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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

In Re: **$323,647.60 IN FUNDS BELONGING TO THE CALIFORNIA VALLEY MIWOK TRIBE**	Case No. 18-cv-01194-JAP/KBM Hon. James A. Parker **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO TRANSFER VENUE**

I. INTRODUCTION

This case stems from a dispute regarding the membership and leadership of the California Valley Miwok Tribe (Tribe), a federally recognized Indian tribe headquartered at the Tribe's historic rancheria (reservation) in Sheep Ranch, California. All parties to the dispute reside in the Eastern District of California, as does the office of the federal Bureau of Indian Affairs (BIA) that will decide the dispute. All the significant events related to the intra-Tribal dispute have occurred in the Eastern District.

Defendants-in-Interpleader Velma WhiteBear, Antonia Lopez, Gilbert Ramirez, Jr., Antoinette Lopez, Michael Mendibles, and Iva Carsoner (collectively, the Tribal Council) represent several hundred Tribal members, and assert that they are the Tribe's governing body under a Tribal constitution that the Tribal community adopted in 2013 (2013 Constitution).[1] Defendant-in-Interpleader Silvia Burley, her two daughters and her granddaughter (collectively, the Burley Faction) claim that they are the only members of the Tribe and that they, not the Tribal Council, constitute the Tribe's government.

Both the Tribal Council and the Burley Faction claim to be entitled to the Tribe's share of settlement proceeds in the *Ramah* class action (No. 1:90-cv-00957-JAP-KBM). Class Counsel in the *Ramah* action filed a complaint-in-interpleader in that case, asking this Court to resolve the competing claims. (ECF No. 2.)[2] Because the United States currently does not recognize either the Tribal Council or the Burley Faction as the Tribe's government, the Court granted a joint motion by all Defendants-in-Interpleader to stay the interpleader action pending a decision by the BIA to recognize a government for the Tribe. Subsequently, the Court granted Class Counsel's motion to sever the interpleader action from the *Ramah* case and to designate a separate case

[1] When the Complaint-in-Interpleader was filed in this case, the Tribal Council also included Yakima Dixie, who was named as a Defendant-in-Interpleader. Since that time, Mr. Dixie has died, and Briana Sanchez has been appointed to fill the Tribal Council seat left vacant by Mr. Dixie's death. Ms. Sanchez has not been named as a party in this case; however, the six Tribal Council members named as Defendants-in-Interpleader make up a supermajority of the seven-person Tribal Council.

[2] The pleadings filed in the interpleader action were subsequently re-filed under the current case number, after the Court severed the interpleader action from the *Ramah* case. *See* ECF No. 1. Citations are to the re-filed pleadings unless otherwise indicated.

number and caption for the severed action. (ECF No. 1.) The Tribe and Defendants-in-Interpleader are the only parties to the new action.

Now that the *Ramah* litigation is winding down and the interpleader action has been severed from that case, there is no basis for the current action to remain in the District of New Mexico. Neither the parties nor the underlying dispute have any connection to this District. All parties to the Tribal dispute reside in the Eastern District of California, and every material fact giving rise to the Tribal dispute occurred in the Eastern District. The mere fact that the interpleader action originated in the *Ramah* class action, which was venued in the District of New Mexico, does not make venue over the severed action proper here.[3]

The Tribal Council and the Burley Faction have been litigating their dispute in the Eastern District of California and the Ninth Circuit since 2016, as a result of the Burley Faction's choice of that venue, and the Tribal dispute is likely to be decided there. As explained below, the Tribal Council anticipates that the BIA's Pacific Regional Director will eventually recognize a Tribal government. The Regional Director resides in the Eastern District of California, and any legal challenge to the Regional Director's decision would be properly venued there. Retaining the current action in the District of New Mexico would force the parties to litigate their dispute in two different forums, as venue over the Tribal dispute is not proper in this District.

In summary, venue over the severed action is not proper in the District of New Mexico. Even if it were, the convenience of the parties and the interests of justice strongly support

[3] When Class Counsel informed Defendants-in-Interpleader of their intention to request that the Court sever the interpleader action, we informed Class Counsel that our clients did not oppose severance but reserved the right to object to venue or seek transfer to another district. (*See* Case No. 1:90-cv-00957-JAP-KBM, ECF No. 1621, ¶ 7.)

transferring this case to the Eastern District of California. With this Motion, the Tribe and the Tribal Council respectfully request an order to that effect.

II. FACTUAL AND PROCEDURAL HISTORY

A. History of Tribal dispute

The history of the Tribe, and of the current dispute over Tribal government and membership, is detailed in several published federal court opinions, each rejecting the Burley Faction's claims. *See California Valley Miwok Tribe v. USA*, 424 F.Supp.2d 197 (D.D.C. Mar. 31, 2006) (*Miwok I*), *affirmed*, *California Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1263 (D.C. Cir. 2008) (*Miwok II*); *California Valley Miwok Tribe v. Jewell*, 5 F.Supp.3d 86 (D.D.C. 2013) (*Miwok III*). *See also California Valley Miwok Tribe v. Zinke*, No. 2:16-01345, 2017 WL 2379945 (E.D. Cal. June 1, 2017) (*Miwok IV*), *affirmed*, No. 17-16321 (9th Cir. 2018). As those opinions describe, the Tribe's recorded history began with a federal Indian census in 1915, which found 13 Miwok Indians living near the former gold-mining town of Sheep Ranch, California. *Miwok I*, *supra*, 424 F.Supp.2d at 197. The United States subsequently acquired a parcel of land for the benefit of these Indians, establishing the Sheep Ranch Rancheria. *Id.* at 197-198.

In 1998, Yakima Dixie was the only person living on the Sheep Ranch Rancheria. Silvia Burley approached Dixie and "wrote for Yakima's signature, a statement purporting to enroll herself, her two children, Rashel Roznor [sic] and Anjelica Paulk, and her granddaughter, Tristian Wallace, into the Tribe." *Miwok III*, *supra*, 5 F.Supp.3d. at 90. Shortly thereafter, Burley and Dixie signed a resolution (the 1998 Resolution) purporting to establish a "general

council" as the Tribe's government, with Dixie as its head, but without involving any other member of the Tribal community. *See id.* at 90-91. In 1999, Burley submitted documents to the BIA claiming she had replaced Dixie as the leader of the Tribe under the 1998 Resolution — a claim Mr. Dixie disputed. *See id.* at 91-92.

The BIA briefly dealt with the Burley Faction as Tribal representatives, but in 2004 the BIA's Central California Agency, located in Sacramento, California, withdrew that recognition and issued a decision stating that it would not recognize the Burleys' purported Tribal government because it was adopted without the participation or consent of the majority of the Tribal community. *Miwok I*, 424 F.Supp.2d at 200. The Burley Faction challenged that decision before the U.S. District Court for the District of Columbia, which upheld the government's decision. *Miwok I*, 424 F.Supp.2d at 203. The Court of Appeals for the District of Columbia Circuit affirmed, holding that Burley's "antimajoritarian gambit deserves no stamp of approval from the Secretary [of the Interior]." *Miwok II*, 515 F.3d at 1267.

In 2011, after the Burley Faction had thwarted BIA efforts to assist the Tribal community in adopting a Tribal government through a majoritarian process, the BIA's Assistant Secretary – Indian Affairs issued a decision finding that the Tribe's membership *was* limited to five members (the Burley Faction plus Yakima Dixie, who is now deceased), and recognizing the Burleys' Tribal government (2011 Decision). The Tribal Council, representing the Tribe and its several hundred members whom the 2011 Decision would have excluded, challenged the 2011 Decision in the U.S. District Court for the District of Columbia in *Miwok III*. The District Court ruled that the 2011 Decision was unreasonable in light of the record, and remanded it to the BIA for reconsideration. *Miwok III*, 5 F.Supp.3d. at 98-100.

On remand, the Assistant Secretary – Indian Affairs issued a new decision, on December 30, 2015, which found that the Tribe's membership is *not* limited to five people and that "Ms. Burley and her family do not represent the [Tribe]." (2015 Decision, Exhibit A to Complaint-in-Interpleader, ECF No. 2, p. 5). The 2015 Decision determined that all lineal descendants of the historical Tribal members identified in certain government census records and similar documents must be allowed to participate in the formation of a Tribal government. (2015 Decision, p. 6.) The 2015 Decision did not recognize the Tribal Council (or any group) as the Tribe's government. (*Id.* at 5.) However, the 2015 Decision authorized the BIA's Pacific Regional Director to receive additional information from the Tribal Council for the purpose of determining whether the 2013 Constitution was validly ratified in the BIA's view. (*Id.* at 6.)

In April 2016, the Tribal Council submitted additional information to the Pacific Regional Director and requested that she recognize the Tribe's 2013 Constitution as validly ratified. (Exhibit A to Declaration of James Rusk.) The BIA solicited the Burley Faction's input on the request, and they responded by challenging the 2015 Decision in the District Court for the Eastern District of California, in *Miwok IV*. The Tribal Council intervened as defendants. *See Miwok IV*, *supra*, 2017 WL 2379945, at *1.

On June 1, 2017, the District Court granted summary judgment for the BIA and the Tribal Council on all the Burley Faction's claims, ruling that the 2015 Decision was not arbitrary or capricious. *Id.* at *8-9. The Burley Faction appealed to the Ninth Circuit, and the Ninth Circuit affirmed on December 11, 2018. *California Valley Miwok Tribe*, *supra*, No. 17-16321 (9th Cir. 2018). On January 4, 2019, the Burley Faction filed a petition for rehearing and rehearing *en banc* with the Ninth Circuit. Both the petition for rehearing and the Burley

Faction's earlier briefs in the Ninth Circuit made the same arguments that the Burleys are now trying to raise in this Court in their Motion to Lift Stay — namely, that the four members of the Burley Faction are the Tribe's only members and that Yakima Dixie's death moots any Tribal leadership dispute. (Motion to Lift Stay, ECF No. 8, ¶¶ 3-4, 7-8; Petition for Rehearing, Exhibit B to Rusk Decl., pp. 3, 8-9; Appellants' Reply Brief, Exhibit C to Rusk Decl., pp. 1-3.)

B. The *Ramah* interpleader action and severance

After the Assistant Secretary issued the 2015 Decision, the Tribal Council became aware that the Tribe was a class member in the *Ramah* action.[4] The Tribal Council notified Class Counsel in March 2016 that there was a dispute regarding Tribal leadership and that, pursuant to the 2015 Decision, the United States did not recognize any Tribal government. (Exhibit B to ECF No. 2.) In September 2016, pursuant to Section VIII.E of the Final Settlement Agreement in the *Ramah* case, Class Counsel filed the Complaint-in-Interpleader, naming the Tribal Council members and Silvia Burley as Defendants-in-Interpleader, and asked this Court to determine who was entitled to receive the Tribe's share of the Ramah settlement proceeds. (ECF No. 2, ¶ 10.) The Tribal Council and the Burley Faction jointly requested that the Court stay the interpleader "pending a final decision by the [BIA] to recognize a government for the Tribe." (ECF No. 5, p. 2.) The Court granted the request and stayed the interpleader "pending a final decision by the Department of the Interior recognizing a government for the Tribe or until further order of the Court." (ECF No. 7, p. 2.)

[4] At that time, the Burley Faction's address in Stockton, California, was listed as the Tribe's address in settlement documents filed with the *Ramah* court. (Complaint-in-Interpleader, ECF No. 2, ¶¶ 1, 3.)

As the Ninth Circuit was completing its deliberations in the *Miwok IV* appeal, the *Ramah* litigation and settlement distribution were also winding up. However, the BIA still had not recognized a government for the Tribe. On December 14, 2018, Class Counsel filed an unopposed motion to sever the Miwok interpleader action from the *Ramah* litigation so that Class Counsel could "close the books" on the *Ramah* case and be relieved of any further responsibilities. (Motion to Sever, No. 1:90-cv-00957, ECF No. 1621, ¶ 5.) The Court granted the Motion to Sever. (ECF No. 1.)

On December 31, 2018, less than three weeks after the Ninth Circuit affirmed the 2015 Decision, Ms. Burley filed a motion to lift the stay in this action. (Motion to Lift Stay, ECF No. 8.) The Motion to Lift Stay asks the Court to lift the stay and release the interpleaded funds to the Burley Faction, notwithstanding the finding in the 2015 Decision that the Burley Faction does not represent the Tribe. (Motion to Lift Stay, ¶¶ 3-5.) Ms. Burley's motion argues that the Ninth Circuit incorrectly decided the Burley Faction's appeal in *Miwok IV* and that BIA actions not before this Court are unlawful. (Motion to Lift Stay, ¶¶ 3-4.) It asks this Court to determine the membership of the Tribe. (Motion to Lift Stay, ¶ 5.) The Tribal Council has filed an opposition to the Motion to Lift Stay concurrently with this motion and respectfully requests that the Court rule on this motion before considering the Motion to Lift Stay.

C. The Tribe's Secretarial election

While the Burley Faction's appeal was pending in the Ninth Circuit, on September 11, 2017, the BIA's Pacific Regional Director issued her decision on the Tribe's request for federal recognition of its 2013 Constitution. (Exhibit D to Rusk Decl.) The Regional Director found that the BIA could not recognize the results of the July 6, 2013 election that ratified the 2013

Constitution, because there was insufficient evidence that the Burley Faction had been given an adequate opportunity to participate in that election.[5] *Id.* at 3. The Regional Director encouraged the Tribe to petition the BIA for a Secretarial election, *id.*, which is an election held by the BIA, pursuant to federal regulations, for the purpose of allowing a tribe to adopt a governing document, *see* 25 CFR Part 81.

By letter dated August 7, 2018, the Tribal Council notified the Burley Faction that the Tribe had begun gathering the required signatures and intended to submit a petition for Secretarial election, and that the Burleys would have an opportunity to participate in that election, regardless of whether they chose to sign the petition. (Exhibit E to Rusk Decl., p. 1.) The Burley Faction responded by filing a motion to enjoin the BIA from acting on the Tribe's petition or conducting a Secretarial election. (Exhibit F to Rusk Decl.) The Ninth Circuit denied the motion. (Exhibit G to Rusk Decl.)

The Tribal Council anticipates that, pursuant to the regulations governing Secretarial elections, the BIA's Central California Agency in Sacramento, California, will call and conduct a Secretarial election for the Tribe in 2019. *See* 25 C.F.R. §§ 81.19(b). Assuming that a majority of registered voters approve the proposed Tribal constitution, the BIA's Pacific Regional Director in Sacramento, California, will approve the results of that election and recognize a government for the Tribe. *See* 23 C.F.R. § 81.45(b). That recognition will end the Tribal

[5] The Tribe and the Tribal Council believe that the Regional Director's decision was wrongly decided, but chose to forego legal challenge to that decision and instead to pursue a Secretarial election as the Regional Director recommended, in order to obtain federal recognition for the Tribe's government. Nonetheless, the Tribe continues to operate under the 2013 Constitution and recognizes the Tribal Council, whose authority was ratified by that Constitution.

leadership dispute and provide the basis for this Court to lift the stay in this action and order the distribution of the Tribe's share of the *Ramah* settlement proceeds. (*See* Order Granting Stay, ECF No. 7, p. 2.) Any legal challenge to the Regional Director's decision could be brought in the Eastern District of California, or arguably in the District of Columbia, but not in the District of New Mexico.

III. ARGUMENT

Neither the Tribal Council nor the Burley Faction chose to litigate this case in the District of New Mexico. This case is venued in the District of New Mexico only because the *Ramah* class action, which involved tribes from all over the United States, was decided in this District. Now that the class litigation has concluded and the interpleader action has been severed, venue is no longer proper here. Even if venue were proper, there is no reason to force the parties to the Miwok interpleader action to litigate this matter in New Mexico. Venue is proper in the Eastern District of California, and the convenience of the parties and the interests of justice weigh heavily in favor of transferring this case to that district, which is the historical home of the Tribe and the current domicile of every party to this dispute.

A. Venue is not proper in the District of New Mexico.

Venue over the severed Miwok action is not proper in the District of New Mexico because none of the parties to the severed action resides in New Mexico, and none of the events giving rise to the parties' competing claim to the settlement funds occurred in this district.

1. Legal standard for venue

As relevant here, venue for a civil action is proper in "a judicial district in which any defendant resides," if all defendants reside in the state in which the district is located, 28 U.S.C. § 1391(b)(1), or in "a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred," 28 U.S.C. § 1391(b)(2). A natural person "shall be deemed to reside in the judicial district in which that person is domiciled." 28 U.S.C. § 1391(c)(1). For venue purposes, a person's domicile is their "true, fixed, and permanent home." *Keys Youth Servs., Inc. v. City of Olathe, Kansas*, 248 F.3d 1267, 1272 (10th Cir. 2001). Noncorporate entities like the Tribe are treated the same as corporations for residence purposes: they are deemed to reside in any judicial district in which the entity is subject to the court's personal jurisdiction with respect to the civil action in question. 28 U.S.C. § 1391(c)(2); *Navajo Nation v. Urban Outfitters, Inc.* 918 F.Supp.2d 1245, 1254 (D. New Mexico Jan. 16, 2013) (District of New Mexico was proper forum where four million acres of the Navajo Nation's land and 112,000 members were in the state).

In identifying the district in which a substantial part of the events or omissions giving rise to a claim occurred, courts will examine: (1) the nature of plaintiff's claims and the acts or omissions underlying those claims; and (2) whether substantial events material to those claims occurred in the forum district. *Employers Mut. Cas. Co. v. Bartile Roofs, Inc.*, 618 F.3d 1153, 1167-68 (10th Cir. 2010).

2. The parties to this case have no connection to the District of New Mexico.

None of the parties to the current action resides in the District of New Mexico; *every* party resides in the Eastern District of California. The Tribe's headquarters is located at the Sheepranch Rancheria in Calaveras County, California, within the Eastern District. (Declaration of A. Lopez, ¶ 5.) Every member of the Tribal Council, and most members of the Tribe itself, live in the Eastern District of California. (Lopez Decl., ¶ 4.) Silvia Burley resides in Stockton, California, which is also located within the Eastern District. (*See* Complaint-in-Interpleader, ECF No. 2, ¶¶ 1, 3; First Amended Complaint, ¶ 9, Exhibit A to Request for Judicial Notice (RJN).) Thus, venue is not proper in this District under subsection 1391(b)(1).

None of the significant events giving rise to the parties' competing claims occurred in the District of New Mexico. All significant events related to the Tribal leadership dispute occurred in the Eastern District of California or at the BIA headquarters level in Washington, D.C. Every factual event related to Tribal affairs that is described in the 2015 Decision, dating back more than a century to the federal Indian census at Sheep Ranch in 1915 and the government's purchase of the Sheep Ranch Rancheria in 1916, occurred within the Eastern District of California. (*See* 2015 Decision, pp. 1-5.) The Burley Faction's entrance onto the scene in 1998, their efforts to take control of the Tribe, and the decisions of the BIA's Central California Agency to *not* recognize the Burleys as the Tribe's government, all occurred in the Eastern District of California. *See Miwok I*, 424 F.Supp.2d at 198, 200-201. Even the Burley Faction's most recent attempt to litigate the Tribal leadership dispute and challenge the 2015 Decision occurred in the Eastern District of California. *See generally Miwok IV*, 2017 WL 2379945. Thus, venue is not proper in this District under subsection 1391(b)(2).

The fact that the *Ramah* class action was venued in this District does not make venue proper in the severed action. While venue may have been proper in the class action, the severed interpleader action is now a separate case. *See M.M.M. on behalf of J.M.A. v. Sessions*, 319 F.Supp.3d 290, 295 (D.D.C. Aug. 3, 2018) ("Severed claims become independent actions that proceed separately and result in separate judgments"). Venue in the severed action must be evaluated based on the parties to that action. *C.f. Spaeth v. Michigan State Univ. Coll. of Law*, 845 F.Supp.2d 48, 56-57 (D.D.C. Feb. 17, 2012) (granting defendant law schools' motion to sever claims against law schools into four new cases, each with a single law school defendant, and transferring each new case to the district in which the law school defendant was located); *Nat. Indem. Co. v. Transatlantic Reinsurance Co.*, 13 F.Supp.3d 992, 1006 (D. Neb. Mar. 31, 2014) (severing claims against defendant companies and transferring each new case).

Because venue is not proper in the District of New Mexico, the Court should transfer the case to the Eastern District of California.

B. Even if venue were proper here, the Court should transfer the case to the Eastern District of California.

Even assuming, for the sake of argument, that venue were proper in the District of New Mexico, the interests of justice and the convenience of the parties warrant transfer to the Eastern District of California.

1. Legal standard for transfer

"For the convenience of the parties and witnesses, in the interest of justice," a district court may transfer an action "to any other district or division where it might have been brought…." 28 USC § 1404(a). The purpose of this provision is to "prevent the waste of time,

energy, and money and to protect litigants, witness, and the public against unnecessary inconvenience and expense." *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964) (internal quotation marks and citations omitted).

Section 1404(a) provides district courts with discretion to decide motions to transfer "according to an individualized, case-by-case consideration of convenience and fairness." *Chrysler Credit Corp. v. Country Chrysler, Inc.*, 928 F.2d 1509, 1516 (10th Cir. 1991) (internal quotation marks omitted). The Tenth Circuit has set out discretionary factors for courts to weigh in adjudicating motions to transfer:

> [1] the plaintiff's choice of forum; [2] the accessibility of witnesses and other sources of proof; including the availability of compulsory process to insure attendance of witnesses; [3] the cost of making the necessary proof; [4] questions as to the enforceability of a judgment if one is obtained; [5] relative advantages and obstacles to a fair trial; [6] difficulties that may arise from congested dockets; [7] the possibility of the existence of questions arising in the area of conflict of laws; [8] the advantage of having a local court determine questions of local law; [9] all other considerations of a practical nature that make trial easy, expeditious and economical.

Id. (internal quotation marks omitted).

2. Venue is proper in the Eastern District of California.

This case could have been brought in the Eastern District of California because all parties reside in the Eastern District of California, and most of the events giving rise to their dispute occurred there. *See* 28 U.S.C. § 1391(b)(1). As stated above, the Tribe and every member of the Tribal Council reside within the Eastern District. (Lopez Decl., ¶¶ 4, 5.) Silvia Burley also resides within the Eastern District. (Complaint-in-Interpleader, ECF No. 2, ¶¶ 1, 3; RJN, Exhibit 1, ¶ 9.)

Venue is also proper in the Eastern District of California for the additional and independent reason that a substantial part of the events or omissions giving rise to the Tribal leadership dispute happened there. *See* 28 U.S.C. § 1391(b)(2). The factual events described in the 2015 Decision occurred in the Eastern District. (*See* 2015 Decision, pp. 1-5.) The BIA's initial decisions to *not* recognize the Burleys as the Tribe's government occurred in the Eastern District. *See Miwok I*, 424 F.Supp.2d at 198, 200-201. While the 2015 Decision was issued in Washington, D.C., the Burleys' challenge to that decision was litigated in the Eastern District.[6] *See generally Miwok IV*, 2017 WL 2379945.

For both of these independent reasons, venue is proper in the Eastern District, and this Court has discretion to transfer the case to that venue. 28 USC § 1404(a).

C. The Tenth Circuit's discretionary factors weigh heavily in favor of transferring this case to the Eastern District of California.

The discretionary factors set forth by the Tenth Circuit weigh heavily in favor of transferring this case to the Eastern District of California. In particular:

- Choice of forum: Neither the Tribal Council nor the Burley Faction chose to litigate their dispute in the District of New Mexico. But the Burley Faction *has* chosen to litigate the Tribal leadership dispute in the Eastern District of California.
- Availability of witnesses: Every litigant, potential witness, and source of evidence is located in the Eastern District of California.

[6] The Burley Faction also could have challenged the 2015 Decision in the District Court for the District of Columbia, *see* 28 U.S.C. § 1391(e), and some chapters in the Tribal leadership dispute have been litigated there. *See Miwok I*, 424 F.Suppp.2d 197; *Miwok III*, 5 F.Supp.3d 86. But the Burleys chose to litigate in the Eastern District of California, and the availability of an alternative forum does not render the Eastern District improper.

- Cost and other practical considerations: All parties will incur unnecessary costs and inconvenience if they are forced to litigate this case in the District of New Mexico, far from the parties' homes and the events giving rise to the Tribal dispute.
- Enforceability of the judgment and conflict of laws: The Tribal dispute will likely be decided by the BIA in the Eastern District of California, and any challenge to the BIA's decision will be properly venued there. Retaining this case in the District of New Mexico raises the possibility of inconsistent judgments and multiple appeals to different Courts of Appeals.

See Chrysler Credit Corp., *supra*, 928 F.2d at 1516.

1. Neither the Tribal Council nor the Burley Faction chose to litigate this dispute in the District of New Mexico.

Where a plaintiff has chosen a forum, that choice weighs heavily against a transfer of venue. *Emp'rs Mut. Cas. & Co.*, *supra,* 618 F.3d 1153, 1167-68. However, plaintiff's forum choice is entitled to less deference "where the facts giving rise to the lawsuit have no material relation or significant connection to the plaintiff's chosen forum." *Id.* at 1168.

In this case, neither the Tribal Council nor the Burley Faction chose to litigate in the District of New Mexico. Rather, both parties were interpled into the *Ramah* class action, which happened to be venued in the District of New Mexico. The Court subsequently severed the interpleader action. At no point in this chain of events did either the Tribal Council or the Burley Faction choose to litigate in the District of New Mexico, and venue would not have been proper had either party attempted to litigate Tribal issues in this Court. As such, this factor weighs against venue in the District of New Mexico.

Even if one party had chosen to litigate the current case in this Court, that choice would not be entitle to deference because the facts giving rise to this dispute have no material relation

or significant connection to the District of New Mexico. As detailed above, every fact underlying this tribal leadership dispute is grounded in the Eastern District of California.

2. All witnesses and other sources of proof are located in the Eastern District of California.

"The convenience of the witnesses is the most important factor in deciding a motion under [Section] 1404(a)." *Navajo Nation*, *supra*, 918 F.Supp. at 1256 (citation omitted). As stated above, the Tribe and the Tribal Council reside in the Eastern District of California. (Lopez Declaration, ¶¶ 4-5.) The Burley Faction also resides in the Eastern District. (Exhibit 1 to RJN, ¶ 9.) The BIA's Central California Agency and Pacific Regional Office, which have jurisdiction over this Tribe, are also located in the Eastern District. (Exhibit 2 to RJN.)

Though the Tribal Council expects that the interpleader action will be resolved based on a written BIA decision recognizing a government for the Tribe, it is possible that witness testimony could be required. Thus, the convenience of witnesses supports transfer to the Eastern District of California. *See Palace Exploration Co. v. Petroleum Dev. Co.*, 316 F.3d 1110, 1122 (10th Cir. 2003) (venue was proper in the district in which a majority of the witnesses resided).

3. Litigating the case in New Mexico would impose unnecessary costs and inconvenience on all parties.

Because all parties reside in California, litigating this case in New Mexico would impose unnecessary burdens on the participants, including costs of travel to attend hearings and other proceedings, and the time and inconvenience incurred in participating in such proceedings far from home. Litigating this case in New Mexico would necessarily entail a significant amount of travel to and from New Mexico, for the parties and their counsel. (Lopez Decl., ¶ 9.) This travel

would impose costs on the parties for transportation, lodging, missed work and related expenses. (Lopez Decl., ¶ 9.) It would necessarily increase the time that counsel must devote to the case, thus increasing the parties' legal fees. In addition, travel to New Mexico would require the parties to miss work, to be away from their families, and to bear the other inconveniences of travel. (Lopez Decl., ¶ 9.) Litigating the case in the Eastern District of California would greatly reduce, or completely eliminate, these burdens. (Lopez Decl., ¶ 10.)

The burdens associated with litigating the case in New Mexico weigh heavily in favor of transferring this case to the Eastern District of California.

4. Transfer will avoid the possibility of inconsistent judgments and multiple appeals.

As explained in Part II.C, *infra*, the Tribe expects the BIA to conduct a Secretarial election for the Tribe that will result in federal recognition of a Tribal government and end the Tribal leadership dispute. That election, and the BIA's recognition decision, will occur in the Eastern District of California, and any challenge to the BIA's decision will be properly venued there. *See* 28 U.S.C. § 1391(b), (e). The Burley Faction's current challenge to the BIA's 2015 Decision is already being heard in the Eastern District and the Ninth Circuit. Retaining this case in the District of New Mexico raises the possibility of inconsistent judgments and multiple appeals to different Courts of Appeals.

The Tribal Council's position, as expressed in its opposition to the Motion to Lift Stay filed concurrently with this motion, is that this Court is not authorized to decide the Tribe's membership or to recognize a Tribal government, and that the Court should defer to the BIA's decision to recognize a Tribal government for purposes of identifying the proper recipient of the

Tribe's share of *Ramah* settlement proceeds. As noted above, any challenge to the BIA's decision would not be heard in this Court and would not be subject to appeal in the Tenth Circuit.

The Burley Faction, however, has asked the Court to decide the Tribe's membership and to determine that they are entitled to the Tribe's share of *Ramah* funds, independent of any BIA recognition decision. (Motion to Lift Stay, ¶ 5.) If the Court were to do so, an appeal would lie with the Tenth Circuit, raising the possibility of a judgment that could conflict with the decisions of the Eastern District of California and the Ninth Circuit in both *Miwok IV* and any subsequent action brought in those courts. Even assuming that the Court denies the Burley Faction's request to determine questions of Tribal membership and government, if this action remains venued here, the Court will eventually lift the stay and order the Tribe's share of Ramah funds distributed to some Tribal government recognized by the BIA. In that event, the losing party could appeal the Court's decision to the Tenth Circuit, again raising the possibility of multiple litigation and inconsistent rulings.

Transferring this case to the Eastern District of California will ensure that all matters related to the Tribal leadership dispute are heard by that court and the Ninth Circuit, which will be bound by the prior rulings in *Miwok IV*. Doing so will serve the interests of judicial economy and promote the integrity of the federal courts.

5. All remaining factors are either neutral or irrelevant.

None of the other factors set out by the Tenth Circuit support maintaining this litigation in the District of New Mexico. The Tribal Council is unaware of any concerns related to obtaining a fair trial, or docket congestion, in either the District of New Mexico or the Eastern

District of California. *See Chrysler Credit Corp.*, *supra*, 928 F.2d at 1516. Neither district presents potential issues related to conflict of laws (*e.g.*, state and federal law), other than the possibility of conflicting judgments described above. *See id.* Because any challenge to the BIA's recognition of a Tribal government will be governed by federal law, there is no need for the court to decide questions of local law, although the Eastern District of California would be better positioned to decide such questions in any case. *See id.*

IV. CONCLUSION

For the reasons set forth above, the Tribe and the Tribal Council respectfully request that the Court transfer this matter to the Eastern District of California.

January 14, 2019

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CERTIFICATE OF SERVICE

I certify that on January 14, 2019, I caused a copy of the foregoing Memorandum of Points and Authorities Supporting Motion to Transfer Venue to be filed with the court using the CM/ECF system, which will send notification of such filing to the parties entitled to receive notice.

__/s/_James Rusk_____
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