No. D080288

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

MANUEL CORRALES, JR.,

Plaintiff/Appellant,

v.

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 COMBINED REPLY BRIEF

Manuel Corrales, Jr., Esq.
CA State Bar No. 117647
17140 Bernardo Center Drive, Suite 358
San Diego, California 92128
Tel: (858) 521-0634
Fax: (858) 521-0633
mannycorrales@yahoo.com
In pro per

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

STATUTES

I. INTRODUCTION

The sole issue on appeal is whether the trial court erred in dismissing for lack of subject matter jurisdiction appellant Manuel Corrales's ("Corrales") action for attorneys' fees against, among others, respondent California Valley Miwok Tribe. Underlying the action is Corrales's Fee Agreement with the Tribe, which is 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"). But according to the trial court, adjudicating the validity and the enforceability of Corrales's Fee Agreement with the Tribe, whose membership and leadership remain in dispute, would require it to decide an issue of Tribal law beyond its jurisdiction—that is, whether the Tribal representative who signed the Fee Agreement retaining Corrales was truly the Tribe's leader.

However, both in briefing before in the trial court and in his Opening Brief on appeal, Corrales established that there was no need to decide any tribal leadership because the Tribal representative who signed the Fee Agreement had ostensible authority to retain him. The Tribe now asserts in its Respondent's Brief that Corrales is barred from raising ostensible authority for the first time on appeal; that he lacks a "shred of authority" for his position; and that the remainder of his brief improperly addresses the merits of his dismissed claims. But the Tribe is wrong on all counts.

First, in his operative complaint and motion for new trial following the Tribe's successful motion to dismiss, Corrales raised the core issue that Tribal representative Silvia Burley had authority to hire him on the Tribe's behalf because the Bureau of Indian Affairs ("BIA") treated her as the Tribe's authorized representative in federal contract

negotiations. Though Corrales did not use the magic phrase "ostensible authority," he argues that the trial court could defer to the BIA's decision and ignore disputes regarding Burley's leadership concerned her authority, including her ostensible authority, to sign a Fee Agreement retaining him and bind the Tribe.

Second, even if ostensible authority was raised for the first time on appeal, which it is not, this Court has authority to decide the purely legal issue of this doctrine's impact on the trial court's subject matter jurisdiction because its adjudication does not depend on developing a factual record. Indeed, because this Court reviews the jurisdictional issue de novo, it need not defer to any findings of fact or conclusions of law by the trial court, but is in the same position as the trial court to decide the issue in the first instance.

Third, contrary to the Tribe, this Court's own precedent as well as federal authority support Corrales's position that courts should defer to the BIA's dealings with Burley in determining Tribal leadership, and not just on a temporary basis.

Finally, this Court should not and need not ignore the remainder of Corrales's Opening Brief because he did not argue the merits or ask this Court to rule in his favor on the substantive issues raised in the underlying action. Rather, Corrales merely established that the trial court also erred in rejecting the information and legal authority he provided to adjudicate the merits of his claims without having to decide any Tribal leadership dispute under Tribal law, including staying the action instead of dismissing it.

For the reasons discussed, Corrales respectfully requests that this Court reverse the dismissal of his action against the Commission and the Tribe for lack of subject matter jurisdiction, and remand with instructions for the trial court to proceed to the merits of his claims.

Corrales also requests that the Court order this action consolidated with a second action he filed to prevent the running of the statute of limitations on previously unpled common count claims—including for quantum meruit, money had and received, and an open book account—which has been stayed pending this appeal.

II. ARGUMENT

A. Corrales is Not Barred from Arguing That Burley Had Ostensible Authority to Retain Him Because He Raised This Issue in His Complaint and in Post-Trial Briefing regarding the Motion to Dismiss

In asserting that Corrales waived the argument that Burley had ostensible authority to retain him, the Tribe ignores the allegations in Corrales's operative First Amended Complaint against the Commission and the Tribe (as represented by the Shelton Faction and the Burley Faction who intervened in the action)[1] on the issue of Burley's authority. It also overlooks arguments in Corrales's motion for new trial after the trial court's erroneous dismissal order, in which all parties, including the Tribe and the trial court, put Burley's authority to sign the Fee Agreement squarely at issue.

1. Far From Waiving It, Corrales Pled Burley's Ostensible Authority in His Operative First Amended Complaint

In his First Amended Complaint against the Commission and the Tribe, Corrales repeatedly alleged the validity of the Fee Agreement based on Burley's **authority** to sign it for the Tribe.

[1] As explained in the Opening Brief, two factions of the Tribe aligned with two different leaders previously intervened in the underlying action—the Burley Faction under the leadership of Silvia Burley and the Lena Shelton Faction under the leadership of the late Yakima Dixie. Only the Tribe's Burley Faction moved to dismiss the underlying action, but is referred to as "the Tribe" to avoid confusion.

Indeed, he noted that, as the BIA's recognized authorized representative and "person of authority," Burley had authority to bind the Tribe to the Fee Agreement:

> - 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 Miwok Tribe. (CT 2311, ¶20, emphasis added.)
>
> - Burley does not dispute the validity of Corrales' Fee Agreement with the Tribe. The Commission and Intervenors argue, however, that Burley did not have the **authority** to enter into a fee agreement with Corrales, because she was not a recognized leader for the Tribe, they as members did not approve it[.] (CT 2312, ¶23, emphasis added.)
>
> - At the time Burley signed the Fee Agreement for the Miwok Tribe, the BIA had recognized her as the **authorized representative** for the Tribe, and entered into federal contracts with her[.] (CT 2312, ¶23, emphasis added.)
>
> - Accordingly, the following undisputed facts show that Burley had the **authority** in 2007 to enter into the subject Fee Agreement with Corrales, and did not need permission from the Lena Hodges Shelton Intervenors to do so:
>
> * * *
>
> Throughout the years, the BIA considered Burley to be the 'Chairperson' of the Tribe, then later a **"person of authority"** or "spokesperson" for the Tribe for purposes of entering into 638 federal contract funding for the Tribe[.] (CT 2333, ¶¶84–88, emphasis added.)

Through these allegations, Corrales adequately raised Burley's ostensible authority to sign the Fee Agreement in 2007 by alleging that, during the relevant time, she was recognized by the BIA as the Tribe's authorized representative, "person of authority" or "spokesperson."

The sole purpose of these allegations was to establish Burley's ostensible or seeming authority to enter into the Fee Agreement, which exists where "a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess." (Civ. Code § 2317; see also Civ. Code § 2334 ("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.") Here, as Corrales explained in his Opening Brief, the Commission acted as a co-principal to the Tribe, recognizing Burley as the Tribe's representative, thereby holding her out as having the authority to bind the Tribe to, for example, the Fee Agreement at issue.

Moreover, estoppel forms the basis of ostensible authority (Van Den Eikhof v. Hocker (1978) 87 Cal.App.3d 900, 906), and Corrales pled promissory estoppel in connection with the Tribe's representations as a whole:

> 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. Corrales justifiably relied upon this promise, and performed legal services for almost 13 years. The Miwok Tribe reasonably expected its promise would induce, and it did induce Corrales to perform these legal services. As a result, the promise to the Tribe made to Corrales is binding, because injustice cannot be avoided unless the

> promise is enforced. Accordingly, justice requires that the Fee Agreement be enforced and that the Miwok Tribe pay fees Corrales incurred on its behalf. (CT 2333, ¶84-88.)

Notably, these allegations are accepted as true for purposes of the Tribe's facial attack on the First Amended Complaint for lack of subject matter jurisdiction. (See, e.g., Great Western Casinos, Inc. v. Morongo Band of Mission Indians (1999) 74 Cal.App.4th 1407, 1418; Wolfe v. Strankman (9th Cir. 2000) 392 F.3d 358, 362.)

2. Corrales Also Argued Burley's Ostensible Authority in His New Trial Motion After the Court's Dismissal Order

In addition to alleging it in his operative complaint, Corrales also raised Burley's authority to sign the Fee Agreement following the Tribe's motion to dismiss for lack of jurisdiction. For example, he argued in his motion for new trial that the trial court did not need to decide a Tribal leadership dispute in resolving Burley's authority to enter into the Fee Agreement on the Tribe's behalf as long as the trial court **looked to** how the BIA treated Burley in the past, particularly designating her as a "person of authority" before entering into 638 federal contract funding with her on the Tribe's behalf. (CT 2818:28–2819:9; see also CT 2825 ["look to how the BIA treated Burley"]; CT 3146 ["look to" public records from the BIA stating the BIA considered Burley to be a "person of authority"].)

Corrales's arguments that the trial court should deem Burley as having had ostensible authority to sign the Fee Agreement is premised on and synonymous with his argument that the trial court could defer to the BIA to establish Burley's authority to sign the Fee Agreement. Both arguments explain and establish that Burley had

"authority" to act on the Tribe's behalf and that the trial court was not required to decide a Tribal leadership dispute under Tribal law.

Thus, Burley's ostensible authority is not a "new" theory on appeal, but rather, an issue Corrales specifically pled and expressly argued in the trial court, including after the Tribe put it at issue.

B. Even if Burley's Ostensible Authority Was Not Raised or Briefed Fully in the Trial Court, this Court Has Authority to Review De Novo This Purely Legal Issue and Its Impact on the Trial Court's Jurisdiction for the First Time on Appeal

Even if this Court finds that Corrales did not plead or argue Burley's ostensible authority clearly or fully, the California Supreme Court and other precedent supports its authority to review de novo this purely legal issue and its impact on the trial court's jurisdiction. This is because "[a] litigant may raise for the first time on appeal a pure question of law which is presented by undisputed facts."] (Hale v. Morgan (1978) 22 Cal.3d 388, 394; see also Jackson v. LegalMatch.com (2019) 42 Cal.App.5th 760, 769 [no waiver of errors of law raised for the first time on appeal that are reviewed de novo]; Piscitelli v. Friedenberg (2001) 87 Cal.App.4th 953, 983 [no waiver of challenged "new argument" on appeal that raises only a question of law and can be decided on undisputed facts].)

Here, the erroneous dismissal of Corrales's action for lack of subject matter jurisdiction presents a pure question of law this Court can decide based on undisputed facts in Corrales's operative complaint, which must be taken as true in addressing a facial attack on his complaint, as noted. (Wolfe, supra, 392 F.3d at 362; Great Western Casinos, Inc., supra, 74 Cal.App.4th at 1418.) Moreover, subject matter jurisdiction raises questions of law reviewed de novo, meaning the appellate court has the power to decide the matter anew

without deferring to the trial court's ruling or the reasons for its ruling. (See Tearlach Resources Ltd. v. W. States Int'l, Inc. (2013) 219 Cal.App.4th 773, 779; accord Topanga & Victory Partners, LLP v. Toghia (2002) 103 Cal.App.4th 775, 780-781. Because the issue of whether the trial court properly dismissed this action for lack of subject matter jurisdiction is reviewed de novo, this Court has authority to adjudicate the issue regardless of whether Corrales ever raised the issue of ostensible authority before the trial court. All the more so as this Court can apply the undisputed facts to the law concerning Corrales's argument that it can defer to the BIA based on the allegations in the FAC, which are deemed true for purposes of ruling on the motion to dismiss for lack of subject matter jurisdiction.

C. Ample Authority Supports Corrales's Proposition that the BIA's Recognition of Burley as a "Person Of Authority" for the Tribe for Federal Contracting Purposes Also Establishes Her Ostensible Authority To Retain Corrales

The Tribe further contends that, even if ostensible authority was properly raised, there is no legal authority to support Corrales' argument that the trial court could defer to the BIA's decision to recognize Burley as "a person of authority" for the Tribe to find she had similar authority to retain Corrales for the Tribe. (Resp. Br., pp. 20-21.) To the contrary, this Court has already held that it is proper for the Commission to defer to the BIA in its recognition decision for purposes of determining who is authorized to accept RSTF proceeds for the Tribe. This Court held in a prior appeal that the Commission was entitled to look at the BIA's relationship with the Tribe to determine whether a Tribal representative was authorized to accept the RSTF funds: "The Commission has therefore taken a reasonable approach in looking to the status of the BIA's relationship with the

Tribe to determine when an authorized tribal representative exists to receive the RSTF funds." (California Valley Miwok Tribe v. California Gambling Control Commission (2014) 231 Cal.App.4th 885, 907-908 (the 2014 Decision).) This Court's 2014 Decision supports Corrales's argument that the trial court, just like the Commission, can also look to public records to see how the BIA had designated Burley to be a "person of authority" for the Tribe with respect to 638 federal contract funding to conclude that she would have the same authority to retain Corrales for the Tribe. Indeed, Corrales explained this authority in the trial court, as follows:

> In the same way the Commission may look to whom the BIA resumes contract funding with for the Tribe to determine who is authorized to receive the RSTF proceeds, this Court may look to how the BIA treated Burley in the past to determine if she was authorized to enter into the subject Fee Agreement. And the Court can do so, without deciding who is the authorized Tribal leader, just like the Commission may do so without deciding who is the authorized leader. Specifically, if the BIA considered Burley to be a "person of authority" within the Tribe to enter into contracts with the federal government, despite an ongoing leadership dispute, then there is no jurisdictional bar to allow this Court to conclude that Burley had that same authority to enter into the subject Fee Agreement for the Tribe.

(CT 2825; accord CT 3146.)

To distinguish this precedent, the Tribe argues that, although agencies and parties such as the Commission, may defer to the BIA's decision to recognize one tribal leadership among many, such deference would only be "temporary"; that it would not be binding on other agencies or courts; and that it would not "bind" the Tribe to an agreement with a third party." (Resp. Br., pp. 24–25.) However, this contention is inherently flawed as there is nothing in this Court's 2014

Decision that excludes courts from giving the same deference to the BIA as other agencies and parties. Nor does the 2014 Decision limit its reach temporally, which is irrelevant anyway because the issue is whether Burley had authority to sign the Fee Agreement in 2007, when the BIA indisputably recognized her as the spokesperson and person of authority for the Tribe.

Moreover, the Tribe's position runs counter to other federal authority that fully supports Corrales' position. In a case exactly on point, Cayuga Nation v. Tanner (2nd Cir. 2016) 824 F.3d 321, 330, the Second Circuit held that courts can and should defer to the BIA's recognition of a "person of authority" who acts as a counterparty to administer federal contracts on the Tribe's behalf. Cayuga Nation involved a dispute concerning the operation of a gambling casino in New York run by a Tribe known as Cayuga Nation which was involved in a leadership dispute. (Id. at p. 324.) Underlying the suit were efforts by the local government, the Village of Union Springs in New York (the Village), to shut down the casino on the grounds that the Tribe was operating it without a license. (Id. at pp. 324–325.) A person named Clint Halftown, whom the BIA had designated as the Tribe's "federal representative" on an "interim basis" for purposes of entering into 638 federal contracts with the federal government, filed suit on the Tribe's behalf, seeking declaratory and injunctive relief against the Village and other defendants. (Id. at pp. 325–326.) The Village moved to dismiss the lawsuit for lack of subject matter jurisdiction, arguing that the district court would need to resolve a Tribal leadership dispute to determine if Halftown had standing or authority to file suit on the Tribe's behalf. (Id. at p. 326.) Agreeing that it lacked jurisdiction to decide the leadership dispute, the district court dismissed the case for lack of subject matter jurisdiction. (Ibid.)

The Second Circuit reversed, holding that an individual recognized by the BIA as the Tribe's representative on a temporary basis to enter into 638 federal contract funding with the federal government could also bring suit on the Tribe's behalf without requiring any determination of the ongoing leadership dispute. (Id. at p. 328.) As the Second Circuit explained, neither the district court nor it needed to address whether Halftown and his lawsuit was authorized "as a matter of *tribal law*" to determine its own jurisdiction. (Ibid., emphasis in original.) Rather, "the only question we must address is whether there is a sufficient basis in the record to conclude, without resolving disputes about tribal law, that the individual may bring a lawsuit on behalf of the tribe." (Ibid.) On that question, the Second Circuit examined prior cases affirming the propriety and the need for deferring to the Executive Branch, as represented by the BIA, because of its "special expertise" in dealing with Indian affairs. (Ibid., citing cases.) The Second Circuit then concluded that the BIA's interim "recognition" of Halftown as a person of authority for the Tribe for 638 federal contract funding purposes was "a sufficient basis in the record" to conclude that he had authority to bring suit for the Tribe without having to resolve any leadership disputes or issues of about tribal law. (Ibid.)

In doing so, the Second Circuit rejected the arguments regarding the temporal and other limits to the BIA's recognition of a Tribal representative that the Tribe is asserting in this action with respect to the BIA's recognition of Burley. For example, the Second Circuit explained that the BIA's decision recognizing Halftown as the Cayuga Nation's interim representative, "though couched in limiting language" and lacking the unequivocal language sought by the Village, was "the only evidence in the record before us of who is

recognized by the Executive Branch as the Nation's governing body." (Id. at p. 329.) Moreover, the Second Circuit explained that there was "nothing in the BIA's reasoning in the 2015 decision [recognizing Halftown] that confines itself to the ISDA contracts at issue, or that suggests that the BIA would recognize different tribal leadership in connection with other functions relevant to the Nation's dealings with the federal government, including its courts." (Ibid.) The Second Circuit also noted that it would be impractical and "disastrous" to tribal rights to conclude that a case could not go forward whenever any faction within a tribe asserted a claim to leadership under tribal law inconsistent with the assertions of one of the litigants. (Id. at p. 328.) The Second Circuit then concluded unequivocally that courts could defer to the BIA's temporary recognition of an individual as authorized to act on a tribe's behalf in the context of litigation:

> We hold that we are entitled to defer to the BIA's recognition of an individual as authorized to act on behalf of the [Cayuga] Nation, **notwithstanding the limited issue that occasioned that recognition**. We thus may, and do, conclude that Halftown may initiate litigation on behalf of the [Cayuga] Nation in the instant matter, without resolving any questions of tribal law.

(Id. at p. 330, emphasis added.)

Just as "a recognition decision from the BIA" was "sufficient" to "find that the recognized individual has the authority to initiate a lawsuit on behalf of the tribe" in Cayuga Nation, the BIA's recognition of Burley as the Miwok Tribe's "spokesperson," "authorized representative," and "person of authority" here is sufficient to find that she had authority to sign the Fee Agreement retaining Corrales on the Miwok Tribe's behalf. (Id. at p. 328.) Moreover, just as the tribe's arguments in Cayuga Nation regarding the temporal or other limits of

the BIA's recognition failed, the Tribe's analogous arguments here are also unavailing, and the trial court was permitted to give deference to the BIA's recognition of Burley beyond the context of federal contracting law and at the time she signed the Fee Agreement in 2007.[2] All the more so because the practical reasons for rejecting a contrary rule explained by the Second Circuit in Cayuga Nation also exist here—that is, that rival factions could use leadership disputes arising under tribal law to frustrate resolution of legitimate disputes arising between third parties and the Tribe as a whole. Just as deference to the BIA was "the only practical and legal option … for the courts to consider" to avoid the misuse of the "lack of subject matter jurisdiction" by tribal parties in Cayuga Nation, so too is the case here. (Id. at p. 330.)

Because it should have deferred to the BIA's recognition of Burley as the Tribe's "spokesperson," "authorized representative," and "person of authority," the trial court's dismissal of the underlying action for lack of subject matter jurisdiction was erroneous. (See also Nooksack Indian Tribe v. Zinke (W.D. Wash., May 11, 2017, No. C17-0219-JCC) 2017 WL 1957076, at *4 [examining cases and explaining that courts must defer to the Executive Branch's recognition or lack of recognition of tribal government in determining a Tribal representative's authority to initiate, conduct, and defend litigation]; Robinson v. Salazar, (E.D. Cal. 2012) 838 F.Supp.2d 1006, 1031

[2] It is undisputed here that the BIA recognized Burley as a "person of authority" for the Tribe when she signed the Fee Agreement retaining Corrales in 2007, and that she only lost that designation in March of 2019, when the 2015 Washburn Decision concluding that no one presently represents the Tribe became final.

["Deference to the BIA determination is the preferred course of action."].)

D. Contrary to the Tribe's Assertion, Arguments that the Trial Court Had Jurisdiction to Determine Whether Corrales's Fees Could Be Paid from the Tribe's RSTF's Proceeds Before Distribution or to Stay the Action Address Threshold Jurisdictional Issues, Not the Merits

The Tribe refuses to address as unnecessary Corrales's remaining arguments that the trial court also had jurisdiction to determine whether his fees could be paid from the Tribe's RSTF proceeds presently being withheld by the Commission or to follow the federal district court's decision in Ramah Navajo Chapter v. Jewell (D.N.M. 2016) 167 F.Supp.3d 1217 to stay the underlying action. According to the Tribe, these arguments impermissibly address the merits of Corrales's claims.

But the Tribe's assertions are belied by the tenor of Corrales's arguments and the relief sought. For example, Corrales only argued that the trial court had jurisdiction to make the ultimate merits determination without seeking such relief on appeal—that is, that the trial court would have jurisdiction to order the disputed fees to be set aside by the Commission prior to any release to the Tribe once it obtains a newly constituted governing body. As Corrales has explained, should the Tribe accomplish a reconstitution of its governing body and resume government-to-government relations with the BIA with a newly recognized Tribal leadership, there is a risk that the Commission will prematurely release all the Tribe's RSTF proceeds to the new governing body, without paying Corrales' fees or lien. But this Court should find that the trial court has jurisdiction to both allow the underlying action to proceed and to order the Commission to withhold the disputed RSTF proceeds, which are akin

to trust assets under California probate law being held by the Commission as trustee, so as to not defeat Corrales's claim for his fees. (See Cal. Prob. Code § 10830, subd. (c); In re Kerr's Estate v. Luce, Forward, Hamilton & Scripps (1966) 63 Cal.2d 875; In re Algee's Estate (1958) Cal.App.2d 691, 696).

Similarly, Corrales's arguments regarding the federal Ramah litigation were meant to explain the error in the trial court's decision to dismiss the underlying action instead of staying it until the Tribe completes its organization efforts and has a new governing body. Because Corrales has filed a lien in that action, where the parties have not raised any jurisdictional issues, the Ramah Court will likely first pay attorneys' fees, including Corrales's fees, before distributing the settlement funds representing underpayments tribal 638 federal contract awards interpleaded for the Miwok Tribe.

E. This Court Should Instruct the Trial Court to Consolidate the Underlying Action With Corrales's Second Suit Asserting Common Law Counts On Remand

As Corrales disclosed in his Opening Brief, dismissal of the underlying action forced him to file a second action alleging common counts to avoid the running of the statute of limitations. Had the trial court not erroneously dismissed the underlying action, Corrales would have sought leave to amend his complaint to add those counts. That second action has now been stayed pending this appeal. (See Appellant's Request for Jud. Not., Ex. 2.) In the interests of judicial efficiency, Corrales urges this Court to order that the two actions be consolidated on remand.

//

//

F. The Commission Takes No Position Regarding This Appeal

In its recently filed Respondent's Brief, the Commission states that it takes no position in Corrales' appeal, because the order of dismissal for lack of subject matter jurisdiction arose from a motion not filed by the Commission. Notably, the Commission states in its Respondent Brief that "when uncertainty exists as to an eligible tribe's authorized leadership, the Commission, as administrator of the RSTF, defers to the determinations of the Federal Bureau of Indian Affairs." (Commission RB at 2). This is consistent with Corrales' argument that the trial court could likewise defer to the BIA's decision to recognize Burley as "a person of authority" for the Tribe to find she had similar authority to retain Corrales for the Tribe, without having to resolve an issue of Tribal law or a Tribal leadership dispute. Cayuga Nation, supra.

G. The Arguments Made by The Lena Shelton Faction Lack Merit

1. The Lena Shelton Faction Never Joined in the Motion to Dismiss

The Lena Shelton Faction Intervenors ("Tribe(L)") never joined in the Burley Faction's ("Tribe(B)") motion to dismiss for lack of subject matter jurisdiction. Neither did it file its own motion to dismiss or those grounds, or on any grounds. As a result, they were not named in this appeal as a party Respondent. The Notice of Appeal and the caption in Corrales' Opening Brief do not name them separately as a party Respondent. This appeal only includes the California Gambling Control Commission, the California Valley Miwok Tribe (consisting of the Lena Shelton Faction and the Burley Faction), and the California Valley Miwok Tribe, Burley Administration (i.e., Tribe(B)).

Moreover, since the 2015 Washburn Decision became final in March of 2019 (OB at 21, 23), stating that no one presently represents the California Valley Miwok Tribe, as a whole (CT 1541), the Tribe(L) has no authority to file a Respondent Brief on behalf of the California Valley Miwok Tribe, as a whole. It can only file a Respondent Brief on its own behalf as an intervening rival faction of the Burley Faction. However, it was never a part of the motion to dismiss which is the subject of this appeal.

2. The Tribe(L) Misstates the Record Concerning Burley's Undisputed BIA-Designated "Person of Authority" for the California Valley Miwok Tribe, As a Whole ("the Miwok Tribe")

In an attempt to discredit Silvia Burley ("Burley") as the BIA-designated "person of authority" as the basis for her authority to retain Corrales for legal services for the Miwok Tribe, the Tribe(L) argues that Burley was no longer a BIA recognized leader of the Miwok Tribe in 2005, when the BIA purportedly "suspended" federal 638 contract funding. This contention is misleading and false.

The undisputed facts in the record establish that Burley retained the BIA-designated "person of authority" status well after 2005, up until the 2015 Washburn Decision became final in March of 2019, stripping her of that authority. In 2004, the BIA simply would no longer recognize her as a "Chairperson" for the Miwok Tribe, because the Miwok Tribe was still "unorganized," and had no formal government. That did not necessarily mean she lost all authority, as the Tribe(L) falsely suggests. Instead, the BIA decided it would simply deal with her as a "person of authority" for the Miwok Tribe. (CT 2889). In a letter dated March 26, 2004, the BIA wrote to Burley in part as follows:

> "This relationship [of developing and maintain a government-to-government relationship with federally-recognized tribes]

> includes, among other things, the responsibility of working with the person or persons from each tribe who either are rightfully elected to a position of authority within the tribe **or** who otherwise **occupy a position of authority** within an unorganized tribe. To that end, the **BIA has recognized you as a person of authority within the California Valley Miwok Tribe**. However, the BIA does not yet view your tribe to be an 'organized' Indian tribe …" (Emphasis added).

(CT 2889). In other words, although the BIA would not recognize Burley as the Tribal Chairperson, given the fact the Miwok Tribe had yet to be organized, as the BIA was hoping Burley would do, it still recognized her as a "person of authority." The Assistant Secretary of Interior reiterated this distinction and position in a February 11, 2005 Decision. See CVMT v. Jewell (D.C.C. 2013) 5 F.Supp. 3d 86, 93 ("In the February 2005 Decision, the BIA reiterated that it did not recognize Burley as the tribal Chairperson, but rather, a 'person of authority' within the Tribe. It further stated that 'until such time as the Tribe has organized, the Federal government can recognize no one, including [Yakima], as the Tribal Chairman.'"); (CT 1460, Letter of Feb 11, 2005 from Asst. Secretary of Interior, Michael Olsen, to Yakima Dixie, with Burley copied). The Assistant Secretary did not withdraw this interim recognition until the 2015 Washburn Decision. The fact that the BIA would suspend and resume 638 federal contract funding in and after 2005 from time to time, did not affect Burley's BIA-designated "person of authority" status for the Miwok Tribe. For example, on September 21, 2005, Janice Whipple-DePina, the BIA Awarding Officer who entered into 638 federal contracts with Burley, stated that although she suspended 638 federal contract funding with the Miwok Tribe through Burley by letter on July 19, 2005, Burley's

status as a "person of authority" remained unchanged. She declared under penalty of perjury:

> "Nothing in this letter should be read to indicate that [the] BIA is taking the position that Ms. Burley is no longer 'a person of authority' within the Tribe."

(CT 2895). She then drew the distinction of Burley no longer being recognized as the Tribal Chairperson, but yet still being recognized as a "person of authority" for the Miwok Tribe, when the 638 federal contract funding was reinstated through Burley. She stated:

> "The quoted language [in my letter of reinstatement] is not intended in any way to [state] that the BIA recognizes Ms. Burley as the Tribal Chairperson of the California Valley Miwok Tribe. It is my understanding that **her status continues to be that of a person of authority within the Tribe**."

(CT 2895). This Court noted this distinction in its 2014 Decision, as well. 231 CA4th at 893. Thus, the Tribe(L)'s contention that "by no later than 2005" the BIA "had made clear their view that Ms. Burley did not have the authority to bind the tribe" is false and misleading. (Lena Shelton RB at 9).

Moreover, on January 29, 2007, the BIA wrote to Burley stating that during the time that the Miwok Tribe was "unorganized," the BIA would continue to recognize her as a "person of authority" within the Miwok Tribe, "until the organizational process of the Tribe is completed." It stated:

> "The Bureau of Indian Affairs' (Bureau) current position is that the Tribe lacks a governing body duly recognized by the Bureau and that **you are recognized as a 'person of authority' within the Tribe**. Furthermore, the Superintendent, Central California Agency and his staff have implemented a plan to assist the Tribe with its organizational efforts. I believe that it is essential

> for both the Tribe and the Bureau that this organizational process be completed." (Emphasis added).

(CT 2898). The record also discloses that from March 29, 2007 through September 21, 2007, the BIA (Janice Whipple-DePina) entered into multiple 638 federal contracts for Tribal funding with Burley as the Miwok Tribe's "person of authority." (CT 2969-2982). In each of the contracts, Ms. Whipple strikes out the word "Chairperson" written by Burley on her signature block, further indicating the BIA was treating her as a "person of authority" for the Miwok Tribe, and not as the Tribal Chairperson, thus re-emphasizing the BIA's position that Burley was at that time a "person of authority" for the Miwok Tribe. (CT 2972, 2979, and 2982). Three months later, on December 13, 2007, Corrales entered into his Fee Agreement with Burley, who at that time was still a "person of authority" for the Miwok Tribe. (CT 2852).

In addition, from August 31, 2011, the Assistant Secretary of Interior, Larry Echo Hawk, re-recognized Burley as the legitimate "Chairperson" for the Miwok Tribe, rather than merely a "person of authority," since he concluded the Miwok Tribe was already organized under the 1998 General Council, until his decision was vacated and remanded in 2013 in California Valley Miwok Tribe v. Jewell (D.D.C. 2013) 5 F.Supp.3d 86. On remand, the new Assistant Secretary of Interior, Kevin Washburn, ruled on December 31, 2015, that Burley was not the representative of the Miwok Tribe, and that no one else was either, until the Miwok Tribe is organized under the Indian Reorganization Action of 1934 ("IRA"). However, while no longer recognizing the 1998 established General Council, Washburn ruled that the General Council, at the time of its formation, was "a

reasonable, practical mechanism for establishing a tribal body to manage the process of reorganizing the Tribe." (CT1545) Washburn thus reiterated that Burley had been up to that point a recognized, albeit interim, "person of authority" for purposes of facilitating that process. On behalf of the Miwok Tribe though Burley, Corrales challenged the 2015 Washburn Decision in federal district court and on appeal and lost. (CT 1545). As a result, the 2015 Washburn Decision became final in March of 2019. At no time prior to the 2015 Washburn Decision did the BIA ever withdraw its designation of Burley as a "person of authority" for the Miwok Tribe, and there is nothing in the record that either the Tribe(L) or the Tribe(B) can point to that says that. Moreover, according to Burley, at no time did the BIA ever seek to recover 638 funding it awarded the Miwok Tribe through her, or inform her that the funding awarded through her was invalid, because her designation as a "person of authority" within the Miwok Tribe was somehow invalid. (CT 3005, pages 77-78 [Burley deposition]).

Thus, from August 31, 2011, through March 2019, Burley remained a BIA-designated "person of authority" within the Miwok Tribe, until the 2015 Washburn Decision became final, and during this time Corrales performed work for the Tribe under Burley's authority. Accordingly, per Cayuga, supra, the trial court could also defer to the 2011 Echo Hawk Decision, and subsequent events, to see how the BIA continued to treat Burley, without deciding any Tribal law or leadership dispute. Indeed, the 2011 Echo Hawk Decision expressly stated that it was "final for the Department [of the Interior] and effective immediately, but **implementation** shall be stayed pending resolution of the litigation," filed by the Dixie faction in federal court. 2014 Decision (231 CA4th at 895). The fact that it was stayed did not take

away from the fact that the Assistant Secretary of the Interior had recognized Burley again as the Chairperson of the Miwok Tribe, during the time that Corrales was filing lawsuits and doing other legal work for the Miwok Tribe under her original authority as a "person of authority" within the Tribe.

Significantly, since the motion to dismiss for lack of subject matter jurisdiction was filed by the Burley Faction, Burley's deposition testimony reinforces the application of the Cayuga, supra, decision. Burley was shown the March 26, 2004, letter from the BIA recognizing her as a "person of authority," and she understood when she received that letter that the BIA was recognizing her as a person of authority within the Miwok Tribe. (CT3003, pages 62-63). She stated that she had the authority to enter into 638 federal contract funding on behalf of the Miwok Tribe. (CT 3004, page 74). She also testified that after the 638 payments were suspended, the BIA still recognized her as the "person of authority" for the Miwok Tribe, and that nobody else was considered to be a "person of authority" for the Tribe other than herself. (CT 3006, pages 83-84, 87, 89). She then testified that she signed the subject Fee Agreement on behalf of the Miwok Tribe, and that she had the authority on behalf of the Miwok Tribe to do so. (CT 3009, page 103). This testimony contradicts the Burley Faction's position taken in their motion to dismiss, that the trial court would be forced to decide a Tribal leadership dispute in order to determine the validity of Corrales' retention. Burley admits she had that authority, and that the BIA gave her that authority as a "person of authority" within the Miwok Tribe. It is an admission that tracks the holding of Cayuga, supra, that all the trial court is required to do is to look to and defer to the BIA and see how it treated Burley in connection with any authority to act on behalf of the Miwok Tribe,

without attempting to resolve any issues of Tribal law or a Tribal leadership dispute. Cayuga, supra at 328, 330 (holding the trial court is entitled to "defer" to the BIA's recognition decision of a person who is authorized to act for the Tribe on a limited issue and on an interim basis, which is sufficient to find that that recognized individual also has the authority to initiate a lawsuit on behalf of the Tribe).

The fact that the Tribe(L) disputes Burley's authority, or that they claim Burley purportedly needed their permission is irrelevant. The BIA was the giver and taker of Burley's authority, not the rival Lena Shelton Faction, and the Cayuga case makes that clear. Cayuga, supra at 328 (observing that the BIA "has both the authority and responsibility to interpret tribal law when necessary to carry out the government-to-government relationship with the tribe," and the BIA's determination of who does or does not represent the tribe can determine a plaintiff's claims in court).

3. The Lena Shelton Faction's Argument that Corrales is Barred From Asserting an "Ostensible Authority" Theory is Without Merit

The Tribe(L)'s argument that Corrales is barred from arguing on appeal an "ostensible authority" theory, because it was purportedly not raised below, is the same argument advanced by the Respondent Tribe(B), and Corrales' response is the same. There is no merit to that contention. The issue was raised in his operative First Amended Complaint, argued in his New Trial Motion, and this Court nevertheless has authority to consider it on de novo review, since the issue of subject matter jurisdiction based on undisputed facts is a pure legal question. Hale, supra; Tearlach Resources, supra.

4. Corrales Incorporates by Reference His Reply to the Burley Faction's Respondent's Brief

Since all of the arguments contained in the Tribe(L)'s Respondent Brief track those contained in the Tribe(B)'s Respondent Brief, Corrales incorporates by reference his Reply Brief as to the Tribe(B)'s Respondent's Brief.

III. CONCLUSION

There is no jurisdictional bar to allowing Corrales's underlying action to proceed to the merits and determining whether the Fee Agreement is enforceable or recovery should be had under quantum meruit or principles of estoppel; what amount of fees claimed are owed to Corrales; whether Corrales's earned fees can be set aside or paid from the RSTF proceeds; and whether Corrales's lien is valid. Therefore, Corrales respectfully requests that this Court reverse the judgment dismissing the underlying action for lack of subject matter jurisdiction, and order the trial court to both consolidate this action with the second action filed by Corrales and to proceed to the merits of his contractual and equitable claims.

Dated: November 1, 2022 Respectfully Submitted,

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

CERTIFICATE OF WORD COUNT

Under Rule 8.520(c) of the California Rules of Court, I certify that the foregoing Respondent's Brief was produced on a computer in 13-point type using a serif font, that is, Century Schoolbook. The word count, as calculated by the word processing program used to generate the Respondent's Brief is 7,130 which includes footnotes but excludes matters that may be omitted under rule 8.520, subdivision (c)(3).

Dated: November 1, 2022 Respectfully Submitted,

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

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

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 REPLY BRIEF** on the following individuals in the manner indicated below:

PLEASE SEE ATTACHED SERVICE LIST

[X] (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 November 1, 2022 at San Diego, California.

s/ *Carianne Steinman*
Carianne Steinman

CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE

SERVICE LIST

James G. Waian — ELECTRONICALLY
Deputy Attorney General
Noel Fischer
600 West Broadway, Suite 1800
San Diego, CA 92101
P.O. Box 85266
San Diego, CA 92186
james.waian@doj.ca.gov
noel.fischer@doj.ca.gov
Attorneys for California Gambling Control Commission

Colin C. West — ELECTRONICALLY
Morgan, Lewis & Bockius LLP
One Market
Spear Street Tower
San Francisco, CA 94105
colin.west@morganlewis.com
Attorney for Intervenor-Defendants Marie Diane Aranda, Rosalie Ann Russell, Christopher Jason Russell, Lisa Fontanilla, Michael Mendibles, and the California Valley Miwok Tribe

Timothy J. Hennessy, Esq. — ELECTRONICALLY
Curtis A. Vandermolen
Peebles, Kidder, Bergin & Robinson, LLP
2020 L Street, Suite 250
Sacramento, CA 95811
thennessy@ndnlaw.com
cvandermolen@ndnlaw.com
Attorneys for California Valley Miwok (Burley Administration)

J. Ross Peabody — ELECTRONICALLY
450 A Street, 5th Floor
San Diego, CA 92101
rosspeabody@outlook.com
Attorney for Manuel Corrales, Jr.

Terry Singleton SBN 58316 — ELECTRONICALLY
TERRY SINGLETON, A.P.C.
1950 Fifth Avenue, Suite 200
San Diego, CA 92101

CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT
DIVISION ONE

terry@terrysingleton.com
Attorney for Manuel Corrales, Jr.

Clerk of the Court
San Diego Superior Court – Central Courthouse
1100 Union Street, Dept. 503
San Diego, CA 92101

U.S. MAIL ONLY

California Supreme Court
350 McAllister Street, Room 1295
San Francisco, CA 94102

ELECTRONICALLY