Case No. D080288

IN THE CALIFORNIA COURT OF APPEAL
FOURTH APPELLATE DISTRICT, DIVISION ONE

MANUEL CORRALES, JR.,

Plaintiff/Appellant,

vs.

CALIFORNIA GAMBLING CONTROL COMMISSION; CALIFORNIA VALLEY MIWOK TRIBE, as a whole; CALIFORNIA VALLEY MIWOK TRIBE (consisting of the "Lena Shelton Faction" and the "Burley Faction"); CALIFORNIA VALLEY MIWOK TRIBE, Burley administration ("the Burley Faction"),

Defendants/Respondents.

San Diego County Superior Court
Case No. 37-2019-00019079-CU-MC-CTL
The Honorable Ronald F. Frazier

APPELLANT'S OPENING BRIEF

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TO BE FILED IN THE COURT OF APPEAL **APP-008**

COURT OF APPEAL FOURTH **APPELLATE DISTRICT, DIVISION** ONE	COURT OF APPEAL CASE NUMBER: D080288
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: 117647 NAME: Manuel Corrales, Jr. FIRM NAME: STREET ADDRESS: 17140 Bernardo Center Drive, Suite 358 CITY: San Diego STATE: CA ZIP CODE: 92128 TELEPHONE NO.: (858) 521-0634 FAX NO.: (858) 521-0633 E-MAIL ADDRESS: mannycorrales@yahoo.com ATTORNEY FOR (*name*): In Pro per	SUPERIOR COURT CASE NUMBER: 37-2019-00019079-CU-MC-CTL
APPELLANT/ PETITIONER: Manuel Corrales, Jr. RESPONDENT/ REAL PARTY IN INTEREST: California Gambling Control Commission, et al.	

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Check one): ☒ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party *(name*): Manuel Corrales, Jr.

2. a. ☒ There are no interested entities or persons that must be listed in this certificate under rule 8.208.
   b. ☐ Interested entities or persons required to be listed under rule 8.208 are as follows:

	Full name of interested entity or person	**Nature of interest *(Explain):***
(1)		
(2)		
(3)		
(4)		
(5)		

☐ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: September 7, 2022

Manuel Corrales, Jr.
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF APPELLANT OR ATTORNEY)

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APPELLANT'S OPENING BRIEF

I.

INTRODUCTION

The central issue in this case is one of **ostensible authority**, i.e., whether an ostensible agent for a party to an attorney fee agreement had **ostensible authority** to sign the agreement, and whether the trial court lacked subject matter jurisdiction over that dispute.

This is an appeal from a dismissal without prejudice of a Complaint seeking recovery of attorney's fees from an "**unorganized**"

Indian Tribe whose membership and leadership remain in dispute. The issue on appeal is whether the trial court lacked subject matter jurisdiction to decide a former Tribal lawyer's claim for attorney's fees under a fee agreement tied to certain Revenue Sharing Trust Fund ("RSTF") payments the Tribe is entitled to receive, and has been receiving, on a quarterly basis from the California Gambling Control Commission ("the Commission"), and which a federally-designated "person of authority" for the unorganized Tribe executed for the Tribe. By history, the person the Bureau of Indian Affairs ("BIA") designated as a "person of authority" for the unorganized Tribe had the authority to execute federal contracts for the Tribe on an interim basis in order to manage the process of formal organization the Tribe had voted on in 1935, and had the authority without BIA approval to execute fee agreements with lawyers. The trial court, however, ruled that in order for it to decide the fee dispute between the former Tribal lawyer and the Tribe, it would have to determine whether the person who executed the fee agreement for the Tribe was authorized to do so, and the trial court concluded it lack subject matter jurisdiction to decide that preliminary issue.

Since the trial court dismissed the action without prejudice, the former Tribal attorney re-filed suit in the Superior Court in order to prevent the running of the statute of limitations on his common count claims not previously pled, including quantum meruit, money had and received, and an open book account. The former Tribal attorney has asked the trial court in his newly filed action to stay his case pending a decision from this reviewing Court or the reconstitution of the Tribe's governing body identifying a Tribal representative recognized by the BIA.

The trial court's dismissal for lack of subject matter jurisdiction was erroneous. There were several reasons the trial court in fact had subject matter jurisdiction. First and foremost, the trial court had subject matter jurisdiction to determine if the former Tribal attorney's retention was based on ostensible authority. The Tribe's status as an "unorganized" Tribe made the BIA the giver of authority to persons designated to represent the Tribe on an interim basis, not the Tribe or any faction of the Tribe. **Until the Tribe is formally organized, the BIA alone determines who is the valid representative of an "unorganized" Tribe**. In this case, the person who signed the former Tribal attorney's fee agreement was designated by the BIA to be the valid representative of the "unorganized" Tribe, with the designation first as the Tribal Chairperson, and then a "person of authority" or "spokesperson" for the Tribe. Both the BIA and the ostensible agent for the Tribe under the BIA's designation represented to the former Tribal attorney that the person who signed the subject fee agreement was a "person of authority" for the Tribe, thus creating triable issues of fact for ostensible authority, all of which gave the trial court proper subject matter jurisdiction. The trier of fact does not decide a Tribal membership or leadership dispute in determining ostensible authority issues.

Second, to the extent the written fee agreement was invalid in any way, the former Tribal lawyer was still entitled to quantum meruit recovery for the reasonable value of his legal services, which the trial court had jurisdiction to decide. Issues of ostensible authority would still be relevant.

Third, in determining whether the person who signed the subject fee agreement for the Tribe was the Tribe's ostensible agent, the trial court was required to look to see how the BIA had treated this

person over the years, as explained by this Court in California Valley Miwok Tribe v. California Gambling Control Commission (2014) 231 CA4th 885, 907-908. The trial court had subject matter jurisdiction to determine factually, and from public records, whether the BIA considered the person who signed the subject fee agreement to be an "authorized representative" or "spokesperson" for the Tribe during the time of the former Tribal lawyer's retention. Doing so, would not require the trial court to decide a Tribal membership or leadership dispute, any more than the Commission looking to see with whom the BIA later contracts on behalf of the Tribe for 638 contract funding to determine who the BIA considered to be the valid representative of the Tribe for release of RSTF payments, as instructed by this Court in its 2014 decision. 231 CA4th at 908.

Given the nature of the fee agreement and the unique nature of the funds which are alleged to be the source of payment for the former Tribal lawyer's fees, the present suit for recovery of those fees is not premature. In accordance with this Court's 2014 decision, the former Tribal lawyer's fees can be paid from the Tribe's RSTF proceeds the Commission is withholding without any funds being released to the Tribe. This Court's 2014 decision instructs that the Probate Code dealing with the duties of trustees are applicable in understanding the proper role of the Commission with respect to the Tribe's RSTF proceeds. The fee agreement was a hybrid fee agreement requiring payment of guaranteed hourly services with a percentage of the RSTF assets as an enhancement of those guaranteed fees. Under California Probate law, trustee's and attorney's fees are paid from the trust estate before making final distribution to the beneficiaries. In addition, California case law holds that fees owed under a hybrid fee agreement calling for payment of a guaranteed fees and a percentage

of the estate are valid, and liens attached to the estate for payment of those fees are enforceable. Here, the trial court had jurisdiction to determine the validity of the former Tribal lawyer's lien on the RSTF proceeds the Commission is withholding from the Tribe, and the amount payable. The trial court certainly has jurisdiction over the Commission and the money it is withholding in the California State treasury. Triable issues exist on whether the former Tribal lawyer's hourly billing, which the Tribe paid for several months, was "temporarily suspended" in accordance with the plain language of the written fee agreement, and to be paid from the final distribution of the RSTF proceeds the Commission was withholding. The trial court erred in concluding that it had no subject matter jurisdiction to adjudicate the validity of this delayed payment arrangement, and whether the former Tribal lawyer's fees were guaranteed regardless of the outcome of the many cases and other matters the former attorney handled for the Tribe.

Neither was the former Tribal lawyer's claims for earned fees barred by Bus. & Prof. Code §6201 requiring arbitration of a fee dispute between a client and his or her lawyer, since the Tribe waived any right to arbitration by filing pleadings in the trial court seeking resolution of the fee dispute, including intervening in the case, filing oppositions to the former attorney's summary judgment motion, and filing demurrers and motions to dismiss.

Also, the trial court's refusal to stay the action, instead of dismissing it, pending organization of the Tribe's governing body was an abuse of discretion. The trial court should have followed the lead in a related case of Ramah in the federal district court, where an interpleader action was stayed by the court for class action settlement proceeds for the Tribe, pending resolution of the Tribe's leadership

dispute. The trial court's refusal forced the former Tribal lawyer to re-file his action in another Department, alleging common counts for quantum meruit, etc., so as to preserve the statute of limitations on those claims.

The former Tribal lawyer's suit and appeal are not frivolous or a violation of this Court's 2014/2020 decisions. The issues on appeal here are different than those raised in theses prior decisions. In those decisions, the issue was the release of RSTF payments to the Tribe, pending a Tribal leadership and membership dispute. In contrast, the former Tribal lawyer here first and foremost seeks payment of his earned fees from the Tribe's RSTF proceeds, without any funds being released to the Tribe, in accordance with the Probate Code and cases construing the Probate Code under similar circumstances.

The trial court also erred in denying the former Tribal lawyer's motion for new trial and accompanying motion for relief from default. Based upon the trial court's ruling granting the motion to dismiss on lack of subject matter jurisdiction, it was unclear whether the trial court was expecting to have the motion to dismiss opposed with evidence outside the pleadings. Therefore, the former Tribal lawyer sought relief from default to present such evidence, which the trial court summarily denied without any explanation or analysis.

II.

MATERIAL FACTS

In early December, 2007, Silvia Burley ("Burley") contacted Plaintiff MANUEL CORRALES, JR., ("Corrales") by phone in San Diego, California, and represented to Corrales that she was the Chairperson and the person of authority for a small, federally-recognized Indian tribe by the name of the CALIFORNIA VALLEY MIWOK TRIBE ("the Tribe" or "the Miwok Tribe") up in northern

California. (CT 1291, 3174). Burley and her husband, Tiger Paulk, asked Corrales if he would be willing to represent the Tribe in a dispute with the Commission over certain funds called Revenue Sharing Trust Fund ("RSTF") payments the Tribe was entitled to receive on a quarterly basis. (CT 1291). According to Burley and Paulk, the retention would involve resolving related disputes with the BIA and, as a result, Corrales' retention would cover other related matters to obtain the release of these funds. (CT 1291). To this end, Corrales wrote Burley and Paulk that he contemplated his fees would involve a "hybrid contingency fee agreement," where he would receive a reduced hourly fee in consideration for a modest percentage of the recovery." (CT 1291, Letter December 7, 2007, from Corrales to CVMT).

On December 10, 2007, Corrales confirmed a telephone conversation with Burley and Paulk concerning the fee agreement reached between Corrales and the Tribe through Burley. (CT 1296, Letter December 10, 2007, from Corrales to CVMT). Corrales' confirming letter stated, in part, that his fees would be "15% of the total gross recovery and $3,000.00 per month" which he would "bill against." (Id.). Burley had the $3,000.00 check sent to Corrales the next day. (CT 1294, Fax Coversheet, December 11, 2007).

The Fee Agreement between Corrales and the Tribe under Burley's leadership was executed on December 13, 2007. (CT 2852). Burley signed for the Tribe. (CT 2852). The Fee Agreement provided that Corrales was retained to represent the Tribe in connection with a claim for damages or other appropriate relief against whomever is responsible for the loss suffered by the Tribe arising out of the Commission's refusal to release RSTF payments to the Tribe. (CT 2848). It further provided that other parties may be sued on various

theories to maximize recovery. (CT 2848). The Fee Agreement was not a pure contingency fee agreement. Instead, it was a hybrid fee agreement that provided for a guaranteed payment for hourly services at $250 per hour, plus an enhancement of 15% of the withheld RSTF proceeds once they were released to the Tribe. (CT 2849-2850). To this end, the Fee Agreement provided:

> "**Fee to Attorney:** The parties have agreed upon a hybrid contingency fee agreement. This means that Client agrees to pay Attorney a percentage of the recovery plus a guaranteed monthly fee for expenses. Specifically, the Client agrees to pay Attorney **15%** of the total gross recovery by way of settlement, judgment or compromise. A monthly, **guaranteed fee** of $3,000.00 paid on the 15th of each month will be held in retainer by Attorney and will be used to cover costs and expenses. Any amount of the retainer not used for costs or expenses will be applied to Attorney's expended time at **$250/hour**. (Emphasis added: "guaranteed fee").

(CT 2849-2850, Fee Agreement, December 13, 2007, para. 6). This enhanced amount was increased in 2009 to 20%.

The Fee Agreement also provided that upon discharge Corrales would be compensated for the reasonable value of his services at the rate of $250 per hour, together with other factors identified in the agreement. (CT 2851, Para. 8).

On January 19, 2008, Corrales sent the Tribe under Burley's leadership an invoice for hourly services rendered with a cover letter explaining the billing arrangement, so there would be no "confusion." (CT 1298). The invoice was for legal services rendered at $250 per hour per the agreement for the period December 2, 2007 through January 15, 2008. (CT 1298-1302). As Corrales explained:

> "I billed 38.9 hours. At $250/hour, this amounts to $9,725.00.
>
> "On December 13, 2007, you sent me my initial **retainer check for $3,000**. Per our agreement, I billed against this and paid

> various expenses. The balance owed in fees exceeds $6,000. This amount obviously will increase for the following month."
> * * *
> "Per our agreement, the $3,000 check is to be paid on the 15th of each month, and is to be used as a **retainer to pay my hourly fees and costs**…" (Emphasis added).

(CT 1298, Letter January 19, 2008, from Corrales to CVMT). The invoice attached to the letter shows that the fees were accumulating and carried over to the next month as fees owed. (CT 1302).

On February 13, 2008, Corrales sent the Tribe under Burley's leadership an invoice for hourly services rendered. (CT 1304). The invoice exceeded the $3,000 monthly retainer payment, and the excess amount was carried over to the next billing cycle. (CT 1307-1308).

On March 10, 2008, Corrales sent the Tribe under Burley's leadership an invoice for hourly services rendered. (CT 1310). Again, the invoice exceeded the $3,000 monthly retainer payment, and the excess amount was carried over to the next billing cycle. (CT 1313).

On April 11, 2008, Corrales sent the Tribe under Burley's leadership an invoice for hourly services rendered. (CT 1316). The invoice exceeded the $3,000 monthly retainer payment, and the excess amount was carried over to the next billing cycle. (CT 1317-1318).

On May 13, 2008, Corrales sent the Tribe under Burley's leadership an invoice for hourly services rendered. (CT 1320). Thereafter, for about nine months the Tribe under Burley's leadership temporarily stopped making monthly retainer payments for Corrales' legal services for financial reasons, but Corrales continued to provide those services. In lieu of resuming monthly payments for hourly services rendered, the Tribe and Corrales, on March 10, 2009,

amended the original Fee Agreement to provide that the monthly payment of $3,000 for Corrales' legal fees would be temporarily suspended, and, instead, the hourly fees Corrales earns for his legal services would be "deferred" and "accumulate," and thereafter paid from the later released RSTF proceeds. (CT 2847, Second Amendment to December 13, 2007 "Hybrid Contingency Fee Agreement with Monthly Rate," dated March 10, 2009).

The Fee Agreement states that the Tribe grants Corrales a **lien** on the Tribe's **claim**. (CT 2851, Para. 9 of Fee Agreement). That "claim" is described in the Fee Agreement as the "Revenue Sharing Trust Fund money belonging to the California Valley Miwok Tribe." (CT 2848, Para. 1 of Fee Agreement, entitled "Claims Covered by Agreement"). As written, Corrales had a lien on the Tribe's RSTF money being held by the Commission, and the parties looked to that as the source for the payment of Corrales' fees. (CT 2851). The amended Fee Agreement clarified that the source of Corrales' fees is the RSTF proceeds belonging to the Tribe, i.e., the money the Commission is withholding from the Tribe. It states:

> "Upon recovery of any P.L. 93-638 funds or the RSTF money, … Client agrees to **pay Attorney** forthwith **from those recovered funds** any and **all fees owed** under the original agreement … **that may have been deferred and have accumulated** …" (Emphasis added).

(CT 2847, Para. 2.c., Second Amendment to December 13, 2007 "Hybrid Contingency Fee Agreement with Monthly Rate").

Corrales' guaranteed fee was simply the enhancement of his reduced $250 hourly rate, as opposed to his flat market rate at the time of $500 per hour. (CT 0644). Moreover, as confirmed by the Tribe under Burley's leadership when Corrales was terminated, his work was not confined to only one case. It was for multiple cases and

matters. (CT 0687, Notice of Termination from Burley to Corrales, dated May 22, 2020 [“terminate your services … as the attorney representing the California Valley Miwok Tribe in all state and federal legal matters, Ramah litigation, and/or otherwise, effective immediately]). Indeed, Tiger Paulk confirmed in a voicemail to Corrales prior to the filing of his suit for fees that Corrales was the Tribe’s “in-house counsel.” (CT 3179-3181, Ex. “46” to Decl. Corrales, July 26, 2021, voicemail from Tiger Paulk).

On November 30, 2009, Corrales presented the March 10, 2009 amended Fee Agreement to the United States Secretary of Interior (“the Secretary”) for approval. (CT 2854). On March 11, 2010, the Secretary wrote a letter to Corrales in response indicating that the law had changed and that the Department of Interior (“DOI”) is no longer required to approve fee agreements between federally recognized Indian tribes and their attorneys. (CT 2854-2856, Letter from Pilar Thomas of the DOI to Corrales, dated March 11, 2010). At the time this letter was written, the DOI was aware of the ongoing leadership dispute between Burley and Yakima Dixie, the leader of the rival faction, and public records confirmed that the DOI had treated Burley as a “person of authority” or “spokesperson” for the Tribe, and that the BIA had entered into 638 federal contract funding contracts with Burley on behalf of the Tribe, despite an ongoing leadership dispute. (CT 2889, 2898, 2900-2901). In response to Corrales’ request, the DOI did not deny that Burley had any authority to sign the Fee Agreement for the Tribe. Instead, it simply took no action because of the change in the law. (CT 2854). At the time she entered into the subject Fee Agreement and the amendment thereto, Burley maintained, and continues to maintain today, that she had the authority to enter into those agreements. (CT 3009). As a result,

Corrales was led to believe by both Burley and the BIA that Burley had the authority to enter into the subject Fee Agreement for Corrales' legal services, and that he would be paid for those services from the RSTF proceeds belonging to the Tribe. (CT 2333, FAC, para. 83-88).

BACKGROUND OF THE TRIBE

The Tribe stemmed from twelve band of Indians identified by a BIA agent, John Terrell, in 1915. (CT 2308). This band of Indians lived in the Sheep Ranch area in Calaveras County, near San Andreas, in Northern California. (CT 2308). Terrell bought a 0.92-acre plot of land for these Indians in 1916, but over the century only a few of the descendants of these original band of 12 Indians ever used it or resided on it. (CT 2308). The 0.92-acre plot was called the Sheep Ranch Rancheria, and those Indians affiliated with or descended from the original Band of 12 Indians who actually used or resided on the Rancheria were members of the Tribe called the "Sheep Ranch Rancheria." (CT 2308).

In 1998, Yakima Dixie ("Dixie") was the only one of the descendants of the 1915 census who was residing on the 0.92-acre plot of land, which was a recognized Rancheria or reservation held in trust by the U.S. government. (CT 2308). Since the lot was purchased by the government for the 12 Sheep Ranch Indians, the BIA has always tied membership and authority to act for the Tribe to residency on the Rancheria. (CT 2308). As a result, in 1998, Dixie, being the only descendant of the 1915 census residing on the Rancheria, had the full and exclusive authority to organize the Tribe and enroll members. (CT 2308).

In August of 1998, Dixie adopted and enrolled into the Tribe Burley and three (3) members of her family. (CT 2308). The BIA accepted this enrollment, and Burley and her family members became

official, enrolled members of the Tribe. (CT 2308). Accordingly, the Tribe at that time consisted of Dixie, his brother Melvin Dixie (whose whereabouts were at that time unknown), and the Burleys. (CT 2308).

In November 1998, the BIA met with Dixie and Burley and encouraged them to organize the Tribe into a General Council form of government, because of the small size of the Tribal members, in order to manage the formal organization of the Tribe under the Indian Reorganization Act of 1934 ("IRA"), as was voted on in 1935 by the sole resident of the Tribe living on the Rancheria. (CT 2308-2309). The BIA did not allow the other descendants of the 1915 census who never resided on the Rancheria to participate in the organization of the Tribe, and, because they never resided on the Rancheria, they were also not considered actual members of the Tribe like Dixie and the Burley family. (CT 2309). The BIA looked at the General Council as temporary and merely a means of formally organizing the Tribe under the IRA with the participation of descendants of the original 12 Band members identified in the 1915 census. (CT 2309). As a result, the BIA expected the 1998 formed General Council to formally organize the Tribe under the IRA, and recognized the General Council and Burley's leadership to accomplish that goal. (CT 2891, 2898, 2901). In early 1999, a leadership dispute arose between Burley and Dixie. (CT 1542). Dixie claimed he never resigned as the Tribal Chairman, but he still gave Burley the right as delegate to represent the Tribe. (CT 2519, 2314). From the time Dixie resigned in early 1999, and for several years thereafter, the BIA only recognized Burley, and not Dixie, as the rightful Chairperson or "person of authority" for the Tribe. (CT 2314).

Beginning on March 26, 2004, the BIA started recognizing Burley as a "person of authority" or "spokesperson" for the Tribe,

rather than "Chairperson," and in connection with that authority entered into 638 federal contract awards with her as the authorized representative for the Tribe. (CT 2889). The BIA did not withdraw this designation as a "person of authority" for the Tribe until December 30, 2015, when the Assistant Secretary of Interior ("ASI"), Kevin Washburn, issued a decision that neither she nor anyone else was an authorized representative of the Tribe, until it was formally organized under the IRA. (CT 1545). Burley, through Corrales' efforts, challenged that decision in federal court. (CT 2309). On June 1, 2017, the U.S. District Court affirmed Washburn's decision, and on December 11, 2018, the 9th Circuit Court of Appeals affirmed that ruling. On March 11, 2019, the time lapsed to petition the 9th Circuit Court of Appeals' decision, and, as a result, Washburn's decision became final. Thus, the BIA's designation of Burley as a "person of authority" spanned from March 26, 2004, until March 11, 2019, when Washburn's decision became final**. Accordingly, since Corrales' retention was from December 13, 2007, through May 22, 2020, he performed services for the Tribe during the major part of the time that the BIA recognized Burley as a "person of authority" or "spokesperson" for the Tribe, and specifically entered into the subject Fee Agreement with the Tribe when the BIA still considered Burley to be a person of authority for the Tribe**.

ATTTEMPT TO ORGANIZE THE TRIBE

For several years, and as documented in several court decisions, the Tribal community as a whole was considered to be approximately 200 persons. (CT 0794); CVMT v. CGCC (2014) 231 CA4th 885, 893. These were persons who were related to, or descendants of, the original 12 Band members counted in 1915, but who never resided on the Rancheria. (CT 1544). In 1998, when the

BIA helped Dixie and Burley establish the 1998 General Council, and many times thereafter, it made it clear to them that, because Jeff Davis, the sole resident of the Rancheria in 1935, had voted for the Tribe to be organized under the IRA, they had the responsibility to reach out to the Tribal community in the surrounding areas and include them in the formal IRA organization of the Tribe. Fearing she would lose control over the Tribe, Burley resisted, and the BIA over the years grew more and more frustrated over her refusal to organize the Tribe under the IRA. (CT 2309; 2900-2902; 1387-1388); (RT 12/13/21, p. 12). Dixie sought to do so on his own with his faction of various descendants of the original 12 Band members, amid his claim that he had never resigned as Chairman of the Tribe. (CT 1546). However, the BIA continued to treat Burley alone as the sole representative of the Tribe, and continued to enter into federal 638 contract funding with her alone on behalf of the Tribe, hoping she would begin the process of formal organization under the IRA. (CT 2889-2891; 2898).

At one point, the BIA sought to do so itself, after Dixie submitted his own proposed constitution, and Burley started relying on the 2004 IRA amendment allowing Indian tribes to organize outside the IRA if they chose, without it affecting their eligibility for federal funding. (CT 1387-1388). Burley administratively appealed the BIA's efforts, and that ultimately led to the ASI Larry Echo Hawk ruling in August 2011 that the Tribe's General Council established in 1998 was the Tribe's governing body with Dixie and the Burley family as the only five actual members of the Tribe, and that the BIA could not force the Tribe to organize under the IRA if it chose not to do so. (CT 2309; CVMT v. CGCC, supra at 894-895). Dixie successfully challenged that decision in federal court, which led to the December 30, 2015

Washburn decision reversing the 2011 Echo Hawk decision, and setting up a system of Eligible Groups of persons who were descendants of the original 12 Band members and who had the right to participate in the organization of the Tribe. (CT 1541). Burley unsuccessfully challenged the Washburn decision in federal court, and the Washburn decision became final on March 11, 2019. (RT, 12/31/21, pp9-10).

Dixie died in December 2017, (CT 1149) but his followers continued to move forward with organizing the Tribe on their own without Burley. In January 2019, the remnants of the Dixie faction began to fight amongst themselves as to whether all of the 200 descendants they claim to comprise the Tribe as a whole were in fact actual descendants of Jeff Davis, while at the same time moving forward with the organization of the Tribe and calling a Secretarial Election. (CT 0791-0792). Burley and Tiger Paulk then contacted Corrales and told him they lost control of the Tribe, and that he should file a lawsuit to recover his fees. (CT 3197). Corrales did so on April 12, 2019, but only named the Commission, since he was still technically the attorney for the Tribe. (CT 0023). On May 30, 2019, the BIA published a genealogy study which found that most of these 200 persons who claimed to be descendants of Jeff Davis were in fact not related to him at all. (CT 0791-0792). As a result, the BIA invalidated the Secretarial Election. (CT 0792).

On May 31, 2022, ASI Bryan Newland issued a decision modifying the 2015 Washburn decision, enabling the descendants of the 12 Band of Indians counted in a 1929 census to take part in the organization of the Tribe, thereby increasing the number of persons qualified to take part in the organization of the Tribe back to about 200, and with Burley's family being a part of that group. (RJN No. 1).

Although the modified decision overrules the objections the Dixie faction had been making about Burley's membership, it is irrelevant to the issue of ostensible authority for purposes of Corrales' retention and his entitlement to the payment of his fees.

III.

STATEMENT OF THE CASE

On April 12, 2019, Corrales filed his Complaint against the Commission, seeking declaratory relief on the validity of the Fee Agreement he entered into with Burley, the validity and enforcement of his lien for attorney's fees on the Tribe's RSTF proceeds the Commission is holding for the Tribe, and whether Burley had the authority to execute it on behalf of the Tribe. (CT 0023, Para. 22 of Complaint). Corrales' Complaint sought injunctive relief asking the trial court to direct the Commission to withhold and set aside any RSTF payments it may make to the Tribe, should the remnants of the Dixie faction succeed in re-organizing the Tribe per Washburn's decision, and the BIA approves a called Secretarial Election and thereafter approves a newly constituted Tribal governing body. (CT 0023, Para. 25 of Complaint).

On January 10, 2020, the trial court entered an order allowing the remnants of the Dixie faction to intervene in Corrales' lawsuit, together with their faction they mirrored in calling the California Valley Miwok Tribe. (CT 0273). Later, the Tribe under Burley's leadership made an "appearance" as an additional intervenor, without seeking to obtain an order to that effect. (CT 0299). The effect was that there were <u>two</u> California Valley Miwok Tribe entities as intervenors in Corrales' lawsuit, both separately represented by different counsel, and both claiming to be the Tribe.

On April 15, 2020, the Dixie faction, disavowing Burley's authority to act for the Tribe and claiming to be the Tribe, purported to fire Corrales. (CT 0689). On May 22, 2020, Burley, purporting to act on behalf of the Tribe, also fired Corrales as the Tribe's lawyer. (CT 0687). On August 28, 2020, Corrales then submitted a final invoice to the Tribe in care of Burley for payment of his fees. (CT 0993-1087). This detailed final invoice was served on all parties, including the Commission in formal discovery in Corrales' lawsuit. (CT 0656). Corrales filed an amended Notice of Lien for his fees on May 26, 2020, serving the Commission, counsel for the Dixie faction, and the Tribe in care of Burley. (CT 305-310). Previously, on December 27, 2020, Corrales had filed a Notice of Lien for his fees when he mistakenly thought Burley had fired him. (CT 0648-0649, Para. 6; 0691-0695). That original Notice of Lien was also served on the Commission, Burley, and the attorneys for Dixie. (CT 0695). On April 29, 2021, the trial court denied Corrales' summary judgment motion, but allowed Corrales to amend his Complaint to add the Tribe for a breach of contract claim. (CT 2127). Accordingly, Corrales amended his Complaint on May 21, 2021, adding the Tribe as an additional defendant, and adding claims for breach of contract and promissory estoppel. (CT 2305).

Thereafter, the Tribe under Burley's leadership filed a motion to dismiss for lack of subject matter jurisdiction, which the trial court granted on December 14, 2021. (CT 2798, 2807-2808). The motion to dismiss was <u>not</u> based on sovereign immunity which would have required the submission of evidence in support thereof. (CT 2342-

2383). The motion, therefore, was not supported by any evidence.[1] The thrust of the Tribe's motion was that the Court would be required to decide a leadership or membership dispute in order to decide if Burley was authorized to enter into the Fee Agreement with Corrales. (CT 2355-2362). The trial court agreed, and dismissed the action based on those grounds, and indicated that it could look beyond the pleadings to decide the motion, believing the motion was based on sovereign immunity. Judgment was entered on December 27, 2021. (CT 2798, 2807-2808).

Corrales thereafter timely filed a motion for new trial and motion for relief from default, submitting evidence for the trial court to consider on the issue of whether Burley was authorized to enter into the subject Fee Agreement for the Tribe. The trial court summarily denied both motions on April 1, 2022, without any detailed reasons or explanation. (CT 3248). Corrales timely appealed on May 19, 2022. (CT 3320).

IV.

STATEMENT OF APPEALABILITY

This appeal is taken from a final judgment that resolves all of the issues between the parties. CCP §304.1(a))1).

V.

SCOPE OF REVIEW

Questions of **subject matter jurisdiction** are questions of law, which are reviewed de novo. Singletary v. International Brotherhood of Electrical Workers (2012) 212 CA4th 34, 41. Where the question

[1] Although the Tribe(B) argued that under Great Western Casino, supra, the trial court could consider evidence outside the pleadings, it offered no evidence in support of its motion, and made no reference to any such evidence. (CT 2353).

depends on findings of fact, the Court applies the substantial evidence test if the facts are disputed. J.H. McKnight Ranch, Inc. v. Franchise Tax Bd. (2003) 110 CA4th 978, 983. However, if the facts are undisputed, the Court resolves the question of subject matter jurisdiction as a matter of law. Warburton/Buttner v. Superior Court (2002) 103 CA4th 1170, 1181.

Generally, in entertaining a motion to dismiss, the trial court must accept the allegations in the complaint as true, and construe all inferences in the plaintiff's favor. Great Western Casinos, Inc. v. Morongo Band of Mission Indians (1999) 74 CA4th 1407, 1418. A challenge to the court's subject matter jurisdiction may be "facial" or "factual." White v. Lee (9th Cir. 2000) 227 F.3d 1214, 1242; Great Western Casinos, supra at 1418. In a facial attack, the jurisdictional challenge is confined to the allegations pled in the complaint. Wolfe v. Strankman (9th Cir. 2004) 392 F.3d 358, 362; Great Western, supra. The challenger asserts the allegations in the complaint are insufficient "on their face" to invoke federal jurisdiction. Safe Air for Everyone v. Myer (9th Cir. 2004) 373 F.3d 1035, 1039; Great Western, supra. To resolve this challenge, the court assumes that the allegations in the complaint are true and draws all reasonable inferences in favor of the party opposing dismissal. Wolfe, supra at 362; Great Western, supra. Under this scenario, a determination of subject matter jurisdiction is a legal question subject to de novo review. Guardianship of Ariana K (2004) 120 CA4th 690, 824.

By contrast, in a factual attack, the challenger disputes the allegations that, by themselves, would otherwise invoke the court's subject matter jurisdiction. Safe Air, supra at 1039. This type of factual challenge arises in the context of a motion to dismiss based on Indian sovereign immunity, where discovery and a fact-finding

hearing are permitted. Warburton/Buttner v. Superior Court (4th Dist., Div. One 2002) 103 CA4th 1170, 1181 ("… a court considering a jurisdictional question regarding sovereign immunity may go beyond the pleadings and contract language to consider testimonial and documentary evidence relevant to that issue," citing Great Western, supra at 1418). To resolve this challenge, the court "need not presume the truthfulness of the plaintiff's allegations." Safe Air, supra. Instead, the court "may review evidence beyond the complaint without converting the motion to dismiss into a motion for summary judgment." Safe Air, supra. Once the moving party has made a factual challenge by offering affidavits or other evidence to dispute the allegations in the complaint, the party opposing the motion must "present affidavits or any other evidence necessary to satisfy its burden of establishing that the court, in fact, possesses subject matter jurisdiction." St. Clair v. City of Chico (9th Cir. 1989) 880 F.2d 199, 201. Under this scenario, the reviewing court applies the substantial evidence test. Warburton/Buttner, supra at 1181.

In matters involving the interpretation of a written contract, the reviewing court is not bound by the trial court's interpretation, so long as there is no conflicting extrinsic evidence or the conflicting evidence was of a written nature only. Milazo v. Gulf Ins. Co. (1990) 224 CA3d 1528, 1534.

Although the existence of an agency relationship, including the existence of ostensible agency, is usually a question of fact, it "becomes a question of law when the facts can be viewed in only one way." Markow v. Rosner (2016) 3 CA5th 1027, 1039 (citing Metropolitan Life Ins. Co. v. State Bd. Of Equalization (1982) 32 Cal.3d 649, 658).

VI.

LEGAL DISCUSSION

A. THE TRIAL COURT ERRED IN DISMISSING PLAINTIFF'S COMPLAINT FOR LACK OF SUBJECT MATTER JURISDICTION

1. The First Amended Complaint sufficiently alleged Burley acted with the ostensible authority of the BIA, and therefore of the Tribe, in executing the subject Fee Agreement.

In his 4th Cause of Action for Promissory Estoppel, and elsewhere throughout the First Amended Complaint ("FAC"), Corrales pled sufficient allegations that Burley was essentially acting with the ostensible authority as the Tribe's "**person of authority**," as that title was given to her by the BIA, when she executed the Fee Agreement for the Tribe. Estoppel is the real foundation for both ostensible agency and ostensible authority. Van Den Eikhof v. Hocker (1978) 87 CA3d 900, 906 (citing Yanchor v. Kagan (1971) 22 CA3d 544, 549).

The Tribe under Burley's leadership (Tribe (B)) moved to dismiss the FAC without any supporting evidence. (CT 2342-2383). It was filed as an alternative to its demurrer, and therefore the motion was a "facial" attack of the FAC. As a result, it limited its challenge of subject matter jurisdiction to the allegations in the FAC. To this end, Corrales never had the burden of producing evidence to dispute the Tribe(B)'s motion. St. Clair v. City of Chico (9th Cir. 1989) 880 F.2d 199, 201.

Under the undisputed facts in this case, both Burley and the BIA made certain representations that Burley had the authority to enter into the subject Fee Agreement with Corrales on behalf of the Tribe. Since the Tribe was, and currently is, "unorganized," only the BIA had

the authority to designate Burley as the valid representative of the Tribe[2], and it did so by the following actions:

(1) The BIA approved of Dixie's enrollment of Burley and her family members into the Tribe in 1998. (CT 2308, Para. 9, FAC).

(2) The BIA facilitated and approved of the General Council form of government in 1998 with Dixie as the Chairperson, and then a year later recognized Burley as the new Tribal Chairperson. (CT 2308-2309, Para. 10, FAC).

(3) The BIA looked to Burley as a valid representative of the Tribe to effectuate the organization of the Tribe under the IRA through the General Council. (CT 2309, Para 10, FAC).

(4) The BIA entered into 638 federal contract funding with Burley as the sole representative of the Tribe from 1999 through 2009. (CT 2315, Para. 29.f., FAC).

(5) In 2001, the BIA approved Burley's actions through the General Council to change the name of the Tribe from the Sheep Ranch Indian Rancheria to the California Valley Miwok Tribe, and published that name change in the Federal Register. It has published that new name in the Federal Register every year, and continues to refer to the Tribe by its new name, thereby confirming Burley's

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[2] If the Tribe was organized, that means it would have a BIA-recognized governing body, and the Tribe has the authority to select its own leader or "person of authority" to act for the Tribe. See Sac & Fox Tribe of the Mississippi in Iowa v. BIA (8th Cir. 2006) 439 F.3d 832 (election disputes between competing tribal council are nonjusticiable, intratribal matters). Where, however, the Tribe is not organized, i.e. it does not have a BIA-recognized governing body, then the BIA had the exclusive authority to determine who is the "person of authority" or "spokesperson" who can represent the unorganized, federally-recognized Tribe, pending formal organization. (CT 1545, 2889-2891, 2898).

authority in effectuating the name change. (CT 2315-2316, Par. 29.g., FAC).

(6) The BIA began referring to Burley as the "person of authority" or "spokesperson" for the Tribe in 2004, and never withdrew that designation until December 30, 2015, when the Kevin Washburn decision was issued. (CT 2889, 1545).

(7) The BIA/DOI declined Corrales' request for approval of the subject Fee Agreement he entered into with the Tribe through Burley, indicating that approval was no longer necessary because of a change in the law. It stated it was taking no action on Corrales' request at a time when it considered Burley to be a "person of authority" or "spokesperson" for the Tribe. (CT 2854).

Burley made these same representations to Corrales in 2007 when he entered into the subject Fee Agreement, and thereafter, which led Corrales to believe that Burley had the authority on behalf of the Tribe to retain him for legal services for the Tribe, and that he would be paid for his services from the RSTF proceeds the Commission was collecting and holding for the Tribe. (CT 2333, Para. 84-86 FAC). Paragraph 20 of the FAC specifically alleges:

> "The fee agreement Corrales entered into with the Miwok Tribe in 2007 was signed by Burley as the authorized representative of the Tribe. At the time, the federal government recognized Burley as the authorized representative of the Tribe."

(CT 2311, Para. 20, FAC). To this end, the FAC states:

> "84. By virtue of the subject Fee Agreement, and related oral and written representations, the Miwok Tribe made a promise to Corrales that he would be paid for his legal services from the subject RSTF proceeds.
>
> "85. Corrales justifiably relied upon this promise, and performed legal services for almost 13 years.

> "86. The Miwok Tribe reasonably expected it promise would induce, and it did induce Corrales to perform these legal services."

(CT 2333, Para. 84-86, FAC).

These undisputed facts and allegations support Burley's ostensible authority to enter into the subject Fee Agreement on behalf of the Tribe, over which the trial court had subject matter jurisdiction. Ostensible authority is statutorily explained as follows:

> "**Ostensible authority** is such as a **principal**, intentionally or by want of ordinary care, causes or **allows a third person to believe the agent to possess**." (Emphasis added).

CC §2317. And:

> "A **principal** is **bound** by **acts of his agent**, under a merely **ostensible authority**, to **those persons** only who have **in good faith**, and without want of ordinary care, incurred a liability or **parted with value**, upon the faith thereof." (Emphasis added).

CC §2334.

Under California law, "an agency is either actual or ostensible." CC §2298. An agency is actual when the principal "intentionally confers [authority] upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself to possess [actual authority]." Gulf Ins. Co. v. TIG Ins. Co. (2001) 86 CA4th 422, 438. An agency is ostensible when the principal "intentionally, or by want of care, causes a third person to believe another to be his agent who is not really employed by him." CC §2300. An agent's authority may be implied from the circumstances of a particular case and may be proved by circumstantial evidence. Kaplan v. Coldwell Banker Residential Affiliates, Inc. (1997) 59 CA4th 741, 748.

A principal is liable for the acts of an ostensible agent only if three conditions are met: "[t]he person dealing with the agent must do so with belief in the agent's authority and this belief must be a reasonable one; such belief must be generated by some act or neglect of the principal sought to be charged; and the third person in relying on the agent's apparent authority must not be guilty of negligence." Associated Creditors' Agency v. Davis (1975) 13 Cal.3d 374, 399. Whether the agent in fact had the authority is irrelevant. Further, "[l]iability of the principal for the acts of an ostensible agent rests on the doctrine of '**estoppel**,' the essential elements of which are the representations made by the principal, justifiable reliance by a third party, and a change of position from such reliance resulting in injury." Pries v. Am. Indem. Co. (1990) 220 CA3d 752, 761. The principal does not need to make explicit representations regarding an agent's authority to the third party. C.A.R. Transp. Brokerage Co., Inc. v. Darden Restaurants, Inc. (9th Cir. 2000) 213 F.3d 474, 480 (applying California law). Instead, ostensible authority may be shown through evidence of the principal's **representations to the public in general**. Kaplan, supra at 747-748. The existence of ostensible authority is a question of fact, and may be implied from the circumstances. Yanchor v. Kagan (1971) 22 CA3d 544, 550.

Ostensible agency, therefore, must be established through the actions or words of the principal, not those solely of the putative agent. Hill v. Citizens Nat. Truat & Savings Bank of Los Angeles (1937) 9 Cal.2d 172, 175. The principal must be aware of the putative agent's statements and acquiesce in them for there to be ostensible authority binding on the principal. Dill v. Berquist Construction Co. (1994) 24 CA4th 1426, 1437. However, where the principal knows the agent is holding himself out as acting with the principal's authority and remains

silent, ostensible agency may be established. Leavens v. Pinkham & McKevitt (1912) 164 Cal. 242, 247-248; Pries, supra at 761.

Here, the Tribe is the principal and Burley is the ostensible agent of the Tribe, but, because the Tribe is "unorganized," the Tribe functions as a principal by virtue of the power and authority given to it by the BIA. Thus, under these unique circumstances, the Tribe and the BIA act jointly as the principal for purposes of Burley having the ostensible authority to act for the Tribe during the time the BIA conferred upon her the status of "person of authority" or "spokesperson" for the Tribe. In other words, while the Tribe is the principal and Burley is the ostensible agent for purposes of ostensible authority, the Tribe had no power to grant Burley the authority to act on behalf of the Tribe without the BIA giving it that power, given its status as an "unorganized" Tribe. **The BIA was the giver and taker of that authority**. (CT 2889, 1545). It gave Burley the authority to act as Chairperson in 1999, (CT 2883) then act as a "person of authority" and "spokesperson" for the Tribe in 2004, (CT 2889) and then later in 2015 it took that authority away when Washburn rendered his decision stating Burley no longer represented the Tribe. (CT 1545). The BIA gave her the authority to act for the Tribe on an interim basis, until she could, through the General Council, manage and complete the process of organizing the Tribe under the IRA, as previously voted upon in 1935. (CT 1463-1464). Under these unique circumstances, the principal was both the Tribe and the BIA. The undisputed evidence establishes that the Tribe exists, and has existed over the decades, but it did not have, and continues not to have, an organized governing body. (CT 2900-2902). Its name has been published in the Federal Register showing it does in fact exist as a federally-recognized tribe. (CT 1111-1112). As alleged, and through

public records, Burley was the ostensible agent for the Tribe through the BIA during the time of Corrales' retention. Her authority derived from the BIA. Thus, for all intents and purposes, the Tribe is liable as the principal for Burley's actions and representations as the Tribe's ostensible agent, because both the BIA, as the giver of the Tribe's authority, and Burley, the expressly BIA-designated "person of authority," made representations to Corrales and to the public that led Corrales to believe that Burley had the authority to enter into a fee agreement with him on behalf of the Tribe. Whether the other rival faction approved of the fee agreement is irrelevant. They had no authority to confer upon Burley the authority to act for the Tribe. That authority came solely from the BIA, and the undisputed evidence shows that the BIA never gave them any similar authority.

Accordingly, the trial court had subject matter jurisdiction to decide whether Burley in fact was acting with ostensible authority for the Tribe in accordance with CC §§ 2317 and 2334, and it erred in dismissing the action on the erroneous belief that it would be required to decide a Tribal leadership and membership dispute to determine Burley's authority to enter into the subject Fee Agreement and Corrales' claim for payment of his fees.

2. Evidence submitted in support of a new trial motion also established subject matter jurisdiction based on ostensible authority

In addition to the allegations in the FAC, Corrales submitted evidence in support of his new trial motion showing that the BIA had represented to him and to the public that Burley was the ostensible agent for the Tribe, and showing that Burley herself made multiple representations to Corrales and to the public that she was the ostensible agent for the Tribe. To the extent the trial court believed

and expected to look beyond the pleadings to determine subject matter jurisdiction, Corrales provided such evidence that expanded on the allegations in the FAC. (CT 2834-3054). However, as pointed out, the Tribe(B) did not support its motion to dismiss with any evidence, and therefore Corrales did not have the burden to provide any himself. Acres Bonusing, Inc. v. Marston (N.D.Cal. 2022) 2022 WL 1914319, *3 ("Once the moving party has made a factual challenge by offering affidavits or other evidence to dispute the allegations in the complaint, the party opposing the motion must 'present affidavits or any other evidence necessary to satisfy its burden of establishing that the court, in fact, possesses subject matter jurisdiction'"); Warburton/Buttner, supra, at 714-715 (allowing discovery and fact-finding on the issue of waiver of sovereign immunity for purposes of determining subject matter jurisdiction, and citing Great Western Casino, supra).

Moreover, the trial court's written order clearly indicated that it believed the Tribe(B)'s motion to dismiss was based on sovereign immunity, which, based on Great Western Casinos, supra, it had cited in its ruling, requires the court to "engage in sufficient pretrial factual and legal determinations" to determine the validity of the sovereign immunity defense." Great Western Casinos, supra at 1418; see Warburton/Buttner, supra at 714-715 ("a court considering a jurisdictional question regarding sovereign immunity may go beyond the pleadings and contract language to consider testimonial and documentary evidence relevant to that issue"). (CT 2807-2808). However, the Tribe(B)'s motion to dismiss was not based on sovereign immunity. (CT 2342-2383). Instead, it was based on the flawed proposition that in order to determine if Burley had the authority to enter into the subject Fee Agreement with Corrales, the trial court

would be required to resolve a leadership and membership dispute, over which the trial court had no jurisdiction. (CT 2343). As stated, this reasoning is flawed. The trial court clearly had subject matter jurisdiction to determine whether Burley had ostensible authority to act for the Tribe at the time she signed the subject Fee Agreement. Indeed, Corrales specifically pled a cause of action for promissory estoppel which forms the basis of ostensible authority. (CT 2333). Yanchor v. Kagan, supra at 549; Pries, supra at 761; CACI 3709. Moreover, it is undisputed that the trial court would only need to look to see how the BIA treated Burley in the past for ostensible authority purposes before Corrales was fired, and not look to see how the BIA views Burley's relationship with the Tribe in the present. The fundamental inquiry, therefore, is who was the BIA-designated authorized agent for the Tribe during Corrales' retention, not who presently is the "person of authority." That is the core of ostensible agency, to wit: the past. Thus, the relevant issue here is: At the time Burley executed the agreement in 2007, was she acting with the ostensible authority for the Tribe? Overlapping this issue is the fact that Burley was not a lawyer, and therefore could not represent the Tribe. The trial court had subject matter jurisdiction to decide that issue, and erroneously concluded that it would be forced to decide the present Tribal leadership and membership dispute to do so.

3. A resolution of a Tribal leadership or membership dispute is not a necessary predicate to adjudicate Corrales' claims for payment of his fees.

As explained above, the issue is whether Burley, as the BIA-designated "person of authority" for the Tribe, had the ostensible authority to sign the Fee Agreement for the Tribe, in the same way she had the authority to sign numerous 638 federal contracts with the

BIA as a "person of authority" for the Tribe. (CT 2893, 2932-2982). The trial court had jurisdiction to decide that issue. Whether Burley is the current Tribal leader or was the rightful Tribal leader (against claims by the rival faction that she was not) during Corrales' retention is irrelevant. The issue is whether Corrales in good faith performed legal services for the Tribe for almost 13 years, based upon Burley's and the BIA's representations to him and to the public that Burley was a "person of authority" or "spokesperson" for the Tribe, and therefore had the ostensible authority to retain Corrales to represent the Tribe on various matters. CACI 3709 (ostensible agency); Rest.2d, Contracts §90(1); Tomerlin v. Canadian Indem. Co. (1964) 61 Cal.2d 638, 649.

B. CORRALES' CLAIMS FOR PAYMENT OF HIS ATTORNEY'S FEES ARE NOT PREMATURE SO AS TO DIVEST THE TRIAL COURT OF SUBJECT MATTER JURISDICTION

The Tribe(B) also argues that the trial court had no jurisdiction to decide Corrales' claims for attorney's fees, because such claims are "premature"[3] and must wait until the Tribe is organized with a newly constituted governing body before Corrales can be paid, if at all. This contention is without merit.

Aside from alleged alternative forms of relief[4], the main thrust of the FAC is that Corrales' fees can and should be paid without releasing the RSTF proceeds to the Tribe. Indeed, in the original

[3] A term used by the Tribe(B) in its opposition to Plaintiff's motion for summary judgment (CT 1599-1601), but the thread of its argument is the same.

[4] The alternative claims in the FAC are not at issue in this appeal, and are nevertheless moot in light of the recent ASI Decision, dated May 31, 2022, expanding the Tribe's membership back from 9 to 200 persons. (RJN No. 1).

Complaint, Corrales never asked for the release of the RSTF proceeds to the Tribe at all. (CT 0023-0034).

The FAC, similar to the original Complaint, asked the trial court to order that no RSTF money be released until further order of the court. (CT 2311, Paragraph 19 of FAC). The FAC also alleged: "Payment of his fees now does not necessarily require that the RSTF proceeds be released to the Tribe as a whole." (CT 2312, Paragraph 24 of FAC). Corrales asked the trial court to rule on the validity of the Fee Agreement and his lien before the RSTF proceeds are released to the Tribe, and not wait until the Tribe has a new governing body to make such a ruling. (CT 2316, Paragraphs 31 and 65 of FAC). Simply put, he asked the trial court to fix his fees and order them to be paid, not release the RSTF proceeds to the Tribe. The FAC also asked the trial court for an order directing the Commission to "withhold and set aside" any payment it may make to the Tribe, should the Commission decide to release any funds to the Tribe's newly formed governing body. (CT 2330, Paragraph 65 of FAC). These allegations clearly did not ask the trial court for the RSTF proceeds to be released to the Tribe.

Plaintiff alleged alternative relief, now moot, in the form of releasing the RSTF proceeds to the Tribe, in the event the trial court felt it could not pay Corrales' fees without doing so, and Corrales cited statutory and case law to support that alternative request under changed circumstances. (CT 2312-2321, Paragraph 24-43). This alternative form of relief was warranted under Cal. Probate Code §15409(a). However, Plaintiff's main allegation in the FAC was that his fees can be paid without releasing the RSTF proceeds to the Tribe. (CT 2312, Paragraph 24 of FAC).

Corrales no longer represents the Tribe. When he did represent the Tribe, he sought, on behalf of the Tribe, for the release of the Tribe's RSTF proceeds the Commission was withholding **to the Tribe**, by engaging in multiple forms of litigation on various fronts. The 2014 Court of Appeal Decision made it clear that before the Tribe's funds could be released **to the Tribe**, a valid governing body or representative must be identified by the BIA, since the Commission did not know to whom the funds should be released, given the competing claims of Tribal leadership. The Court of Appeal made it clear, and the undisputed evidence confirms, that those funds belong to the Tribe as beneficiaries. The Court of Appeal never ruled that a portion of those funds could not be paid to third-party creditors, and in particular attorney's fees owed by the Tribe, pending resolution of the Tribal leadership and membership disputes. Even if the RSTF were to be released to the Tribe because its leadership and membership issued resolved, Corrales' lien for his fees would need to be paid before the Tribe's funds could be released to the Tribe. And this is the equitable relief Corrales sought—that the Commission withhold a disputed portion of the RSTF proceeds it is holding for the Tribe to pay Corrales' lien. This is consistent with California law over which the trial court had subject matter jurisdiction.

In probate proceedings, for example, taxes, trustee's and attorney's fees are paid from the trust estate before making final distribution to the beneficiaries. Cal. Probate Code §§ 17200(b), (a); 15682; Kasperbauer v. Fairfield (2009) 171 CA4th 229, 235 (court held attorney who assisted a removed trustee in preparation of his final accounting could be paid from trust funds before final adjudication of beneficiaries claims against the trustee). If there are legal issues for the probate court to decide pending final distribution

to the beneficiaries, the trust assets remain withheld, but that does not prevent the payment of ongoing administrative expenses, such as taxes, mortgage payments, and interim payment of trustee and legal fees. Kasperbauer, supra at 235. For the same reasons, Corrales, as a third-party creditor, can be paid from the trust proceeds (RSTF proceeds the Commission is holding in trust for the Tribe), prior to any final distribution to the Tribe. The present Tribal leadership and membership dispute, while preventing the release of the RSTF proceeds **to the Tribe** until those issues are resolved, does not preclude payment **to Corrales** for his legal fees as a discharged lawyer and third-party creditor.

The RSTF proceeds are trust assets. The Commission holds them in trust for the Tribe as the beneficiary of that trust. California Valley Miwok Tribe v. California Gambling Control Commission (4th Dist., Div. One 2014) 231 CA4th 885, 905-906. ("2014 Miwok Tribe"). As the Court in "2014 Miwok Tribe" clearly stated:

> The Compacts state that the Commission "shall serve as the trustee" of the RSTF funds. Therefore, the provisions of the **Probate Code** dealing with the duties of trustees are applicable here in understanding the proper role of the Commission. (Emphasis added).

231 CA4th at 905. Accordingly, cases construing the Probate Code in determining payment of attorney's fees from trust assets are likewise applicable to determine the merits of Corrales' claims that: (1) his fees can be fixed prior to distribution of trust assets, or (2) otherwise paid before final distribution of trust assets to beneficiaries.

To this end, the case of In re Kerr's Estate v. Luce, Forward, Hamilton & Scripps (1966) 63 Cal. 2d 875, is dispositive. There, a person named in a will but not related to the decedent hired a San Diego law firm to represent him in seeking an order from the San

Diego Superior Court that he was entitled to distribution of all of the decedent's property as a beneficiary. He entered into a hybrid fee agreement with the law firm, in which he agreed to pay his lawyers a guaranteed fee of $200 and 50% of the "recovery" in the estate, i.e., 50 % of the final distribution of the estate, which included the sale of the decedent's home. The fee agreement provided for a lien against the assets of the estate as security for payment of the fees. Before being fired, his lawyers performed various work on the case, including interviewing witnesses to the will, preparing a petition for probate of the will, and other filings with the court. Upon firing his lawyers, the client noticed a motion for substitution and to "fix fees for work done to this time." 63 Cal.2d at 878. Over his objections, the Probate Court ruled that the fee agreement was valid and that his former attorneys had a valid lien on the assets of the estate. The Probate Court ruled that the amount of the former attorneys' fees could not be ascertained until the decedent's home was sold, but otherwise the former attorney's fees for both the guaranteed fee and 50% of the estate were to be paid upon final distribution of the estate. The Supreme Court affirmed the order in all respects. 63 Cal.2d at 880. There was never an issue raised that the lawyers could not get paid because they purportedly did not "recover" anything for the client prior to discharge, as the Tribe(B) raised below.

For the same reasons, the trial court here had jurisdiction to rule on the validity of Corrales' hybrid fee agreement and his lien on the trust assets. The subject Fee Agreement, like the fee agreement in In re Kerr's Estate, supra, contained a provision for guaranteed hourly fees plus a percentage of trust assets, i.e., RSTF proceeds on deposit with the Commission. The trial court had jurisdiction to fix Corrales' fees and order them to be paid from the distribution of the funds.

However, unlike the case in In re Kerr's Estate, supra, the amount of the RSTF trust assets are ascertainable. Each quarter the Commission publishes a report on its website showing the exact amount of RSTF proceeds that have accumulated for the Tribe. (CT 0938-0950). No Tribal property needs to be sold in order to calculate the 20% figure owed from the trust assets to pay Corrales' fees. As in In re Kerr's Estate, supra, the guaranteed portion of Corrales' fees is easily ascertainable. Case law supports Corrales' claim that under circumstances similar to this, payment of attorney's fees can be paid from trust assets prior to final distribution to the beneficiaries, where the size of the trust assets is sufficient to pay for those fees. In re Algee's Estate (1958) 158 CA2d 691, 696 (cited in Witkin, Summary of California Law, Wills and Probate, §540, page 621(10th ed. 2005)).

> For example, Cal. Probate Code §10830(c) provides that:
>
> "…the court may make an order allowing the portion of the compensation of … the attorney for the personal representative, as the case may be, on account of **services rendered up to that time**, that the court determines is proper. The order shall authorize the personal representative to charge against the estate the amount allowed." (Emphasis added).

The original statute, Cal. Probate Code §911, containing the same language, has been applied to cases where the attorney was fired and thereafter sought payment of his or her fees from the assets of the estate prior to final accounting and distribution of the estate. See In re Algee's Estate, supra at 696 (prompt payment of attorney's fees to be made from estate).

Accordingly, there is no logical basis to contend that the present Tribal leadership and membership disputes prevent the payment of these fees, since, under California law, trust estate debts can, and

often are, paid prior to final distribution to the beneficiaries, especially legal fees of discharged lawyers with hybrid fee agreements.

C. GIVEN THE NATURE OF HIS GUARANTEED FEE ARRANGEMENT, CORRALES WAS NOT REQUIRED TO EFFECTUATE THE RELEASE OF THE RSTF PROCEEDS DURING HIS RETENTION AS A CONDITION OF THE PAYMENT OF HIS FEES

In its motion to dismiss, the Tribe(B) argued that Corrales is not entitled to compensation for his legal services, because he never effectuated the release of the RSTF proceeds from the Commission. (CT 2364). It contended that, because of the subject Fee Agreement was a "contingency" fee agreement, Corrales's fees were purportedly contingent upon the release of those funds. These contentions are without merit and misleading. They ignore the true nature of the Fee Agreement.

As stated, the subject Fee Agreement was not a "pure" contingency fee agreement on a single case where the amount of a judgment or settlement is unknown and subject to speculation. This was a hybrid fee agreement that required payment of **guaranteed hourly services** with a percentage of the trust assets as an enhancement of those guaranteed fees, and it covered multiple litigation services on several cases. This was confirmed by Burley in her letter discharging Corrales on May 22, 2020, stating that Corrales was fired "as the attorney representing the California Valley Miwok Tribe in all state and federal legal matters, Ramah litigation, and/or otherwise, effective immediately." (CT 0687). Since Corrales' $250 hourly rate was guaranteed, there was no requirement under the Fee Agreement that Corrales succeed in getting the RSTF payments released to the Tribe during his retention in order to be paid his fees. Corrales' fees were not contingent upon the release of those funds

during his retention. The RSTF proceeds are Tribal property and already belong to the Tribe. The Commission is merely holding them for the Tribe. Thus, there was never any "risk" that the Tribe would not recover those funds in the traditional since, as in a garden-variety contingency fee case. Corrales was not litigating whether the Tribe was entitled or eligible to receive these funds. That was already decided, and it was undisputed that it was, and still is. Rather, his job was to try and get them released to the Tribe. Had the Tribe been told they were not eligible or entitled to these funds, then the contingency portion of his hybrid fee agreement would have been a true contingency, with the risk that the Court could rule that the Tribe was not entitled to those funds in the first instance. But that was not the Tribe's predicament, and, because it was not, the Fee Agreement necessarily provided for guaranteed payment of fees. Accordingly, once the funds are ultimately released or "recovered" by the Tribe, the Fee Agreement provides that Corrales' fees are to be paid from those funds, whether he is still working for the Tribe or has been discharged. (CT 2847). Corrales' guaranteed fee was simply the enhancement of his reduced $250 hourly rate, as opposed to his flat market rate at the time of $500 per hour. (CT 0644).

Accordingly, the cases of In re Kerr's Estate, supra, and In re Algee's Estate, supra, are controlling. Corrales is to be paid from RSTF trust assets, which are State licensing fees deposited in the State Treasury, and over which the trial court has subject matter jurisdiction. The Tribe never sued the Commission for money damages with the expectation of obtaining a money judgment with respect to these proceeds. Indeed, the Compacts prohibited that. (Section 9.4(a)(2) of Compact [suits permitted so long as no claim for money damages are sought]). (CT 2571). Aside from other, related

litigation Corrales pursued for the Tribe, Corrales sued the Commission on behalf of the Tribe for equitable relief, not money damages. (CT 1107). Thus, since no "recovery" in terms of a money judgment could have ever been obtained for the Tribe against the Commission, the Tribe(B)'s contention that no fee was earned because no money judgment was ever obtained makes no sense in the factual circumstances of this case.

As stated, the Hybrid Fee Agreement included an hourly rate, which the Tribe paid at the outset of the case for several months. (CT 2323-2324, Paragraph 47 of FAC). This hourly billing was "temporarily suspended," as alleged in the FAC and as written in the plain language of the Fee Agreement, and the hourly fees were allowed to "accumulate" throughout the time that Corrales rendered his legal services. (CT 2322-2324, Paragraphs 46-48 of FAC). It was simply a **delayed payment arrangement**. In light of these facts, Corrales' **fees** were **guaranteed**, regardless of the outcome. Triable issues exist on the parties' intent with respect to this part of the Fee Agreement, which the trier of fact will have to decide at trial. CACI 314; City of Hope National Medical Center v. Genentech, Inc. (2008) 43 Cal.4th 375, 395. Thus, there is a sufficiently pled actual controversy with respect to Corrales' interpretation of the terms of the subject Fee Agreement allowing his fees to accumulate as alleged in the FAC. Indeed, the Fee Agreement also provided that Corrales was to provide litigation services for the recovery of federal 638 funds, which was a steppingstone toward getting the RSTF proceeds released, since this required litigating Tribal leadership and membership issues with the BIA. (CT 2323-2324, Para. 47, FAC). Moreover, the record confirms Corrales sent various letters and invoices to the Tribe in care of Burley showing that he was billing, and

receiving payment, for his time at $250 per hour, and that, in accordance with the amended Fee Agreement, the payment of those fees would instead accumulate and be deferred until such time as the Tribe's RSTF proceeds are available for release to the Tribe. (CT 1291-1323)

Moreover, there is nothing in the subject Fee Agreement which provides that, before Corrales can be paid his fees as a discharged lawyer for the Tribe, he must wait until the Tribal leadership and membership dispute are resolved.

D. THE TRIAL COURT'S REFUSAL TO STAY THE ACTION RATHETR THAN DISMISS IT WAS AN ABUSE OF DISCRETION

In his motion for new trial, Corrales asked the trial court to follow the lead of a related **stayed** federal District Court case, entitled Ramah Navajo Chapter v. Jewell (D.N.M. 2016) 167 F.Supp.3d 1217, where the Tribe and the same Tribal faction and their attorneys are parties, and **stay** his action rather than dismiss it. The trial court declined to do so, thus forcing Corrales to re-file his action with additional commons counts, including quantum meruit and money had and received, so as to prevent the running of the statute of limitations on those claims. The trial court's refusal to do so was an abuse of discretion.

Ramah is a class action lawsuit involving all federally-recognized tribes across the country who were underpaid in their 638 federal contract awards. The federal government has interpleaded in the federal Court Registry $300,000.00 in settlement funds belonging to the Tribe, because of an ongoing leadership dispute. The District Court has stayed that interpleader action and disbursement of those funds to the Tribe, until such time as the Tribe resolves its leadership

dispute and has a newly constituted governing body recognized by the BIA capable of receiving those funds.

The Tribe and the same two rival factions who have appeared in this case are named in the Ramah interpleader action. (CT 3209, Joint Status Report of the Parties in Ramah, dated July 15, 2021). Corrales had a similar hybrid fee agreement with the Tribe in that action as he did in this case, and Burley signed it on behalf of the Tribe as well. (CT 2858, Addendum Fee Agreement, Ramah, dated October 22, 2016). When Burley fired Corrales, she signed a substitution of attorney in the Ramah federal court action, substituting the Peebles law firm in the place of Corrales. (CT 2861, Ramah substitution of attorney, dated June 11, 2020). The Peebles law firm represents the Tribe(B) here, and it filed the motion to dismiss in this case. Mr. Colin West's law firm representing the rival Lena Shelton Faction ("Tribe(L)") here, represents the rival Tribe(L) in the Ramah action. (CT 3030). The Court in Ramah approved and signed the substitution of attorney. (CT 2863, Order Granting Application for Substitution of Attorney, dated June 16, 2020). Corrales filed a Notice of Lien in that interpleader action. (CT 2873, Notice of Lien, dated May 26, 2020). Neither side has objected to the Court's jurisdiction or the authority of Burley to hire the Peebles law firm for the Tribe, or Corrales' lien. Once the Tribe completes its organization efforts and has a new governing body, the Court will likely first pay each side's attorneys their fees, and Corrales' lien for his fees.

Clearly, the Ramah court will not be asked to resolve a leadership dispute in order to approve fees owed to the attorneys who appeared in the case for the Tribe. The fact that the attorneys were hired and appeared in the action in Ramah before the Tribe will be organized will not prevent the federal court from determining the

amount of fees owed, since it will not require the court to decide who was the leader of the Tribe prior to the Tribe's organization. Both sides will be paid attorney's fees from the interplead funds. Ramah Navajo Chapter, supra. And both rival factions cannot object to Corrales' lien in the Ramah action on the grounds that Burley had no authority to hire him, because to do so would terminate their rights to fees as well, since they, too, were hired before the Tribe was organized.

The Tribe(B) and the Tribe(L) cannot have it both ways: object to jurisdiction here on the grounds the trial court would be compelled to decide a leadership dispute, yet permit the federal court to decide fees in Ramah.

Corrales seeks the same relief here as he does in Ramah: that the Court order his fees be paid before the Commission releases the Tribe's funds to the new governing body. Otherwise, Corrales runs the risk of not getting paid at all, since it is highly unlikely that a new governing body, as reconstituted by the Tribe(L) faction, would approve his fees. See Crowe & Dunlevy, P.C. v. Stidman (10th Cir. 2011) 640 F.3d 1140, 1157-1158 (affirming injunction against Tribal Court in ordering a non-Indian lawyer to return fees paid from Tribal treasury from rival faction who hired him in midst of tribal leadership dispute, on grounds lawyer would have no recourse, because a new governing body, as reconstituted by the other rival faction, would likely refuse to return the fees and be immune from suit).

E. THE TRIAL COURT HAD JURISDICTION TO DECIDE CORRALES' QUANTUM MERUIT RECOVERY FOR THE REASONABLE VALUE OF HIS SERVICES

The Tribe(B) argued below that Corrales has no valid quantum meruit or promissory estoppel claim for recovery of his fees, because

his work for the Tribe was "gratuitous" and he purportedly produced "no results." (CT 1603). This contention is without merit and misconceives the law of quantum meruit recovery.

If the subject written Fee Agreement is found to be invalid for any reason, Corrales is still entitled to quantum meruit recovery for the reasonable value of his services. He does not need to prove the existence of a contract. E.J. Franks Construction, Inc. v. Sahota (2014) 226 CA4th 1123, 1127-1128. For example, in Huskinson & Brown v. Wolf (2004) 32 Cal.4th 453, the Supreme Court held that a lawyer who enters into an invalid fee agreement is still entitled to recover for the reasonable value of his services on a quantum meruit basis. 32 Cal.4th at 461, 464. Accordingly, the trial court had jurisdiction to determine the reasonable value of Corrales' services, without having to determine the existence of a written fee agreement. The reasonable value of his services would be measure by his market rate of $500 per hour, and other Lode star factors, notwithstanding the Fee Agreement calling for something else.

Whether Burley was the ostensible agent for the Tribe in hiring Corrales is still relevant for purposes of Corrales' claim for quantum meruit recovery for the reasonable value of his fees. A triable issue of fact exists on whether the Tribe benefitted from his services in litigating several years in various courts on his behalf, knowing that it could not do so without a lawyer (Burley could not represent the Tribe in court, because she is not a lawyer), an issue over which the trial court had subject matter jurisdiction. Moreover, no one objected to Corrales making appearances in various court proceedings on behalf of the Tribe. No one made a motion to recuse him or disqualify him on the grounds that Burley purportedly had no authority to hire him to represent the Tribe. Moreover, the Commission, as **trustee** over the

RSTF proceeds has a duty to preserve the Tribe's RSTF proceeds it has been holding for the Tribe over the years. Yet it never objected to Corrales' appearance in various lawsuits for the Tribe.

F. CORRALES' CLAIMS ARE NOT FRIVOLOUS AND DO NOT VIOLATE THIS COURT'S 2014 AND 2020 DECISIONS

Corrales discloses that while he represented the Tribe, he was sanctioned by the Court in 2020 for filing a frivolous appeal. Corrales, on behalf of the Tribe, sought release of the RSTF proceeds to the Tribe while the Tribal leadership and membership dispute was still pending. This Court held in its 2014 decision that the Commission was justified in withhold those funds until such time as the Tribe organizes it governing body and begins receiving 638 contract funding again. CVMT v. CGCC (2014) 231 CA4th 885, 904-908. The Court reasoned that when that occurs, the Commission would know whom the BIA has designated to receive those funds for the Tribe, and it could then release the Tribe's RSTF payments to that Tribal representative. 231 CA4th at 908.

In contrast, Corrales here is not seeking an order for release of the RSTF proceeds to the Tribe. Instead, he seeks an order that his fees be paid from the RSTF proceeds the Commission is holding for the Tribe without the RSTF being released to the Tribe, or, alternatively, that the trial court order his fees be fixed and set aside for release at a later date when the Tribe's governing body is reconstituted, but that his lien be paid before any funds are released to the Tribe.

The alternative relief alleged in the FAC regarding changed circumstances due to Tribal membership having been narrowed down to 9 persons is now moot, because ASI Bryan Newland has on May 31, 2022, modified the 2015 Washburn decision concerning Eligible

Groups, which had the effect of expanding the Tribal membership back to approximately 200 persons. (RJN No. 1).

Thus, the only issues on appeal are whether the trial court had subject matter jurisdiction over the adjudication of Corrales' claim for fees, and whether they can be paid from the Tribe's RSTF proceeds without releasing the proceeds to the Tribe, pending its ongoing leadership and membership dispute. In particular, the only issue here on appeal is whether a determination of Burley's authority in executing the subject Fee Agreement necessarily involves a resolution of a Tribal leadership and membership dispute over which the trial court lacked subject matter jurisdiction. These issues were not decided in this Court's 2014 and 2020 decisions. [5]

G. THE PENDING ACTION BEFORE THE HON. TIMOTHY TAYLOR

As stated, Judge Frazier dismissed Corrales' action for want of subject matter jurisdiction without prejudice. Corrales, therefore, re-filed his action adding common count causes of action for Money had and Received (Quantum Meruit or Indebitatus Assumpsit), Money Had and received, Open Book Account, and Account Stated. These

[5] Although not raised below before Judge Frazier, the Commission has argued in Judge Taylor's Department that Corrales' claims are barred under Bus. & Prof. Code §6201 for failing to attribute the subject fee dispute. However, the Tribe waived its right to arbitration by filing pleadings seeking resolution of the subject fee dispute. Indeed, all of the Tribal factions intervened in the underlying action and filed oppositions to Corrales' motion for summary judgment. Tribe(B) filed a demurrer and motion to dismiss, and Tribe(L) filed a motion to dismiss and a motion for sanctions. Thus, under Bus. & Prof. Code §6201(d) the Tribe, including both competing factions, waived their right to arbitrate the subject fee dispute by "filing [pleadings] seeking…[a]…judicial resolution of a fee dispute…" Bus. & Prof. Code §6201(d)(1).

common counts were not pled in the FAC, and because the two-year statute of limitations was about to run on these claims, Corrales was forced to re-file his lawsuit with these additional claims, and it was randomly assigned to Judge Taylor.

Corrales has requested the trial court in Judge Taylor's Department stay his action until this Court issues a decision on this appeal on whether the trial court has subject matter jurisdiction over his claims, or until the Tribe acquires a newly constituted governing body.

H. THE TRIAL COURT ERRED IN DENYING CORRALES' MOTION FOR NEW TRIAL AND FOR RELIEF FROM DEFAULT

An error in law for purposes of a new trial motion includes erroneous interpretation and application of the law. Ramirez v. USAA Casualty Ins. Co. (1991) 234 CA3d 391,397. Here, the trial court, at the Tribe(B)'s erroneous urging, interpreted the case of Great Western Casinos, Inc. v. Morongo Band of Mission Indians (1999) 74 CA4th 1407, to stand for the proposition that a motion to dismiss for lack of subject matter jurisdiction permits the trial court to consider evidence outside of the pleadings. It does not. Instead, as Corrales pointed out in his motion for new trial papers (Plaintiff's PAs, pages 11-12), Great Western Casinos, supra, held that "in entertaining a motion to dismiss, the … court **must accept the allegations of the complaint as true, and construe all inferences in the plaintiff's favor**." 74 CA4th at 1418. On the other hand, Great Western Casinos, supra, specifically held that where the motion to dismiss is based on a claim of sovereign immunity, "the court must engage in sufficient pretrial factual and legal determinations to 'satisfy itself of its authority to hear the case' before trial." 74 CA4th at 1418. However, it is undisputed that the Tribe(B)'s motion to dismiss was not based on

sovereign immunity, and the trial court therefore was not required to look outside the pleadings to rule on the motion. Indeed, the subject Fee Agreement, as alleged in the FAC, states that the Tribe(B) waived sovereign immunity with regard to the interpretation and enforcement of the Fee Agreement. (FAC, para. 81).

Instead, and in accordance with the holding of Great Western Casinos, supra, the trial court was required to accept the allegations in the FAC as true for purposes of ruling on the Tribe(B)'s motion to dismiss. To this end, the FAC specifically alleges "the fee agreement…was signed by Burley as the authorized representative of the tribe." (CT 2311, FAC, para. 20). Instead of accepting these allegations to be true, the trial court suggested that Corrales failed to submit any evidence to rebut the Tribe(B)'s contention that Burley's authority to sign the subject Fee Agreement on behalf of the Tribe was disputed, and therefore, in order to resolve that dispute, the trial court would be forced to decide a Tribal leadership and membership dispute. (CT 2807-2808). This was error.

To the extent the trial court expected Corrales to submit evidence to oppose the Tribe(B)'s motion to dismiss, Corrales filed a motion for relief from default supported by his attorney's declaration of fault, which entitled Corrales to mandatory relief. However, the trial court summarily denied the motion without any substantive analysis of the issues raised. (CT 3318-3319).

V.

CONCLUSION

For the foregoing reasons, the judgment should be reversed.

Dated: September 8, 2022

s/ Manuel Corrales, Jr.
Manuel Corrales, Jr., Esq.
In pro per

CERTIFICATE OF WORD COUNT

The text of this "Appellant's Opening Brief" consists of 13,946 words as counted by Microsoft Office Word 2016 word processing program used to generate this brief.

Dated: September 8, 2022

s/ Manuel Corrales, Jr.
Manuel Corrales, Jr., Esq.
In pro per

CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE

COURT OF APPEAL CASE NO. D080288
Manuel Corrales, Jr. v. California Gambling Control Commission, et al.
SDSC Case No. 37-2019-00019079-CU-MC-CTL

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CERTIFICATE OF SERVICE

I, the undersigned, declare that I am over the age of 18 years and not a party to the action; I am employed by the County of San Diego and my business address is 17140 Bernardo Center Drive, Suite 358, San Diego, California 92128. I caused to be served the following document(s): **APPELLANT'S OPENING BRIEF** on the following individuals in the manner indicated below:

PLEASE SEE ATTACHED SERVICE LIST

[ ] (VIA U.S. MAIL) I placed a true copy thereof enclosed in a sealed envelope(s) addressed as stated on the attached mailing list and placing such envelope(s) with first class postage fees, thereon fully prepaid, in the United States Mail at San Diego on this date following ordinary business practices.

[X] BY ELECTRONIC SERVICE: I filed such document through the court's electronic filing system (EFS) operated by ImageSoft TrueFiling (TrueFiling).

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

Executed September 8, 2022 at San Diego, California.

s/ *Heather Bullman*
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