hawk's 2011 decision, and the U.S. District Court ordered the
AS-IA reconsider its decision. By the time the U.S. District
Court made its order, AS-IA Echo Hawk has retired and was
replaced by Kevin Washburn. On his last day in office on

December 31, 2015, before he, too, retired, AS-IA Washburn reversed AS-IA Echo Hawk's decision and concluded that the Tribe was not limited to five (5) members and that the General Council was never properly organized by the 1998 Resolution, because it did not consist of valid representatives of the Tribe. He refused to recognize the General Council as the governing body of the Tribe, and then directed that unenrolled, "potential" (but not actual) members be allowed to participate in re-organizing the Tribe under the IRA. In short, Washburn did a complete 180 degree turn on the Echo Hawk decision.

The Burley faction then filed this action challenging Washburn's decision, because it is erroneous as a matter of law and an arbitrary and capricious final agency action. The 2011 Echo Hawk decision should be reinstated, because it is based upon correct principles of Indian law.

II.

STATEMENT OF FACTS

A. HISTORY OF THE TRIBE

In 1915, the United States government purchased approximately 0.92 acres of land in Calaveras County, California, for the benefit of twelve (12) named Indians living on the Sheep Ranch Rancheria. (AR-CVMT-2011-001687). The Indian agent who recommended the purchase of the land for these Indians described the group as "the remnant of once quite a large band of Indians in former years living in and near the old decaying mining town known and designated on the map as 'Sheepranch.'" (*Id.*).

In 1934, Congress passed the Indian reorganization Act ("IRA"), which, among other things, required the U.S. Secretary of Interior ("the Secretary") to hold elections through which the adult Indians of a reservation decided whether to accept or reject the applicability of certain provisions of the IRA to

1 their reservation, including provisions authorizing tribes to
2 organize and adopt a constitution under the IRA. 25 U.S.C.
3 Sections 476 and 478. (AR-CVMT-2011-001687). In 1935, Jeff
4 Davis, the only Indian living on the Rancheria, voted in favor
5 of the Tribe being organized under the IRA. (Id.). However, the
6 process was never followed through, and as a result the Tribe
7 was never organized under the IRA. (Id.).

8 In 1958, in keeping with the then-popular policy of
9 assimilating Native Americans into American society, Congress
10 enacted the California Rancheria Act, which authorized the
11 Secretary to terminate the federal trust relationship with
12 several California tribes, including several Rancherias, and to
13 transfer tribal lands from federal trust ownership to individual
14 fee ownership. (Act of Aug. 18, 1958, Pub.L. No. 85-671, 72
15 Stat. 619). To this end, the BIA prepared a plan in 1966 to
16 distribute the assets of the Sheep Ranch Rancheria as a prelude
17 to termination. (AR-CVMT-2011-001687). At that time, Mabel
18 Hodge Dixie was the only adult Indian living on the Rancheria
19 who was entitled to receive the assets of the Rancheria. (Id.).
20 She, therefore, voted to accept the distribution plan and was
21 issued a deed to the land in 1966. (AR-CVMT-2011-001687-88).

22 Although the Sheep Ranch Rancheria land had been
23 distributed to Mabel Dixie pursuant to a distribution plan, the
24 Secretary never published a final notice of termination and had
25 accepted the land back from Mabel Dixie through a quitclaim
26 deed. As a result, the Tribe was administratively
27 "unterminated" before it could be formally terminated. In other
28 words, the Tribe was never terminated. (AR-CVMT-2011-002051,
1399, 1689).

In 1979, individuals from a number of terminated Rancherias
filed an action in the U.S. District Court, Northern District,
styled Hardwick v. U.S. (Civ. No. C-79-1710). The Hardwick

1 plaintiffs sought restoration of their status as Indians,
2 entitlement to federal Indian benefits, and the right to re-
3 establish their tribes as formal government entities.
4 Specifically, the Hardwick plaintiffs sought by injunction to
5 undo the effects of the California Rancheria Act and to require
6 the Secretary to "unterminate" each of the subject Rancherias
7 and to "treat all of the subject Rancherias as Indian
8 reservations in all respects." The Hardwick lawsuit ended in a
9 settlement between the tribes and the federal government,
10 culminating in a series of stipulated judgments. In the
11 settlement, the Secretary agreed to restore "any of the benefits
12 or services provided or performed by the United States for
13 Indians because of their status as Indians" and to "recognize
14 the Indian Tribes, Bands, Communities or groups of the seventeen
15 Rancherias...as Indian entities with the same status as they
16 possessed prior to distribution of the assets of these
17 Rancherias under the California Rancheria Act." (Stipulation and
18 Order, Hardwick v. United States, No. C-79-1710 (Dec. 22,
19 1983)).

20 In 1994, Yakima Dixie ("Dixie"), the son of Mabel Dixie,
21 wrote to the BIA asking for BIA assistance for home repairs on
22 the Rancheria, and described himself as "the only descendent and
23 recognized...member" of the Tribe. (AR-CVMT-2011-001688). At
24 that time Dixie and his brother, Melvin Dixie, were the only
25 surviving children of Mabel Dixie, but Melvin Dixie's
26 whereabouts were unknown. (AR-CVMT-2011-000177). Melvin later
27 died in 2008. (AR-CVMT-2017-001400, fn. 20).

28 In the mid-1990s, Burley contacted the BIA for information
related to her Indian heritage. (AR-CVMT-2011-001688). The BIA
provided her with information that showed she was related to
Jeff Davis who had initially voted in favor of the Tribe being
organized under the IRA. (Id.). Burley was also related to

1 Dixie. (Id.). Thereafter, Burley contacted Dixie and told him
2 about her interest in her Indian heritage that ultimately led to
3 him and his dwindling Tribe. (Id.).

4 On August 5, 1998, Dixie, as "Spokesperson/Chairman" of the
5 Tribe, signed a statement accepting Burley as an enrolled member
6 of the Tribe, and also enrolled Burley's two daughters and her
7 granddaughter. (AR-CVMT-2011-001688). As a result of Dixie's
8 actions, the Tribe in 1998 consisted of six enrolled members:
9 (1) Yakima Dixie; (2) Melvin Dixie; (3) Silvia Burley; (4)
10 Anjelica Paulk; (5) Rashel Reznor; and (6) Tristian Wallace.
11 (Id.).

12 In September of 1998, Yakima Dixie and Burley met at the
13 Rancheria with BIA staff to discuss organizing the Tribe. (AR-
14 CVMT-2011-001688). One of the issues discussed was developing
15 criteria for membership in the Tribe. (Id.). At the time, the
16 whereabouts of Melvin Dixie, Yakima's brother, were unknown. As
17 a result, the BIA staff told Yakima Dixie that he had both the
18 authority and the broad discretion to decide the criteria for
19 membership. According to the BIA, Yakima Dixie, his brother
20 Melvin Dixie, Burley and Burley's adult daughter were the
21 "golden members" of the Tribe. (Id.). And because Melvin Dixie's
22 whereabouts were unknown, the BIA concluded that the three adult
23 members consisting of Yakima Dixie, Burley and her adult
24 daughter were the General Council of the Tribe that had the
25 authority to take actions on behalf of the Tribe. (AR-CVMT-2011-
26 001688-89).

27 Because the Tribe was never formally terminated, there was
28 no court decision, like Hardwick, supra, that affected the
Tribe, and to which the Tribe and the BIA could look to so as to
determine who was a member of the Tribe or otherwise entitled to
organize it. Typically, California tribes who had been
unlawfully terminated by the federal government regained federal

1 recognition through litigation like Hardwick, supra, and the
2 court judgment in that litigation identified the class of
3 persons entitled to organize the tribe, e.g., the distributes
4 and their dependents, and their lineal descendants. However, in
5 the case of the Sheep Ranch Rancheria, although the land had
6 been distributed to Mabel Dixie pursuant to a distribution plan
7 preparatory to termination, the Secretary never actually
8 followed through and published a final notice of termination.
9 Instead, the Secretary accepted the land back from Mabel Dixie
10 through a quitclaim deed, thus essentially administratively
11 "unterminating" the Tribe before it had ever been formally
12 terminated. (AR-CVMT-2011-001689).

13 Therefore, because of the unique circumstance that the
14 Sheep Ranch Rancheria found itself in never being terminated,
15 the BIA concluded that "for purposes of determining the initial
16 membership of the Tribe," Yakima Dixie and Melvin Dixie must be
17 included, because they were the remaining heirs of Mabel Dixie.
18 (Id.). In addition to these two initial members, the BIA
19 recognized that Yakima Dixie had adopted Burley, her two
20 daughters, and her granddaughter, into the Tribe. As a result,
21 the BIA concluded that Burley and her adult daughter, together
22 with Yakima and Melvin Dixie had "the right to participate in
23 the initial organization of the Tribe." (Id.).

24 On September 24, 1998, the BIA told Yakima and Burley that
25 it "recommend[ed] the Tribe operate as a General Council,"
26 because of its "small size," so that they could elect or appoint
27 a chairperson and conduct business. (Id.). To this end, the BIA
28 offered the Tribe \$50,000.00 in grant money for purposes of
improving its tribal government, and provided Dixie and Burley
with a draft resolution "form" for them to use in requesting the
grant. (Id.). The draft resolution contained language
establishing the General Council.

Using the draft resolution form prepared by the BIA, Dixie and Burley prepared and signed a resolution on November 5, 1998, establishing a General Council consisting of all adult members of the Tribe, to serve as the governing body of the Tribe. (AR-CVMT-2011-001690, 00172-176). The resolution became known as Resolution #CG-98-01, which the BIA accepted as the governing document of the Tribe. (AR-CVMT-2011-000179). The document was signed by Yakima Dixie and Silvia Burley, and later by Rashel Reznor, and specifically noted that the whereabouts of Melvin Dixie were at that time unknown. Resolution #GC-98-01 vested the General Council with the governmental authority of the Tribe to conduct the full range of government-to-government relations with the United States. (AR-CVMT-2011-000178).

Pursuant to Resolution #GC-98-01, Yakima Dixie was appointed and elected as the Tribal Chairman. (AR-CVMT-2011-002052).

B. DIXIE'S FRAUD AND TRIBAL LEADERSHIP DISPUTE

On April 20, 1999, Yakima Dixie signed a notice of resignation as Tribal Chairman. (RJN "32", Letter to Washburn from Corrales, 6/6/2014, Ex. "46" to Decl. of MCJ). On the same date, Yakima Dixie also signed a document confirming his resignation as Tribal Chairman and agreeing to the appointment of Silvia Burley to replace him as the new Tribal Chairperson. (Id.).

Sometime after he resigned, Yakima Dixie was approached by a non-Indian, Chadd Everone, who sought Yakima's cooperation in taking control of the Tribe in order to build a gambling casino using the name and status of the Tribe. (AR-CVMT-2017-000955-56). The problem was that Yakima Dixie had already expressly resigned. To regain control of the Tribe, Everone conspired with Yakima to have Yakima falsely say that he never resigned and that his written resignation was a forgery. Yakima Dixie

1 then thereafter falsely told the BIA and others that he never
2 resigned and that his resignation was forged. This then created
3 a Tribal leadership dispute between Yakima Dixie and Burley that
4 has since 1999 caused havoc with the Tribe and crippled the
5 Tribe's ability to operate effectively over the years. (AR-CVMT-
6 2011-002051, 001573-75). Yakima maintained that claim from 1999
7 up through February 7, 2012, when he was deposed and testified
8 in a California state action that he in fact resigned in April
9 of 1999, that his resignation was not forged as he had
10 previously claimed, and that the signatures on the Tribal
11 resignation documents were in fact his. (RJN "33", Letter to
12 Washburn from Corrales, 7/9/2014).

13 Despite Dixie's claim that he never resigned, the BIA chose
14 to acknowledge Burley as the Chairperson of the Tribe, and, as a
15 result, accepted and honored numerous Tribal resolutions passed
16 by the General Council under Burley's leadership from 1999
17 through July 2005. (AR-CVMT-2011-001691). For example, from
18 1999 through July 2005, the BIA entered into annual P.L. 638
19 federal contracts with the Tribe under Burley's leadership, and
20 awarded the Tribe federal contract funding. (*Id.*). The
21 California State Gambling Control Commission ("the CGCC")
22 followed the BIA's lead and acknowledged Burley as the
23 authorized Tribal representative to receive \$1.1 million in
24 annual RSTF payments for the Tribe. However, behind the scenes,
25 Everone continued to stir up false claims of a Tribal leadership
26 dispute between Dixie and Burley, causing the BIA to stop
27 awarding the Tribe 638 federal contract funding in August 2005,
28 which in turn caused the CGCC to withhold RSTF payments to the
Tribe as well. (AR-CVMT-2017-000958-963).

C. THE JANUARY 28, 2010 IBIA DECISION

Because of the ongoing Tribal leadership dispute was not
coming to an end, the BIA took it upon itself, through the

1 urging of Everone and the Dixie faction, to begin a process of
 2 "re-organizing" the Tribe under the IRA. (AR-CVMT-2011-001684-
 3 85). It invited several nonmembers it called "potential" or
 4 "putative" members to participate in a general council meeting
 5 in this re-organization process, which included enrolling new
 6 members. (AR-CVMT-2011-001684). The BIA claimed these actions
 7 were necessary, because, according to the Interior Board of
 8 Indian Appeals ("IBIA") it felt "until the tribal organization
 9 and membership issues were resolved, a leadership dispute
 10 between Burley and Yakima...could not be resolved, and the
 11 resolution of that dispute was necessary for a functioning
 12 government-to-government relationship with the Tribe." CVMT v.
Pacific Regional Director, BIA (Jan. 28, 2010) 51 IBIA 103, 103-
 104. (AR-CVMT-2011-001684-85).

13 The Burley faction appealed the Pacific regional Director's
 14 decision to the IBIA. (AR-CVMT-2011-001684). The IBIA, however,
 15 deemed the matter to be a membership enrollment dispute, because
 16 it involved the issue of whether the BIA could re-organize the
 17 Tribe under the IRA without the Tribe's consent and force the
 18 enrollment of nonmembers to participate in that re-organization.
 19 (AR-CVMT-2011-001703). Because the IBIA did not have
 20 jurisdiction over enrollment disputes, it referred the issue to
 21 the Assistant Secretary of Interior, Indian Affairs ("AS-IA").
 22 (Id.).

23 The IBIA did not refer to the AS-IA any issue concerning
 24 whether the 1998 Resolution establishing the General Council was
 25 invalid for any reason. Nor did the Burley faction raise that
 26 as an issue before the IBIA. (AR-CVMT-2011-001684-1705).

27 **D. AS-IA LARRY ECHO HAWK'S AUGUST 31, 2011 DECISION**

28 On August 31, 2011, the AS-IA Larry Echo Hawk, in response
 to the IBIA's referral of the enrollment dispute, made the
 following decisions concerning the Tribe:

1 1. He reaffirmed that the Tribe is a federally recognized
2 tribe whose entire citizenship, as of August 31, 2011, consists
3 of five acknowledged citizens;

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

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

10 4. Only upon a request from the General Council will the
11 Department assist the Tribe in refining or expanding its
12 citizenship criteria, or developing and adopting other governing
13 documents.

14 5. Although the Tribe's General Council does not render
15 the Tribe organized under the IRA, as a federally recognized
16 tribe, the Tribe is not required to "organize" under the IRA.

17 6. It is impermissible to treat the Tribe, as a non-IRA
18 tribe, differently from tribes organized under the IRA and not
19 allow it to receive federal benefits. (AR-CVMT-2011-002049-50).

20 Echo Hawk, therefore, determined that there was "no need
21 for the BIA to continue its previous efforts to organize the
22 Tribe's government, because it is already organized as a General
23 Council, pursuant to the 1998 General Council Resolution it
24 adopted at the suggestion of the BIA." (AR-CVMT-2011-002049).
25 It concluded further that there was "no need for the BIA to
26 continue its previous efforts to ensure that the Tribe confers
27 tribal citizenship upon other individual Miwok Indians in the
28 surrounding area." (Id.).

 In his decision, Echo Hawk observed that the BIA wrongly
concluded it had an obligation to potential members in the
surrounding community. (AR-CVMT-2011-002050-51). He made it

clear that only the Tribe's General Council has the exclusive authority to decide who can be enrolled as members. He stated:

"...the BIA clearly understood in 1998 that the acknowledged CVMT citizens had the right to exercise the Tribe's inherent sovereign power in a manner they chose. It is unfortunate that soon after the 1998 General Council resolution was enacted, an intra-tribal leadership dispute erupted, and both sides of the dispute found, at various points in time in the intervening years, that it served their respective interests to raise the theory that the BIA had a duty to protect the rights of approximately 250 'potential citizens' of the Tribe. A focus on that theory has shaped the BIA's and the Departments' position on the citizenship question ever since. By contrast, today's decision clears away the misconceptions that these individuals have inchoate citizenship rights that the Secretary has a duty to protect. They do not. The Tribe is not comprised of both citizens and potential citizens. Rather, the five acknowledged citizens are the only citizens of the Tribe, and the General Council of the Tribe has the exclusive authority to determine the citizenship criteria for the Tribe...."

(Id.).

E. U.S. DISTRICT COURT DECEMBER 2013 ORDER REMANDING TO AS-IA FOR RECONSIDERATION

Dixie challenged the Echo Hawk 2011 decision in federal court. (AR-CVMT-2011-000024). In December 2013, the federal district court ("the District Court" or "U.S. District Court") granted summary judgment in favor of Dixie and his Tribal Faction and remanded to the AS-IA for him to "reconsider" his August 31, 2011 decision, because he "assumed" certain factual issues rather than determined them factually. CVMT v. Jewell (U.S.D.C. 2013) 5 F.Supp.3d 86, 100-101. Specifically, the U.S. District Court remanded back to the AS-IA for him to reconsider his August 31, 2011 decision, because, according to the U.S. District Court, the AS-IA merely assumed the Tribe's membership is limited to five persons and further merely assumed that the Tribe is governed by a duly constituted General Council, without

1 setting forth its reasons for these conclusions, in light of the
2 administrative record that questioned the validity of those
3 assumptions. (Id.). Indeed, although much of the decision is
4 predicated on an existing Tribal leadership dispute, the court
5 there did not have the benefit of the deposition transcript of
6 Yakima Dixie taken in the California State case, wherein he
7 admits resigning as Tribal Chairman, because it was not part of
8 the administrative record.

9 As a result, the U.S. District Court was misled into
10 thinking that Dixie still maintained that he never resigned as
11 Tribal Chairman, and the court relied upon that on-going claim
12 in her court as a basis for her ruling. For example, the U.S.
13 District Court stated:

14 Here, the August 2011 Decision fails to address
15 *whatsoever* the numerous factual allegations in the
16 administrative record that raise significant doubts
17 about the legitimacy of the General Council. From as
18 early as April 1999, Yakima contested the validity of the
19 Council. See AR 000182 (April 21, 1999 letter from
20 Yakima to the BIA stating that he "cannot and will not
21 resign as chairman of the Sheep Ranch Indian Rancheria");
22 see also, AR 000205 (October 10, 1999 letter from Yakima
23 to BIA raising questions about Burley's authority); AR
24 001690, 000231 (Yakima notifying the BIA of "fraud and
25 misconduct" with respect to the Tribe's leadership).

26 5 F.Supp.3d 86, 100-101. Accordingly, based solely on the
27 administrative record, the U.S. District Court concluded that
28 Dixie's claim that his resignation was forged and that he never
resigned raised doubts about the validity of the General Council
under the Burley Faction.

Moreover, the U.S. District Court's order was largely based
on Dixie's time-barred claim that the 1998 Resolution was
invalid at the outset, and therefore was erroneous as a matter
of law. (Id.)

F. THE BURLEY FACTION'S INABILITY TO APPEAL THE DISTRICT COURT ORDER OF REMAND

The Dixie Faction has argued that Plaintiffs "cannot re-litigate" the U.S. District Court decision granting summary judgment in the Dixie Faction's favor, because Plaintiffs "did not appeal that decision." This is inaccurate and misleading.

The Burley Faction were Intervenor-Defendants in the Dixie Faction's suit challenging AS-IA Echo Hawk's August 31, 2011 Decision. The Federal Defendants in that suit chose not to appeal the decision. When the Burley Faction attempted to appeal, the Federal Defendants moved to dismiss the appeal for lack of jurisdiction, pointing out that "a private party - unlike the government - may not appeal a district court's order remanding to an agency because it is not final within the meaning of 28 U.S.C. § 1291." (Ex. "1," Motion to Dismiss Appeal for Lack of Jurisdiction, RJN "1"). The Burley Faction conceded this point and stipulated to voluntarily dismiss their appeal. (Ex. "2" Stipulation of Voluntary Dismissal, RJN "2").

Accordingly, Plaintiffs here are not "re-litigating" issues decided by the U.S. District Court that remanded the matter back to the AS-IA to "reconsider" his 2011 Decision. That remand order was not final. Plaintiffs' suit instead is against the AS-IA relative to his December 30, 2015 Decision.

G. AS-IA WASHBURN'S DECEMBER 30, 2015 DECISION

On remand, the AS-IA Kevin Washburn erroneously concluded that the Tribe's membership is more than five people, and that the 1998 General Council does not consist of valid representatives of the Tribe. (AR-CVMT-2017-001402). He erroneously concluded that the Tribe was never properly "reorganized" back in 1998, leaving questions as to the overall membership of the Tribe, and therefore the Tribe must be reorganized. (AR-CVMT-2017-001401). He then wrongfully directed

that un-enrolled, potential members be allowed to participate in reorganizing the Tribe. (AR-CVMT-2017-001402). He refused to acknowledge the Tribe's governing document, Resolution #GC-98-01, which established the Tribe's General Council, despite the fact that this governing document has been in place for over 18 years. (AR-CVMT-2017-001401). His decision stated:

At the time of its enactment, the 1998 Resolution undoubtedly seemed a reasonable, practical mechanism for establishing a tribal body to *manage the process* of reorganizing the Tribe. But the actual reorganization of the Tribe can be accomplished only via a process open to the whole tribal community. Federal courts have established, and my review of the record confirms, the people who approved the 1998 Resolution (Mr. Dixie, Ms. Burley, and possibly Ms. Burley's daughter Rashel Reznor) are not a majority of those eligible to take part in the reorganization of the Tribe. Accordingly, I cannot recognize the actions to establish a tribal governing structure taken pursuant to the 1998 Resolution. Ms. Burley and her family do not represent the CVMT [the Tribe].

(AR-CVMT-2017-001401). However, these conclusions are based upon Dixie's time-barred claim that the 1998 resolution was invalid at the outset. Moreover, the IBIA never referred that issue to the AS-IA for resolution.

III.

ARGUMENT

A. AS-IA WASHBURN'S 2015 DECISION IS ERRONEOUSLY PREDICATED ON A TIME-BARRED CLAIM THAT THE 1998 RESOLUTION ESTABLISHING THE GENERAL COUNCIL WAS INVALID AT THE OUTSET

The issue of whether the validity of the 1998 Resolution was barred by the statute of limitations was raised before AS-IA Washburn upon reconsideration of the AS-IA's decision. (Ex. "47", RJN "33").

Dixie filed a Complaint against the federal government on January 24, 2011, challenging the AS-IA's December 22, 2010

1 decision recognizing the General Council established under the
2 1998 Resolution. After the AS-IA withdrew his December 22, 2010
3 decision, he issued another decision on August 31, 2011,
4 reaffirming his December 2010 decision. Dixie then amended his
5 Complaint on October 17, 2011 challenging the AS-IA's August 31,
6 2011 decision. (AR-CVMT-2017-000023, 53). Dixie's original
7 Complaint included a claim that the 1998 Resolution establishing
8 the Tribal Council was invalid at the outset, even though that
9 was not an issue referred to the AS-IA to decide. In his
10 amended Complaint, Dixie reasserted that claim. (*Id.* At 000032-
11 33). Specifically, Dixie's attack on the validity of the 1998
12 Resolution was that "the identification of the Burleys as
13 members was incorrect because Yakima Dixie did not have the
14 authority to enroll them into the Tribe without the consent of
15 the Tribe's existing members," which Dixie alleged to be members
16 who were "living in the vicinity of the Sheep Ranch Rancheria in
17 1998" who "were readily identifiable as Tribal members, and were
18 known or should have been known to the BIA." (AR-CVMT-2017-
19 000032). Dixie's claim in his federal action attacking the
20 validity of the 1998 Resolution was, however, time-barred, and
21 the AS-IA's decision based upon that claim was, therefore,
22 erroneous as a matter of law.

23 Actions for judicial review of final agency actions brought
24 under the Administrative Procedure Act are subject to a **six-year**
25 statute of limitations. Wind River Min. Corp. v. U.S. (9th Cir.
26 1991) 946 F.2d 710, 713; 28 U.S.C. § 2401(a). Generally, a
27 claim subject to the six-year statute of limitations period
28 under § 2401(a) first accrues when the plaintiff comes into
possession "of the critical facts that he has been hurt and who
has inflicted the injury." United States v. Kubrick (1979) 444
U.S. 111, 122. Under federal law, a cause of action accrues
when the plaintiff is aware of the wrong and can successfully

bring a cause of action. Acri v. Int'l Ass'n of Machinists & Aerospace Workers (9th Cir. 1986) 781 F.2d 1393, 1396. Stated another way, "[t]he moment at which a cause of action first accrues within the meaning of Section 2401(a) is when 'the person challenging the agency action can institute and maintain a suit in court.'" Muwekma Ohlone Tribe v. Salazar (D.D.C.2011) (quoting Spannaus v. U.S. Dep't of Justice (D.C.Cir.1987) 824 F.2d 52, 56).

In Muwekma, supra, the U.S. District Court concluded that the Tribe's claims under the APA against the Department of Interior ("DOI") and its agency officials for purportedly terminating its tribal status was barred by the six year statute of limitations under 28 U.S.C. § 2401(a). It found that the Tribe's claim first accrued and thus it could have pursued a cause of action against the agency on the following three occasions:

(1) in 1927, when the Muwekma contends that "the Department provided [it with only] a fraction of the federal funding and services allocated to ... Indian tribes;

(2) in 1979, when the Muwekma "was not listed on the Federal Register list of entities recognized by the Secretary of Interior as a tribe;" and

(3) in 1989, when the Muwekma filed its petition for federal acknowledgment.

813 F.Supp.2d at 191. The Court then stated:

Of these three dates, the Court finds that the most obvious point at which the Muwekma **could have brought suit** against the agency for purportedly terminating its tribal status was **in 1989, when it was clear that it was aware that it was not a federally recognized tribe.** Given that the Muwekma did not bring this action against the Department until 2001, approximately twelve years after it undoubtedly **possessed knowledge that it lacked acknowledgment by the federal government as a tribe,** its unlawful termination of

tribal status claim is plainly barred by the limitations period of 28 U.S.C. § 24001(a). (Emphasis added).

813 F.Supp.2d at 191.

For the same reasons, the Dixie Faction's claim that the 1998 Resolution was purportedly invalid is barred by the six year statute of limitations, because Dixie knew more than six years before he and his Faction filed suit against the DOI and its agencies on January 24, 2011, that the DOI and the BIA were acknowledging and accepting the General Council established under the 1998 Resolution while he was simultaneously objecting to it. As in the case of Muwekma, *supra*, there were several dates that Dixie could have brought suit against the DOI and the AS-IA for purportedly acknowledging and recognizing the General Council established under the 1998 Resolution which the Dixie Faction claimed in its 2011 suit was invalid at the outset.

These dates are as follows:

(1) The U.S. District Court noted that "from as early as April 1999" Dixie "contested the validity of the [General] Council." It stated:

Here, the August 2011 Decision fails to address *whatsoever* the numerous factual allegations in the administrative record that raises significant doubts about the legitimacy of the General Council. **From as early as April 1999, Yakima [Dixie] contested the validity of the Council.** See AR 000182 (April 21, 1999 letter from Yakima to the BIA stating that he "cannot and will not resign as chairman of the Sheep Ranch Indian Rancheria"); *see also*, AR 000205 (October 10, 1999 letter from Yakima to BIA raising questions about Burley's authority); AR 001690, 000231 (Yakima notifying the BIA of "fraud and misconduct" with respect to the Tribe's leadership). (Emphasis added).

California Valley Miwok Tribe v. Jewell (D.D.C.2013) 5 F.Supp.3d 86, 100.

(2) On February 4, 2000, the BIA wrote to Dixie in response to his allegations of "fraud or misconduct" concerning

1 the change in Tribal leadership that Dixie claims occurred in
2 April and May of 1999. The BIA letter memorialized a meeting
3 between BIA personnel and Dixie that occurred in December 1999.
4 The letter recounts that Dixie presented the BIA with his own
5 "constitution" for governing the Tribe that was purportedly
6 adopted by Dixie and his Faction on December 11, 1999. The BIA
7 returned the document to Dixie in its letter and stated that:

8 "...the body that acted on December 11, 1999, upon the
9 document **does not appear to be the proper body to so act.**"
10 (Emphasis added).

11 (AR-CVMT-2011-000241, 245). In short, the BIA unequivocally
12 informed Dixie that it was recognizing the General Council
13 established under the 1998 Resolution, and not the Dixie
14 Faction's Tribal Council, despite Dixie's claim of fraud in
15 connection with its formation.

16 (3) On March 7, 2000, the BIA wrote Silvia Burley, as the
17 Chairperson of the Tribe, and summarized discussions its
18 personnel had with Dixie on February 4, 2000. The letter
19 recounts that Dixie was challenging his enrollment of Burley and
20 her family into the Tribe. (Ex. "5," BIA letter to Burley dated
21 March 7, 2000, page 2). His argument was obviously that if he
22 never intended to enroll them as Tribal members, then the
23 General Council established under the 1998 Resolution was
24 invalid at the outset. The BIA indicated that it rejected
25 Dixie's claims and requested he submit his grievances to the
26 Tribe's General Council, thus reaffirming the BIA's recognition
27 of the General Council established under the 1998 Resolution.
28 The letter stated:

"We also reiterated [to Dixie] our view, notwithstanding a
Tribal decision to the contrary, **that the appropriate
Tribal forum is the General Council [established under the
1998 Resolution]**. At present, we view, again
notwithstanding a Tribal decision to the contrary, the

General Council as comprised of Yakima Dixie, Rashel Reznor, and you [Burley]..." (Emphasis added).

(AR-CVMT-2011-000249-250).

(4) On July 18, 2001, Dixie filed suit in the U.S. District Court, Eastern District of California, alleging fraud against Burley in connection with the formation of the General Council established under the 1998 Resolution. Dixie alleged that the Tribe was "small," and that he, his brother Melvin and his son "Rocky" were the only members of the Tribe by virtue of being "lineal descendants of the Sheep Ranch Miwok Tribe." (Ex. "6," Complaint, "Sheep Ranch Miwok Tribe v. Burley, et al.," Case No. CIV.S-01-1389 MLS-DAD, pp. 14, 27, 30-31, filed July 18, 2001, RJN "3"). He alleged that his enrollment of Burley and her family was conditioned on them "following his leadership." Id. He alleged that Burley and her family by fraud voted her to become the Tribal Chairperson and that they never intended to follow his leadership. Id. He alleged that had he known of Burley's true intentions, he would have never accepted her and her family as members. Id.

The U.S. District Court dismissed Dixie's suit and observed as follows:

As an initial matter, the court may take judicial notice of evidence that defendants Silvia Burley and Rashel Reznor are **recognized by the BIA as the sole members of the governing body of the Sheep Ranch Rancheria of Me-Wuk Indians.** See BIA July 12, 2000 Letter of Recognition, Burley Decl. Exh. C. (Emphasis added).

(Ex. "23," Order, January 24, 2002, No. CIV. S-01-1389 LKK/DAD, page 3, lines 12-16, AR-CVMT-2011-000278, 280). Dixie never appealed this order of dismissal. The BIA letter of July 12, 2000, which was attached to the motion to dismiss, and which Dixie obviously got a copy of during the briefing of the motion, explicitly states:

1 "The Bureau of Indian Affairs, Central California Agency,
2 recognizes the following individuals as members of the
3 Tribal Council, governing body, of the Sheep Ranch
4 Rancheria of Me-Wuk Indians:

- 5 1. Silvia F. Burley, Chairperson
- 6 2. Vacant, Vice-Chairperson
- 7 3. Rashel K. Reznor, Secretary/Treasurer

8 "Please contact Raymond Fry, Tribal Operations Officer, at
9 (916) 566-7124 should you require additional information
10 with regard to this matter."

11 (Ex. "7," BIA letter of July 12, 2000, to Burley, AR-CVMT-2011-
12 000257). As stated, Dixie got a copy of this letter during the
13 briefing of the motion to dismiss, and was therefore put on
14 notice of the BIA's position with respect to the validity of the
15 General Council established under the 1998 Resolution, at least
16 as far back as January 24, 2000, the date of the order.

17 (5) On October 30, 2003, Dixie wrote a letter to the U.S.
18 Department of the Interior ("DOI") attempting to appeal the
19 BIA's 1999 recognition of Burley as the Chairperson of the
20 Tribe, and requesting that the DOI "nullify her appointment and
21 her and her families' adoption as member of the Tribe." His
22 appeal states in pertinent part:

23 "In this appeal, I Yakima K. Dixie, as Appellant, am
24 contesting the administrative action (without my knowledge
25 and consent) by agents of the Bureau of Indian Affairs, in
26 which Silvia Burley fraudulently came to be the recognized
27 authority for and Chairperson of my ancestral tribe, of
28 which I am the hereditary Chief and **rightful** Chairperson by
lineal descent. As explained herein, I was tricked by
Silvia Burley and others; and I, the Appellant, am
requesting the nullification of both her appointment as
Chairperson and the nullification of her original adoption
and the adoption of her daughter and two grand-daughters
into my tribe, which, again, I allege was fraudulent..."
(Emphasis added as to "hereditary" only; other emphasis in
the original).

(Ex. "8," Dixie Notice of Appeal, dated October 30, 2003, page 1, RJN "4"). Here, Dixie is claiming to have hereditary rights and powers as the "hereditary chief" of the Tribe, notwithstanding the 1998 Resolution, which specifically provides:

"RESOLVED, That all other inherent rights and powers not specifically listed herein shall vest in the General Council..." (Emphasis added).

(Ex. "9," Resolution #GC-98-01, "Establishing a General Council to Serve as the Governing Body of the Sheep Ranch Band of Me-Wuk Indians," dated November 5, 1998, page 1, AR-CVMT-2011-000177). Accordingly, Dixie's 2003 Notice of Appeal is clear evidence that he was attempting to challenge the validity of the General Council established under the 1998 Resolution, and thus was aware of the existence of such a claim more than six years from the time he filed his Complaint against the AS-IA on January 24, 2011.

In any event, Dixie's appeal was dismissed on procedural grounds and as untimely. In a letter dated February 11, 2005, the BIA wrote to Dixie as follows:

"I am writing in response to your appeal filed with the office of the Assistant Secretary-Indian Affairs on October 30, 2003...In that appeal, you challenged the Bureau of Indian Affairs' ("BIA") recognition of Sylvia Burley as tribal Chairman and sought to 'nullify' her admission, and the admission of her daughter and granddaughters into your Tribe. Although your appeal raises many difficult issues, I must dismiss it on procedural grounds.

* * *

"In addition, your appeal appears to be untimely. In 1999, you first challenged the BIA's recognition of Ms. Burley as Chairman of the Tribe. In February 2000, the BIA informed you that it defers to tribal resolution of such issues. On July 18, 2001, you filed a lawsuit against Ms. Burley in the United States District court for the Eastern

District of California challenging her purported leadership of the Tribe. **On January 24, 2002, the district court dismissed your lawsuit, without prejudice and with leave to amend, because you had not exhausted your administrative remedies by appealing the BIA's February 2000 decision.**

After the court's January 24, 2002, order, you should have pursued your administrative remedies with the BIA.

Instead, you waited almost a year and a half, until June 2003, before raising your claim with the Bureau. As a result of your delay in pursuing your administrative appeal after the court's January 24, 2002, order, your appeal before me is time barred." (Emphasis added).

(Ex. "10," BIA letter to Dixie, dated February 11, 2005, pages 1-2, AR-CVMT-2011-000610). As the BIA explained to Dixie in this letter of February 11, 2005, Dixie could have challenged the BIA's recognition of the General Council established under the 1998 Resolution as far back as 1999, by first exhausting his administrative remedies and then filing suit in the U.S.

District Court. The District Court nevertheless gave Dixie another chance and allowed him to proceed with his claims after exhausting his administrative remedies, but he never followed through with that requirement. In the same way he was time-barred in February 2002, he was also time-barred under the six-year statute of limitations when he attempted to challenge the validity of the General Council established under the 1998 Resolution in his January 24, 2011 suit in federal court.

In addition, Dixie's attempt to "nullify" Burley and her family's adoption as members of the Tribe goes to the heart of the validity of the 1998 Resolution establishing the General Council, which states in pertinent part:

"RESOLVED, That Yakima Dixie, Silvia Fawn Burley, and Rashel Kawehilani Reznor, as a majority of the adult members of the Tribe, hereby establishes a General Council to serve as the governing body of the Tribe..."

(Ex. "9," Resolution #GC-98-01, "Establishing a General Council to Serve as the Governing Body of the Sheep Ranch Band of Me-Wuk

Indians," dated November 5, 1998, page 2, AR-CVMT-2011-000178). Without these adopted members, there could be no General Council, and the Tribe would not have been organized with a General Council governing body.

(6) On May 5, 2004, Yakima Dixie executed a "Will & Testament." In this document, Dixie reiterates he is the "Chief and rightful authority of the Sheep Ranch Rancheria of MiWok Indians of California a.k.a. California Valley Miwok Tribe," because of his "hereditary and lineal descent." (Ex. "11," Yakima Dixie Will & Testament, May 5, 2004, page 1). The document also references the establishment of a Tribal Council, separate and apart from the "General Council" established under the 1998 Resolution, and states:

"At the time of this signing, the only member of the Tribal Council is Velma WhiteBear, who is designated as the Executive Director of the Tribe."

(Ex. "11," Yakima Dixie Will & Testament, May 5, 2004, page 2, RJN "5", AR-CVMT-2017-000957). The document then lists ten (10) persons as the only members of the Tribe, but does not name Burley and her three family members Dixie adopted into the Tribe in 1998. (He was also contradicting his claims that the Tribe consists of more than 200 members). Thus, at the time of the execution of his Last Will & Testament, dated May 5, 2004, Dixie was denying the validity of the General Council established under the 1998 Resolution. Together with his October 30, 2003 letter to the DOI and previous letters to the BIA objecting to the BIA's recognition of Burley as Chairperson of the Tribe and the BIA's recognition of Burley and her family as adopted members of the Tribe, Dixie therefore knew he had a claim against the federal government for recognizing the Tribe's General Council that was purportedly invalid at the outset, more than six years from the date he filed suit on January 24, 2011.

(7) Notice that the Tribe had changed its name to the California Valley Miwok Tribe was published in the July 12, 2002 Federal Register. (See Ex. "12," copy of 2002 Federal Register and Ex. "13," June 7, 2001, letter from BIA to Burley accepting new name for publication, RJN "7"). The placement of the new name of the Tribe was an act of recognition by the DOI of the validity of the General Council established under the 1998 Resolution, after the General Council passed a resolution to change the name of the Tribe and submitted it to the BIA for approval. As the DOI stated in a letter to Silvia Burley on June 7, 2001:

"The *Sheep Ranch Rancheria* (Tribe) is a small tribe that does not have a tribal constitution. The tribe has a tribal council and conducts tribal business through resolution. A tribal resolution, such a resolution No. R-1-5-07-201, enacted by the Tribal council on May 7, 2001, is sufficient to effect the tribal name change. The Tribe's new name has been included on the Tribal Entities list that will be published in the FEDERAL REGISTER later this year."

(Ex. "13," Letter from Sharon Blackwell at BIA to Burley, dated June 7, 2001, RJN "7").

The DOI's publication of the Tribe's new name in the FEDERAL REGISTER was adequate notice to Dixie and his followers that on July 12, 2002, the DOI recognized the validity of the General Council established under the 1998 Resolution, thereby giving Dixie critical facts to institute a lawsuit.

"[S]tatute of limitations are to be applied against the claims of Indian tribes in the same manner as against any other litigant seeking legal redress or relief from the government." *Hopland Band of Pomo Indians v. United States* (Fed.Cir.1988) 855 F.2d 1573, 1576; *Sissten-Wahpeton Sioux Tribe v. United States* (9th Cir. 1990) 895 F.2d 588, 592 ("Indian Tribes are not exempt from statute of limitations governing actions against the United

States"). Also, [a]ctual knowledge of government action...is not required for a statutory period to commence." Shiny Rock Mining Corp. v. United States (9th Cir. 1990) 906 F.2d 1362, 1364. Instead, "[p]ublication in the Federal Register is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance." Id. Accordingly, the notice published in the Federal Register on July 12, 2002, was adequate to apprise Dixie and his followers that the federal government was acknowledging the validity of the General Council established under the 1998 Resolution. Thus, based on the Federal Register publication alone, a timely action challenging the validity of the 1998 Resolution establishing the General Council should have been filed before July 12, 2008, six years after the 2002 FEDERAL REGISTER publication.

B. THE U.S. DISTRICT COURT IMPROPERLY DIRECTED THAT THE AS-IA RECONSIDER HIS 2015 DECISION BASED ON A TIME-BARRED CLAIM

As indicated, the Burley Faction, as an Intervenor-Defendant in Dixie's federal suit challenging the August 2011 AS-IA's decision, was unable to appeal the U.S. District Court's order granting summary judgment in favor of the Dixie Faction, because the Federal Defendants chose not to appeal and the remand order was not final. As a result, the AS-IA reconsidered its August 2011 decision based on erroneous remand instructions that included an order that the AS-IA address the issue of whether the General Council as established under the 1998 Resolution was valid at the outset, as pled in the Dixie Faction's complaint.

The U.S. District Court stated:

The August 2011 Decision declares: "[t]he [November] 1998 Resolution established a General council form of government, comprised of all adult citizens of the Tribe, with whom the [BIA] may conduct government-to-government

1 relations. AR 002056. Once again, in reaching this
2 conclusion, the Assistant Secretary simply assumes, without
3 addressing, the validity of the General Council...

4 The Court finds that the August 2011 Decision is
5 unreasonable in light of the facts contained in the
6 administrative record...Before invoking the principle of
7 tribal self-governance, it was incumbent on [the Assistant
8 Secretary] to first determine whether a duly constituted
9 government actually exists...

10 Here, the August 2011 Decision fails to address *whatsoever*
11 the numerous factual allegations in the administrative
12 record that raise significant doubts about the legitimacy
13 of the General Council. From as early as April 1999,
14 Yakima contested the validity of the Council...

15 ...Accordingly, the Court will remand this issue to the
16 Secretary for reconsideration. (Emphasis added).

17 California Valley Miwok Tribe v. Jewell (2013) 5 F.Supp.3d 86,
18 99-101.

19 However, as stated, the issue of whether the General
20 Council was invalid at the outset was barred by the six-year
21 statute of limitations.

22 **C. PLAINTIFFS PRESERVED THE STATUTE OF LIMITATIONS ISSUE**
23 **BEFORE THE U.S DISTRICT COURT IN DIXIE'S FEDERAL ACTION**

24 On March 26, 2012, the Burley Faction filed a motion to
25 dismiss the Dixie Faction's FAC in the federal action
26 challenging the AS-IA's 2011 Decision. Among other things, the
27 Burley Faction alleged that the Dixie Faction's claims were
28 barred by the six-year statute of limitations, including the
claim challenging the validity of the General Council
established under the 1998 Resolution. The motion stated in
pertinent part as follows:

"...Claims which arise under the APA are subject to the
statute of limitations governed by 28 U.S.C. §2401(a),
which bars civil actions against the United States that are
not filed within six years after the right of action first
accrues..."

* * *

"Plaintiffs' Amended Complaint also very clearly challenges the September 24, 1998 BIA final agency action which first recognized the tribe's five member citizenship and their authority to establish a Tribal government, alleging that the BIA acted 'erroneously'...Neither the Non-Members...nor Mr. Dixie ever challenged the 1998 Final Agency Action. Nor did Plaintiffs challenge subsequent BIA final agency actions issued on February 2000 and March 2000, which reaffirmed the authority of the Tribe's governing body, pursuant to Resolution #GC-98-01, and its five federally recognized members...."

(Ex. "14," PAs in Support of Intervenor-Defendant's Motion to Dismiss, filed 3/26/2012, pages 18-19, RJN "8").

The U.S. District Court's Order denying the motion to dismiss on these grounds was factually and legally erroneous. It stated:

It is true that in February 2000, the Secretary accepted the "General Council...as the governing body of the Tribe," A.R. at 236, and the Dixie Faction could have challenged his determination then. Any such challenge would have been mooted, however, by the Secretary's reversal in February 2005, when he held "the [Bureau] does not recognize any tribal government." Non-Recognition Letter, A.R. at 611. Because the Secretary's decision on review "mark[ed] a 180-degree change of course" by once again recognizing the General Council as the Tribe's government, the Dixie Faction's challenge is timely. Decision Letter, A.R. at 2050.

(Ex. "15," Memorandum Opinion Denying Motion to Dismiss, 9/06/2013, pages 13-14, AR-CVMT-2017-000762, 774-775). This conclusion is erroneous. First of all, the February 11, 2005 letter relied upon by the Court states that because the Tribe was at that time not "organized" under the IRA, the BIA did not recognize its governing body, but it did "recognize" Silvia Burley as a "person of authority within the California Miwok Tribe." The letter further stated that the BIA would not

1 recognize either Burley or Dixie as "Chairman" of the Tribe,
2 until the Tribe organized itself under the Indian Reorganization
3 Act of 1934 ("IRA"). The BIA was clearly trying to get the
4 Tribe to "re-organize" itself under the IRA, but was continuing
5 to recognize Burley as a person with authority with whom the BIA
6 was at that time conducting government-to-government relations.
7 The letter never stated that the BIA considered the General
8 Council established under the 1998 Resolution to be invalid.
9 Indeed, recognizing Burley as a person of "authority" within the
10 Tribe would seem to contradict that notion, since her authority
11 was derived from the General Council. Thus, the statute of
12 limitations issue was not mooted by the BIA's February 2005
13 letter.

14 Secondly, the February 11, 2005 letter did not address the
15 issue of whether the General Council was invalid or not
16 recognized, but simply made passing reference to a letter from
17 the BIA dated March 26, 2004 that indicated the Tribe was not
18 organized, and, because of that, the BIA stated in its February
19 11, 2005 letter that it therefore could not "defer to any tribal
20 dispute resolution process at [that] time" with respect to the
21 BIA's recognition of Burley as the Tribal Chairperson and the
22 admission of Burley's family as Tribal members.

23 Third, the AS-IA's 2011 Decision was not a "180-degree
24 change of course" which "once again" "recognize[ed] the General
25 Council as the Tribe's government," as the U.S. District Court
26 characterized it in its Order. Rather, the 2011 Decision made
27 it clear that its "180-degree change of course" was only with
28 respect to its "finding (6)" that stated:

"Under the IRA, as amended, it is impermissible for the
Federal government to treat tribes not 'organized' under
the IRA differently from those 'organized' under the IRA
(25 U.S.C. §§ 476(f)-(h))."

(Ex. "16," AS-IA's August 31, 2011 Decision, page 2, AR-CVMT-2011-002050). Up to that point, the DOI was requiring the Miwok Tribe to "reorganize" itself under the IRA in order for it to be eligible to receive federal benefits. The 2011 Decision further stated:

"I reject as contrary to § 476(h) the notions that a tribe can be compelled to 'organize' under the IRA and that a tribe not so organized can have 'significant federal benefits' withheld from them. Either would be a clear violation of 25 U.S.C. § 476(f)."

(Id. At 2054). This different (180 degree) policy direction was that the BIA should no longer require the Tribe to re-organize its governing body under the IRA, in order to be eligible to receive federal benefits, including P.L. 638 federal contract funding. The "policy" was not whether the General Council was to be recognized as a valid governing body or whether it was invalid at the outset, as the Court was suggesting.

Dixie's claim that the General Council established under the 1998 Resolution was invalid at the outset was time-barred, and the Burley Faction's motion to dismiss this claim should have been granted. Instead, the Court allowed this time-barred claim to proceed against the federal government and improperly ordered the AS-IA to re-evaluate on remand whether the 1998 Resolution establishing the General Council was invalid at the outset.

D. THE ISSUE OF THE VALIDITY OF THE 1998 RESOLUTION ESTABLISHING THE GENERAL COUNCIL WAS NEVER REFERRED TO THE AS-IA FOR REVIEW BY THE INTERIOR BOARD OF INDIAN APPEALS

The issue of improper referral was also raised before Washburn on reconsideration. (Ex. "47", RJN "33").

The issue the Interior Board of Indian Appeals ("IBIA") referred to the AS-IA for resolution was limited to an "enrollment dispute," i.e., whether the BIA could force the

1 Tribe to organize under the IRA and convene a "general council"
 2 meeting without the Tribe's consent and have non-members in the
 3 surrounding community participate in that "re-organization." Ex.
 4 "17," California Valley Miwok Tribe v. Pacific Director, BIA
 5 (01/28/2010) 51 IBIA 103, 120. (AR-CVMT-2011-001701). As
 6 stated, the BIA was forcing this issue, not because it felt the
 7 General Council was invalid at the outset, but rather because it
 8 felt the Tribe could not qualify for federal benefits without
 9 being re-organized under the IRA. The IBIA did not refer any
 10 issue concerning the validity of the General Council. It
 11 referred this "enrollment" dispute to the AS-IA because the IBIA
 12 lacked jurisdiction to decide that issue. It stated:

12 "...In this appeal, Burley contends that BIA exceeded
 13 its authority in determining who would constitute the
 14 'greater tribal community,' or class of 'putative members,'
 15 and in deciding that they could participate as part of a
 16 'general council' meeting of the Tribe, to decide
 17 membership and organizational issues.

18 "As evidenced by the decisions of the Superintendent
 19 and the Regional Director, and the public notices published
 20 by BIA in 2007, BIA apparently has decided to create a base
 21 roll of individuals who satisfy criteria that BIA has
 22 determined to be appropriate and who will be entitled to
 23 participate—effectively as members (albeit in a somewhat
 24 undefined capacity)—in a 'general council' meeting of the
 25 Tribe to organize the Tribe. Although the facts of this
 26 case render BIA's decision far from a typical enrollment
 27 adjudication, we conclude [...], in substance, that is what
 28 it is. Whether or not some or all of the individuals BIA
 would determine, under the Decision, to be 'putative
 members' of the Tribe will ultimately be enrolled, BIA's
 determination of their 'putative membership' apparently
 will effectively 'enroll' them as members of the 'general
 council' that is to meet. And that general council, as
apparently envisioned by BIA, will have the authority to
determine permanent membership criteria.

"Understood in the context of the history of this
 Tribe, and BIA's dealings with the Tribe since
 approximately 1999, **this case is properly characterized as**

1 an enrollment dispute...Because the Board lacks
 2 jurisdiction to adjudicate tribal enrollment disputes, we
 3 dismiss this claim and refer it to the Assistant
 4 Secretary.” (Emphasis added).

51 IBIA at 120-121, AR-CVMT-2011-001701-1702.

5 In the same way the AS-IA observed as undisputed that the
 6 Tribe was a federally-recognized Tribe (AS-IA August 31, 2011
 7 Decision, page 1), the AS-IA in his August 2011 Decision
 8 observed as undisputed the fact that the Tribe “operates under a
 9 General Council form of government, pursuant to Resolution #CG-
 10 98-01.” (Id. at page 2). Whether the General Council was
 11 invalid at the outset was not referred to him for resolution.
 12 Nor could it have been, because Burley was not disputing that
 13 issue in her appeal before the IBIA. Nor was the BIA. As
 14 stated, the issue first came up when Dixie, not Burley, raised
 15 it in his January 24, 2011 complaint he filed in federal court
 16 challenging the AS-IA’s December 22, 2010 Decision, and again on
 17 October 17, 2011, when he challenged the August 31, 2011 AS-IA’s
 18 Decision.

19 Accordingly, it was improper and erroneous for the AS-IA to
 20 entertain and decide that issue in his December 30, 2015
 21 Decision.

22 **E. THE 2015 DECISION ERRONEOUSLY CONCLUDED THAT THE 1998**
 23 **GENERAL COUNCIL WAS ESTABLISHED MERELY TO “MANAGE THE**
 24 **PROCESS “OR REORGANIZING THE TRIBE”**

25 In his 2015 Decision, the AS-IA concluded that the 1998
 26 Resolution establishing the General Council was enacted merely
 27 to “*manage the process* of re-organizing the Tribe.” (2015
 28 Decision, page 5, AR-CVMT-2017-001401). The AS-IA used this
 erroneous statement to justify its further determination that
 the Tribe was required to re-organize under the IRA with the
 participation of non-members (“putative members”) in the
 surrounding community, all in opposition to the determinations

made by the previous AS-IA in his August 2011 Decision. In truth and fact, nowhere in the 1998 Resolution is there any mention that it was established to "manage the process of re-organizing the Tribe."

While the Tribe had the option of re-organizing under the IRA, and the record reflects the Tribe pursued that option for a while but decided against it, the 1998 Resolution clearly provides that it "establishe[d] a General Council to serve as the governing body of the Tribe." (Page 2 of Resolution). It was not established to "manage the process of reorganizing the Tribe" under the IRA. Indeed, the title of the Resolution clearly states:

"ESTABLISHING A GENERAL COUNCIL TO SERVE AS THE GOVERNING BODY OF THE SHEEP RANCH BAND OF ME-WUK INDIANS"

(Ex. "9," Resolution #GC-98-01, page 1, AR-CVMT-2011-000177). If, pursuant to 25 U.S.C. § 476(h), the Tribe is not required to "organize" under the IRA, and the Tribe decides not to pursue that option, then the General Council remains as the governing body of the Tribe. As stated in the 1998 Resolution:

"RESOLVED, That the General Council shall exist until a Constitution is formally adopted by the Tribe and approved by the Secretary of the Interior or his authorized representative, unless this resolution is rescinded through subsequent resolution of the General Council." (Emphasis added).

(Ex. "9," Resolution #GC-98-01, AR-CVMT-2011-000179).

In addition, the BIA initially suggested the Tribe operate either as a General Council or an Interim Tribal Council, but the Tribe chose the first option, strongly suggesting that it did not want to be tied to the idea of having to re-organize under the IRA if it later decided against it. (Ex. "18," BIA letter to Dixie, dated September 24, 1998, pages 2-3). Indeed, the Tribe ultimately chose to simply operate as a General

1 Council outside the IRA, and that's where the trouble began with
2 the BIA later trying to force the Tribe to re-organize under the
3 IRA.

4 **F. THE 2015 DECISION INCORRECTLY CONCLUDES THAT PRIOR FEDERAL**
5 **COURT DECISIONS HAVE HELD THAT THE TRIBE'S MEMBERSHIP IS**
6 **LARGER THAN FIVE MEMBERS AND HAS MISCONSTRUED THE HISTORY**
7 **OF THE CALIFORNIA RANCHERIAS**

8 The 2015 Decision states that "[a]ll of the Federal court
9 decisions examining the CVMT dispute make clear that the Tribe
10 is not limited to five individuals." (Page 3 of AS-IA December
11 30, 2015 Decision, AR-CVMT-2017-001399). This is inaccurate.

12 No federal court decision involving the Tribe directly
13 addressed the issue of whether the Tribe's membership consists
14 of five members and whether the General Council is the duly
15 constituted government of the Tribe. Indeed, the U.S. District
16 Court remanding the AS-IA's 2011 Decision for reconsideration
17 made the same observation. In rejecting the Dixie Faction's
18 argument that collateral estoppel bars the Secretary from
19 recognizing the General Council, the Court observed in a
20 footnote as follows:

21 ...CVMT I and CVMT II do not share the same contested issue
22 with this case. (citation). The only issue before the
23 courts CVMT I and CVMT II was whether the Secretary had the
24 authority to refuse to approve a constitution submitted
25 under IRA § 476(h)(1). The courts did not directly address
26 the issues raised here, namely whether the Tribe's
27 membership consists of five members and whether the General
28 Council is the duly constituted government of the Tribe...

5 F.Supp.3d at 101, fn. 15. The U.S District Court remanding
the 2011 Decision for reconsideration merely criticized the AS-
IA for simply assuming that the Tribe consists of five members,
but made no ruling or holding itself that it was. 5 F.Supp.3d
at 99 ("...rather than simply assume that the Tribe consists of
five members, the Assistant Secretary was required to first

determine whether the membership had been properly limited to these five individuals"). Thus, no Court has ever held that the Tribe includes more than five members.

In addition, the AS-IA recounted an inaccurate history of the California Rancherias to further support its erroneous conclusion that the Tribe is not limited to five members. It stated without any evidentiary support as follows:

"When a parcel on a Rancheria came available, BIA would assign the land to such a non-resident Indian who was associated with the band, if possible...Thus, such associated band Indians who were non-residents were potential residents. And since membership in an unorganized Rancheria was tied to residence, potential residents equated to potential members."

(Ex. "19," AS-IA's December 30, 2015 Decision, page 4, AR-CVMT-2017-001400). There has never been an occasion where the BIA has determined that the membership lists of unorganized California Rancherias should be culled from "potential residents," and neither the AS-IA nor the Dixie Faction can provide evidence of such instances.

In most instances, the California Rancherias were terminated by the Rancheria Termination Act, i.e., P.L. 85-671. Thereafter, many unorganized Rancherias sought restoration of their status as federally recognized tribes through litigation. In those instances, following restoration of these Rancherias through stipulated judgments, the BIA looked to the **actual** residents and relied on distributee lists created during the termination period as the most accurate representation of the active members of a particular tribe and determined that only those individuals were entitled to participate in the tribes' reorganization. See Stipulated Judgment, Paragraph 6, Wilton Miwok Rancheria v. Salazar (N.D.Cal. June 8, 2009) No. C-07-02681, Dkt. 61 (stipulation between the United States and the

1 Wilton Miwok Rancheria that "the initial tribal organization of
 2 the Tribe shall be a General Council consisting of all
 3 distributes and dependent members listed in the Distribution
 4 Plan...."); Alvarado v. Table Mountain Rancheria (N.D.Cal. July
 5 28, 2005) 2005 WL 1806368, at *1 (noting that the restoration of
 6 the Table Mountain Rancheria involved reference to "Indians
 7 named in the distribution plan of the assets of the Table
 8 Mountain Rancheria and their successors in interests"), *aff'd on*
 9 *other grounds*, (9th Cir. 2007) 509 F.3d 1008; Alan-Wilson v.
 10 Sacramento Area Dir. (1997) 30 IBIA 241, 255 (concluding that
 11 the individuals entitled to participate in the organization of
 12 the Cloverdale Rancheria was based on the list of distributees
 13 and the distributees' lineal descendants). These cases show
 14 that when the BIA has had to determine who is eligible to
 15 reorganize a tribe, it has looked to the distribute list—
 16 reflecting actual residence on the Rancheria—as a reliable
 17 record to determine membership. There is no legal basis
 18 whatsoever—in the case of terminated tribes or tribes that
 19 maintained federal recognition—for treating **potential** residents
 20 as members for purposes of reorganization as the AS-IA's 2015
 21 decision states.

22 Accordingly, the AS-IA relied upon these inaccurate facts
 23 to support its erroneous conclusion that the Tribe is not
 24 limited to five members.

25 **G. THE "ELIGIBLE GROUP SYSTEM" IMPROPERLY FORCES THE TRIBE TO**
 26 **"RE-ORGANIZE"**

27 The AS-IA's 2015 Decision establishing the novel "Eligible
 28 Group" system creates a system contrary to federal precedent and
 the requirements of the IRA that equates potential membership
 with actual membership.

When Burley and her family were adopted into the Tribe by
 Dixie, their enrollment changed their status from individuals

with Miwok ancestry to members of a small tribe. In fact, the 2015 Decision recognizes that at the time of the Burley family's enrollment the Tribe was suffering from the effects of a "dwindling tribe." (Ex. "19," AS-IA's December 30, 2015 Decision, page 4, fn. 20, AR-CVMT-2017-001400). Inexplicably, the 2015 Decision rejects the 1998 Resolution establishing the General Council on the purported ground that "the people who approved the 1998 Resolution...are not the majority of those eligible to take part in the reorganization of the Tribe." (Id. at page 5). The 2015 decision then erroneously creates an "Eligible group" system to facilitate the reorganization of the Tribe that includes a larger pool of eligible people based not upon membership, but based upon descent, contrary to well established Indian law.

To be sure, the purported "Eligible group" system improperly places persons with only Miwok ancestry on par with enrolled members. See Santa Clara Pueblo v. Martinez (1978) 436 U.S. 49, 55-56, 72, fn. 32. It also violates the provisions of 25 U.S.C. § 476(f) and (h), because it forces the Tribe to reorganize under the IRA in order to receive federal benefits.

H. THE DIXIE FACTION IS ESTOPPED FROM CHALLENGING THE 1998 RESOLUTION

The record is clear that Dixie participated in the drafting and approval of the 1998 Resolution establishing the General Council. He now claims the whereabouts of his brother, Melvin Dixie, were known at the time of the 1998 Resolution, even though he represented to the BIA and to Burley and others that his whereabouts were unknown. To now contend that the 1998 Resolution is now defective or invalid because Dixie in fact knew where he could be contacted, but that he may have simply lied about it, runs contrary to the principles of equity.

As stated in Menominee Indian Tribe of Wisconsin v. Thompson (W.D.Wis.1996) 943 F.Supp 999, "it is inaccurate to say that equitable defenses can never apply to Indian tribes." 943 F.Supp at 1021(the court also stating that it is aware of no cases holding that collateral estoppel or res judicata can never apply to an Indian tribe). The doctrine of equitable estoppel provides that "whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing is true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it." Cal. Evid. Code §623; Wilk v. Vencill (1947) 30 Cal.2d 104, 107. California equitable estoppel is thus similar to and not inconsistent with federal common law. Lukovsky v. City and County of San Francisco (9th Cir. 2008) 535 F.3d 1044, 1052.

Accordingly, Dixie is equitably estopped from attacking the validity of the 1998 Resolution establishing the General Council on the grounds that his brother, Melvin did not sign the resolution and could have been contacted, because he expressly misled the BIA and Burley into believing that the whereabouts of Melvin were unknown at the time the parties executed and passed the resolution.

I. AS-IA ECHO HAWK'S SHOULD BE REINSTATED AND ADOPTED AS THE MOST LEGALLY CORRECT DECISION ON THE TRIBE'S GOVERNING BODY AND MEMBERSHIP

The AS-IA's August 2011 Decision is clearly a correct statement of Indian law and should be re-instated as the final agency action resolving the dispute between the two factions.

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1 **J. EVERONE AND THE DIXIE FACTION HAVE COMMITTED FRAUD UPON THE**
2 **COURT AND THE BIA BY FALSELY CREATING A TRIBAL LEADERSHIP**
3 **DISPUTE TO JUSTIFY RE-ORGANIZING THE TRIBE**

4 As stated, Everone conspired with Dixie to concoct a Tribal
5 leadership dispute, so that the BIA would question the governing
6 body of the Tribe and, at the urging of the Everone and Dixie,
7 reorganize the Tribe's governing body. The sole purpose of
8 these actions was to "hijack" or take over control of the Tribe
9 from Burley, so that Everone and his non-Indian investors can
10 build a gambling casino and enrich themselves at the expense of
11 the Tribe. These issues were raised before AS-IA Washburn when
12 the 2011 AS-IA decision was remanded for him to reconsider. (AR-
13 CVMT-2017-000954 [Memo 1/17/2014: Origination of the CVMT
14 Dispute]; Letter to Washburn 6/6/2014 from Corrales, RJN "32"
15 Ex. "46").

16 Everone sowed confusion with the BIA and the DOI which he
17 used to implement his casino plans and build a casino.

18 In 1999, two non-Indian California developers named Bill
19 Martin ("Martin" and Leroi Chappell ("Chappell") read a
20 newspaper article about Yakima Dixie and the Tribe's plight.
21 (AR-CVMT-2017-000955). The Governor had just signed various
22 state-Compacts allowing various federally-recognized tribes to
23 own and operate gambling casino in California. Since the Tribe
24 was federally-recognized and had very few members, it was an
25 easy target to use for this venture. Shortly after reading the
26 newspaper article, Martin and Chappell quickly headed up to
27 Calaveras County, California, to sign up Dixie to represent him
28 in developing an Indian casino. Thinking they could profit from
Dixie's situation, they contacted Dixie and entered into an
agreement with him to build a tribal gambling casino.
Unfortunately, Dixie had already resigned as Chairperson of the
Tribe, and Burley was the current Chairperson. Martin and

1 Chapell then contacted Everone who agreed to take over and help
2 formulate a plan. (AR-CVMT-2017-000956).

3 Everone then took over control of Dixie's affairs, and made
4 himself Dixie's and the Dixie Faction's Tribal "Deputy & Consul
5 General". (AR-CVMT-2017-000956). Everone is white and is not an
6 Indian, and is not a member of any Indian tribe. As the Dixie
7 Faction's "Deputy and Consul General," Everone is the managing
8 agent and "officer" of that organization. Everone manages all
9 loaned money for this scheme through an entity called "Friends
10 of Yakima." (Id.). He also managed and directed Dixie's
11 litigation in the state and federal cases and manages the
12 "Tribal Organization," known as the "Dixie Faction."

13 Everone himself admits he "controls" Dixie. For example,
14 he stated:

15 "They [Chadd Everone and Bill Martin] asked for investment
16 monies and provided me with a prospectus without asking how
17 much I could give. They said my return would be by
18 November 2006. I then asked them why would I give monies
19 to Yakima who can't stay out of jail, and how is he going
20 to run an Indian Casino? Both laughed and **Everone stated**
21 **he controlled Yakima and the casino venture** and told me not
22 to worry about that..." (Emphasis added)

23 (August 31, 2006 Email quoting Everone in meeting).

24 Thus, in light of Dixie's instability, serious criminal history,
25 including murder and alcohol problems, Everone was easily able
26 to manipulate and control Dixie, and use him for his own
27 personal, financial benefit. (Id.).

28 When he met Dixie in late 1999, one of the first things
Everone did was to tackle the problem of Burley being the
Chairperson of the Tribe as a result of Dixie's resignation.
(Id.). He told someone he thought was a potential investor
that he "went to work using the UC Berkeley Law Library to study
up on Indian Law to begin his quest for removing Burley as
Chairperson of the Tribe." For his scheme to take over control

1 of the Miwok Tribe to work, however, he needed Dixie to be the
2 Chairperson, not Burley. His plan was simply to fabricate a
3 forgery claim with respect to Dixie's letter of resignation.

4 The fact that the issue of forgery relative to Dixie's
5 resignation letter was never raised until after the Everone team
6 became involved strongly suggests that it was, and continues to
7 be, a sham claim as part of Everone's scheme to take over the
8 Tribe for his own financial purposes. Indeed, Everone admitted
9 as much, when he was interviewed by someone he thought was a
10 potential investor. He is reported to have said the following:

11 "Only after signing up Yakima did Chapelle (later) find out
12 (from the BIA) that the Tribe was under the control of
13 Silvia Burley. That was when Martin enlisted the help of
14 Everone who came up with a plan to take the tribe out of
15 Silvia's control by saying Yakima only gave up [the]
16 'spokesperson' role to Silvia and not the Chair."
17 (Emphasis added).

18 (Email from C. Ray, dated August 31, 2006, AR-CVMT-2017-000955).
19 Dixie's ultimate admission in his deposition on February 7, 2012
20 that he in fact resigned, and that his signature on his
21 resignation was not forged after all, only further supports the
22 view that Everone in fact concocted this false claim to the
23 detriment of the Tribe, and conspired with Dixie to assert it in
24 the litigation and thwart the Tribe's efforts to govern under
25 the General Council.

26 Moreover, Dixie's false claim that his resignation letter
27 is a forgery is contradicted by several other documents he
28 admits signing thereafter. For example, after resigning, Dixie
admits signing another Tribal document appointing Burley as the
new Chairperson. Then, ten (10) days after resigning, Dixie
signs a document for the development of a casino with the Tribe.
However, he signs as "Tribal Member" under the signature of
Silvia Burley who signed as "Chairperson" of the Tribe. On July

1 7, 1999, Dixie wrote the BIA, through his attorney who had a
2 power of attorney, and referred to himself as the "Vice
3 President" of the Tribe, not the Chairman (RJN "33"). Later, on
4 July 23, 1999, Dixie signed an Addendum to the Development
5 Agreement. He again signed as "Tribal Member," not as Tribal
6 Chairperson, under the signature of Burley who signed as
7 "Chairperson" of the Tribe. (RJN "33"). Dixie obviously signed
8 these documents before he met with Bill Martin and Everone who
9 most likely convinced Dixie that he could develop a casino
10 without Burley. It is also clear that he knew that Burley was
11 signing as the Chairperson of the Tribe, since that her
12 signature block appears directly above his, yet he signed these
13 documents as a mere Tribal member, not as the Tribe's Chairman.
14 The false notion that Dixie never resigned and that his
15 resignation was forged were then concocted by Everone and Dixie,
16 and that has been their "story," though false, up until February
2012, when Dixie ultimately recanted his story under oath at his
deposition.

17 Thus, by the time Everone and his group came up with the
18 false notion that Dixie's "resignation letter" could be claimed
19 as a purported forgery in late 1999, Dixie had already confirmed
20 Burley's right to be Tribal Chairperson by signing multiple
21 documents to that effect from April 10, 1999 through the end of
July 1999.

22 This forgery claim was carried over into the recent state
23 court actions and against the California Gambling Control
24 Commission by Dixie's litigation team controlled by Everone. In
25 addition to the forgery claim being alleged in the Complaint in
26 Intervention in the recent action against the Commission, Dixie
27 submitted a false declaration in support of the motion to
28 intervene, stating that his resignation letter from the Tribe
was a purported "forgery."

1 **1. Dixie's Last Will and Testament.**

2 In an obvious attempt to protect his financial interests,
3 in the event Dixie should die, Everone and his team arranged to
4 have Dixie sign a "Will and Testament", wherein Dixie confirms
5 his agreements with the Everone group to allow them to build a
6 casino, in the event their scheme succeeds in stealing the Tribe
7 away from Burley, after he dies. (AR-CVMT-2017-000957).

8 **2. Everone's team sought to influence the Commission to**
9 **"freeze" the Tribe's RSTF money.**

10 As part of his plan, Everone contacted and hired Arlo
11 Smith, a former California Gambling Control Commissioner, and
12 Pete Melnicoe, a former Chief Counsel for the Commission. (AR-
13 CVMT-2017-000961). His plan was to get the Commission to stop
14 paying Revenue Sharing Trust Fund ("RSTF") money to the Tribe
15 under Burley's leadership, and to have the money paid to Dixie
16 instead. (AR-CVMT-2017-000961). RSTF money are licensing
17 payments made by Compact tribes which are shared with Non-
18 Compact tribes. The Miwok Tribe is a non-Compact Tribe entitled
19 to receive \$1.1 million per year from the Commission. Those
20 payments have been suspended since 2005 because of the current
21 Tribal leadership dispute. Everone is planning on using the
22 Tribe's RSTF money "as security" to convince other non-Indians
23 to invest in his scheme to take the Tribe away from Burley and
24 place it under Everone's control with Dixie as the "puppet"
25 Tribal Chairman. (Id.).

26 To this end, Everone wrote an Email boasting that his hired
27 team was successful in "influencing" the then Chief Counsel for
28 the Commission, Cyrus Rickards, to stop RSTF payments to the
29 Tribe, beginning in 2005. He stated:

30 "I have hired Peter Melnicoe and Arlo Smith (the former
31 Chief Counsel and the former Commissioner of that agency,
32 respectively); and they were instrumental in getting the
33 money frozen." (Emphasis added).

(AR-CVMT-2017-000961, September 11, 2006 Email from Everone).

3. Everone is soliciting "investment money" for the building of a casino, and is offering the Tribe's RSTF money as security.

In connection with his strategy to solicit investment money from non-Indians to finance his scheme, Everone prepared a "Bridge-loan Agreement & Prospectus" in 2004, which states in pertinent part as follows:

"...[A]dministrative procedures and litigation are now in progress to return control of the tribe to Yakima so that he may receive about \$1.2 million in income that currently accrues to the tribe from the California Gambling Control Commission and so that the tribe can be position[ed] to create a casino.

"A sum, not to exceed \$250,000.00 is being sought, in the form of Bridge Loans, to pay for the expenses that are necessary to regain control of the tribe to Yakima, to reorganize the tribe, and to negotiate the location and financial backing for a casino..."

(AR-CVMT-2017-000957, Bridge Loan document, dated February 26, 2004). In addition, the prospective investors were promised a "bonus interest" which would be paid to them "from gambling revenue to the tribe...for a period of 5 years after the casino is created." The prospectus then adds that Burley is still the target, stating:

"This \$1.2 million royalty [RSTF money on deposit in 2004] presently goes to the tribe but is under the control of the Chairperson whose appointment we are attempting to nullify in administrative appeal and litigation." (Emphasis added).

(AR-CVMT-2017-000957, Bridge Loan prospectus). Thus, Everone and his group of investors are not concerned at all about membership or the welfare of other potential Tribal members. They are only concerned about "nullifying" Burley as Chairperson, and stealing the Tribe, so that they can build a

casino for their own financial gain. Dixie is just a tool for their plans.

In fact, the Dixie faction's claims that the Tribe consists of over 200 adults and their children is contradicted by statements made in Yakima Dixie's "Bridge-loan Agreement and Prospectus" under his letterhead purportedly on behalf of the Tribe, which states:

"'Sheep Ranch...' is a **very small (<10 members)**, long-established (1916), federally recognized California Indian tribe that is qualified to receive benefits, including the right to establishment a Class III gambling facility..." (Emphasis added).

(Yakima Dixie "Bridge-loan Agreement & Prospectus, 2/26/2004, RJN "33"). The sign "<" means "less than." Thus, Dixie's statement here is that the Tribe consists of "less than 10 members," not "over 200 adults and their children" as falsely stated by him to the AS-IA and the courts.

Everone has made it clear that any outcome of the litigation favorable to Dixie means ultimate control of the Tribe for his group of investors, not any potential members of the Tribe. Getting control of the Tribe means, to Everone, control for him. For example, in 2006, he wrote in an Email the following:

"[Burley's] last two court maneuvers were dismissed; and the BIA is moving forward with its determination on the authority for the tribe, which almost certainly will give control to Yakima's faction, and that means to us." (Emphasis added).

(AR-CVMT-2017-000958, Everone Email dated September 29, 2006). In short, it is not about control of the Tribe for Dixie, but control of the Tribe for Everone and his investors bent on stealing the Tribe so they can build a casino. Finally, Everone puts it all in context, when he stated:

1 "There are few opportunities to 'make a financial
2 killing' and this, I sincerely believe, is one of
3 them." (Emphasis added).

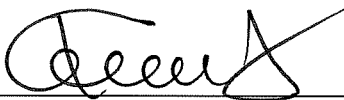
(AR-CVMT-2017-000958, Everone Email dated September 29, 2006).

4 **IV.**

5 **CONCLUSION**

6 For the foregoing reasons, summary judgment should be
7 entered in favor of the Burley faction. The AS-IA should be
8 ordered to reconsider his 2015 decision, and specifically
9 reconsider reinstating his August 2011 decision.

10
11 DATED: 3/2/2017



12 _____
13 Manuel Corrales, Jr., Esq.
14 Attorney for Plaintiffs
15 CALIFORNIA VALLEY MIWOK TRIBE, THE
16 GENERAL COUNCIL, SILVIA BURLEY,
17 RASHEL REZNOR, ANJELICA PAULK and
18 TRISTIAN WALLACE
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