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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MANUEL CORRALES, JR., a California resident,

Plaintiff,

vs.

AMY DUTSCHKE, in her official capacity as the Regional Director of the Bureau of Indian Affairs, Sacramento, California; DEB HAALAND, in her official capacity as U.S. Secretary of Interior; and BRYAN NEWLAND, in his official capacity as Assistant Secretary of the Interior – Indian Affairs,

Defendants.

Case No. '23CV1876 JLS DDL

COMPLAINT

1. **Declaratory Relief**
2. **Injunctive Relief**
3. **For Order Setting Aside Arbitrary and Capricious Final Agency Action [5 U.S.C §706(2)(A)]**

Plaintiff alleges as follows:

INTRODUCTION

1. Plaintiff seeks declaratory and injunctive relief declaring, or otherwise directing the Bureau of Indian Affairs/ Department of Interior (“BIA”) to clarify, that in 2007 when a Tribal leader for a federally-recognized Indian Tribe, whom the BIA designated as a “person of authority” within the Tribe, despite an ongoing Tribal leadership dispute, had the authority to execute a Fee Agreement with Plaintiff for legal services on behalf of the Tribe. Plaintiff sought written clarification from BIA representatives on this issue, but the BIA has refused to provide the requested clarification.

1 2. Plaintiff is a former attorney for the Tribe who provided various legal
2 services to the Tribe for almost 13 years, and, after his services were terminated in
3 2020, sought to recover his fees in the San Diego Superior Court under a hybrid Fee
4 Agreement. The hybrid Fee Agreement guaranteed payment at an hourly rate, plus a
5 percentage of funds being held for the Tribe with the California Gambling Control
6 Commission pending resolution of a Tribal leadership and membership dispute. In the
7 Superior Court, the Tribe moved to dismiss the suit for lack of subject matter jurisdiction,
8 arguing that in order to decide Plaintiff's claim for fees, the court would have to
9 determine whether the Tribal representative was authorized to enter into the Fee
10 Agreement on behalf of the Tribe, which the court concluded it could not do, because to
11 do so would require that it necessarily decide a Tribal leadership dispute. The State
12 Superior Court then dismissed the action without prejudice for lack of subject matter
13 jurisdiction. The State Court of Appeal affirmed.

14 3. In light of these rulings, Plaintiff contacted the BIA and requested written
15 clarification that when Plaintiff entered into the subject Fee Agreement with the person
16 whom the BIA had designated to be the "person of authority" within the Tribe, that
17 person also had the authority to sign the Fee Agreement on behalf of the Tribe by virtue
18 of that designated authority. The BIA refused to provide the requested written
19 clarification, leaving Plaintiff without a remedy, and without the ability to seek recovery
20 of his fees in court. Plaintiff seeks an order from this court compelling the BIA to
21 provide the requested relief, or otherwise decide the issue itself.

22 4. Plaintiff originally asked the BIA for approval of the Fee Agreement in
23 2009. The BIA, knowing that the Tribe was involved in a Tribal leadership dispute at
24 that time, and knowing that it had designated the Tribal leader as a "person of authority"
25 for the Tribe in 2007 when the Fee Agreement was executed, told Plaintiff that he did
26 not need the BIA's approval. This led Plaintiff to believe that the Tribal representative
27 with whom Plaintiff contracted under the Fee Agreement was authorized to sign for the
28 Tribe by virtue of the BIA's designation of her as the "person of authority" within the
Tribe. Based upon the BIA's response for approval of his Fee Agreement, the BIA's
previous public correspondence informing the Tribal representative that she was a
"person of authority" within the Tribe, and not informing Plaintiff otherwise when he

1 sought BIA approval for the Fee Agreement, Plaintiff represented the Tribe on
2 numerous matters, including lawsuits where the BIA was a party, at Plaintiff's great
3 expense and time. At no time during the prosecution of those lawsuits where the BIA
4 was a party did the BIA inform Plaintiff that the Tribal representative did not have any
5 authority to retain him, or raise any objections to the lawsuits Plaintiff initiated on behalf
6 of the Tribe on grounds of lack of subject matter jurisdiction. Now that the Tribe has
7 raised the issue in State Court that the State Court lacks subject matter jurisdiction over
8 Plaintiff's claim for his fees, the BIA has a duty to clarify the authority of the Tribal
9 representative who entered into the Fee Agreement with Plaintiff, so as not to bar his
10 recovery of fees incurred in over 13 years of legal services rendered to the Tribe with
11 the BIA's knowledge and acquiescence.

12 5. Plaintiff contends that the BIA's refusal to provide the requested
13 clarification is an abuse of its authority, and an arbitrary and capricious agency action in
14 violation of the Administrative Procedures Act

15 **JURISDICTION AND VENUE**

16 6. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331,
17 because the asserted claims arise under the Constitution and laws of the United States.

18 7. This Court also has jurisdiction over this action pursuant to 28 U.S.C.
19 §1361, in that Plaintiff seeks to compel an officer or employee of the United States or
20 any agency thereof to perform a duty owed to the Plaintiff.

21 8. Venue is proper in this Court under 28 U.S.C. §1391(e)(1), because
22 Plaintiff resides in this District and no real property is involved in the action.

23 9. Judicial review of the agency action is authorized by the Administrative
24 Procedure Act ("APA"), 5 U.S.C. §§702, 704 and 706. The BIA issued a final agency
25 action under the APA and 25 U.S.C. §2.6(c).

26 10. The requested declaratory and injunctive relief is authorized by 28 U.S.C.
27 §§2201-2202.

28 11. Plaintiff has exhausted his administrative remedies and is not required to
pursue additional administrative remedies before seeking and obtaining judicial relief.

1 12. An actual case and controversy has arisen and now exists between the
2 parties with regard to the BIA’s violations of the constitutional provisions, statutes and
3 regulations cited herein, and its duties and obligations to Plaintiff, as herein alleged.

4 **PARTIES**

5 13. Plaintiff MANUEL CORRALES, JR., (“Corrales”) is a licensed attorney in
6 the State of California, and is a resident of San Diego County, California. His practice is
7 in San Diego County, California.

8 14. Defendant DEB HAALAND (“Haaland”) is the U.S. Secretary of Interior,
9 and is sued in her official capacity only. Ms. Haaland is responsible for the supervision
10 of the various federal agencies and bureaus with the Department of Interior (“DOI”),
11 including the BIA.

12 15. Defendant BRYAN NEULAND (“Newland”) is the Assistant Secretary of
13 the Interior (“ASI”) and head of the BIA. Mr. Newland is sued in his official capacity
14 only.

15 16. Defendant AMY DUTSCHKE (“Dutschke”) is the Regional Director of the
16 Pacific Regional Office of the BIA in Sacramento, California. She was designated by
17 the DOI and the ASI to respond to Corrales’ letter dated June 24, 2023, and issued a
18 final agency action response to that letter. Ms. Dutschke is sued in her official capacity
19 only.

20 **GENERAL ALLEGATIONS**

21 17. In December 2007, Plaintiff, a California lawyer, entered into a Fee
22 Agreement with the California Valley Miwok Tribe (“the Miwok Tribe” or “the Tribe”)
23 which was signed by Silvia Burley (“Burley”) on behalf of the Tribe. The Fee Agreement
24 authorized Plaintiff to initiate multiple lawsuits on behalf of the Tribe. At the time the
25 Fee Agreement was executed, the BIA had recognized Burley as a “person of authority”
26 for the Tribe. The agreement was a Hybrid Fee Agreement where Plaintiff was paid an
27 hourly fee plus a percentage of funds held by the California Gambling Control
28 Commission (“the Commission”) for the Tribe. After paying Plaintiff on an hourly basis
for his services for five months, payment was suspended and deferred until funds held
by the Commission were released.

1 18. Plaintiff initially sought approval of the Fee Agreement from the Assistant
2 Secretary of the Interior (“the Secretary”), but the Secretary indicated that the law had
3 changed, and lawyers no longer needed the Secretary’s approval of contracts with
4 federally-recognized Indian tribes, and therefore took no action on the request. At the
5 time, the Secretary had already designated Burley as the “authorized representative”
6 within the Tribe, which allowed her to enter into federal contract funding with the BIA,
7 and knew of an ongoing leadership dispute that Burley had with another Tribal member,
8 Yakama Dixie (“Dixie”).

9 19. After almost 13 years of representing the Tribe, Plaintiff’s services were
10 terminated on May 22, 2020. Upon termination, Burley notified Plaintiff in writing, by
11 enclosing the Tribal resolution authorizing Plaintiff’s termination, that Plaintiff’s
12 termination was in accordance with paragraph 8 of the Hybrid Fee Agreement which
13 provides:

14 “Client shall have the right to discharge Attorney at any time upon written notice
15 to Attorney. Such discharge shall not affect the Client’s obligation to reimburse
16 Attorney for costs incurred prior to discharge. In addition, Attorney shall be
17 entitled to the reasonable value of legal services performed prior to such
18 discharge to be paid by the Client from any subsequent recovery on claims
19 covered by this Agreement. Such reasonable value shall be based on the factors
20 enumerated in the preceding paragraph [at “Attorney’s hourly rate of \$250 per
21 hour”]”

22 (“Hybrid Contingency Fee Agreement with Monthly Rate,” dated December 13, 2007,
23 para. 8, page 4). Thereafter, Plaintiff submitted a final invoice for payment based on an
24 hourly rate and a percentage of the funds held by the Commission, as set forth under
25 the Fee Agreement. Calculating only fees owed at the agreed rate of \$250 per hour,
26 the fees owed to Plaintiff for almost 13 years of work is approximately \$5.8 million.
27 Whether Plaintiff is also entitled to an additional 20% of the RSTF money held by the
28 Commission, or at Plaintiff’s market rate at that time at more than \$250 per hour, are
matters that would need to be decided in the Superior Court.

19 20. Plaintiff sued the Commission to establish and enforce his lien, and both
20 factions of the Tribe intervened. After participating in discovery (where Burley testified
21 that she had the authority to execute the Fee Agreement on behalf of the Tribe as a

1 BIA-designated “person of authority” within the Tribe) and opposing Plaintiff’s motion for
2 summary judgment, the Tribe under Burley’s leadership moved to dismiss the case for
3 lack of subject matter jurisdiction, arguing that, for the court to determine the validity of
4 the subject Fee Agreement, i.e., whether Burley had the authority to sign it for the Tribe,
5 the trial court would be forced to decide a tribal leadership dispute over which it lacked
6 subject matter jurisdiction. The trial court agreed and dismissed the action without
prejudice for lack of subject matter jurisdiction.

7 21. The Court of Appeal affirmed the trial court’s dismissal for lack of subject
8 matter jurisdiction. In dicta, it refused to extend the rule of deferring to the BIA’s interim
9 recognition of a Tribal representative for federal contract funding to recognize that same
10 person as having the authority to initiate lawsuits for the Tribe, so as to avoid having to
11 decide a Tribal leadership dispute for purposes of subject matter jurisdiction. It
12 reasoned in dicta that deference to a person’s authority to initiate lawsuits for a tribe by
13 virtue of that person’s status as a BIA-designated “person of authority” for the tribe does
14 not extend to the authority to contract with an attorney to initiate those lawsuits. Plaintiff
15 contends this reasoning is flawed. In any event, neither the trial court nor the Court of
16 Appeal addressed the factual issue presented here: whether the BIA’s designation of
17 Burley as a “person of authority” within the Tribe in 2007 in fact permitted her to execute
18 the subject Fee Agreement for the Tribe in 2007. Moreover, a dismissal for lack of
19 subject matter jurisdiction is not on the merits, and, as a result, there has been no
20 judicial determination on whether Burley in fact did or did not have the authority to
execute the subject Fee Agreement for the Tribe in 2007.

21 22. Since the Tribe is not organized, and thus there is no Tribal Court for
22 Plaintiff to resort to, Plaintiff has no legal remedy to adjudicate his claim for payment of
23 his attorney’s fees based on the Court of Appeal’s decision.

24 **FIRST CAUSE OF ACTION**

25 **(Declaratory Relief as to All Defendants)**

26 23. The allegations in paragraphs 1 through 22 are re-alleged and
incorporated herein by reference.

27 24. An actual controversy has arisen and now exists between Plaintiff and the
28 Defendants concerning whether the BIA’s designation of Burley as a “person of

1 authority” within the Tribe in 2007 in fact permitted her to execute the subject Fee
2 Agreement for the Tribe in 2007, and whether the BIA’s refusal to clarify that fact under
3 the circumstance of this case was arbitrary and capricious. The dispute requires the
4 resolution of this issue based on the BIA’s historical treatment of Burley as a “person of
5 authority,” despite an ongoing Tribal leadership dispute, and the BIA’s knowledge of
6 Plaintiff’s legal representation of the Tribe where the BIA was a party to those lawsuits,
7 after Plaintiff sought approval from the BIA and the DOI for the Fee Agreement he had
8 entered into with Burley as the authorized representative or person of authority for the
9 Tribe. The dispute requires resolution of the issue of whether Burley had the authority
10 to enter into the subject Fee Agreement with Plaintiff in 2007, at a time when the BIA
11 had treated her as a “person of authority” within the Tribe and was entering into P.L.
12 638 federal contract funding with her for the Tribe as the “person of authority” or
13 authorized representative or spokesperson for the Tribe, despite her no longer being
14 recognized as the Tribe’s Chairperson, because the Tribe was unorganized and without
15 a recognized government.

16 **SECOND CAUSE OF ACTION**

17 **(Injunctive Relief as to All Defendants)**

18 25. The allegations in paragraphs 1 through 24 are re-alleged and
19 incorporated herein by reference.

20 26. Plaintiff has no adequate remedy at law.

21 27. Grounds exist for injunctive relief, because the requested relief involves
22 the federal government, i.e., the BIA, with authority over a federally-recognized Indian
23 tribe and its recognition of a “person of authority” for a federally-recognized Indian tribe
24 who contracted with an attorney for legal services, and the attorney’s reliance on the
25 BIA’s representations that the person who retained him was a BIA-designated “person
26 of authority” for legal services and had the authority to retain him, thereby causing him
27 to expense time and money in rendering legal services for and on behalf of the Tribe.
28 As a result, when a dispute arose over whether Burley in fact had the authority to retain
Plaintiff, the BIA had a duty to Plaintiff to clarify Burley’s status as a “person of authority”
for the Tribe to include contracting with Plaintiff for legal services, where Plaintiff sought
initial approval of the Fee Agreement, and the BIA allowed Plaintiff to engage in legal

1 services to his detriment for almost 13 years without objection to Burley’s authority to
2 contract for his services on behalf of the Tribe.

3 28. When Plaintiff asked the BIA to provide a letter of clarification of Burley’s
4 authority to include having the authority to contract with Plaintiff, the BIA refused to do
5 so.

6 29. Accordingly, Plaintiff requests the Court order Defendants to clarify
7 Burley’s status as a “person of authority” with respect to the Fee Agreement signed in
8 2007 with Plaintiff.

9 **THIRD CAUSE OF ACTION**

10 **(Arbitrary and Capricious Agency Action in Violation of the Administrative
11 Procedures Act, as Against all Defendants)**

12 30. The allegations in paragraphs 1 through 29 are re-alleged and
13 incorporated herein by reference.

14 31. The APA provides that a court must hold unlawful and set aside any
15 agency action that is “arbitrary, capricious, and abuse of discretion, or otherwise not in
16 accordance with law.” 5 U.S.C. §706(2)(A).

17 32. The BIA’s letter of September 27, 2023, refusing to clarify Burley’s
18 authority in 2007 when she entered into the subject Fee Agreement with Plaintiff was a
19 “final agency action.”

20 33. The BIA’s letter of September 27, 2023, refusing to clarify Burley’s
21 authority in 2007 when she entered into the subject Fee Agreement with Plaintiff was
22 “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,”
23 for the reasons herein alleged, including, but not limited to, paragraph 24 and 27.

24 34. Attached and made part of this complaint are the following documents:

- 25 1. Exhibit 1: Letter to Haaland, et al., dated June 24, 2034, from
26 Corrales;
- 27 2. Exhibit 2: Email to Stephanie Cloud at DOI, dated August 2, 2023,
28 from Corrales;
3. Exhibit 3: Email to Amy Dutschke at BIA, dated August 8, 2023,
from Corrales;

- 1 4. Exhibit 4: Letter to Corrales from Amy Dutschke at BIA, dated
- 2 September 27, 2023;
- 3 5. Exhibit 5: Email to Amy Dutschke at BIA, dated September 28,
- 4 2023, from Corrales;
- 5 6. Exhibit 6: Letter to Corrales from Silvia Burley, dated May 22, 2020;
- 6 and
- 7 7. Exhibit 7: Relevant portions of the deposition transcript of Silvia
- 8 Burley, dated May 26, 2021 in Case Corrales v. CGCC, Case No.
- 9 37-2019-000197079-CU-MC-CTL (San Diego County).

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff requests the following:

- 12 1. Declaring the BIA's designation of Burley as a "person of authority" within
- 13 the Tribe in 2007 in fact permitted her to execute the subject Fee Agreement for the
- 14 Tribe in 2007;
- 15 2. Declaring the BIA's refusal to clarify that fact under the circumstance of
- 16 this case was arbitrary and capricious;
- 17 3. Declaring that Burley had the authority to enter into the subject Fee
- 18 Agreement with Plaintiff in 2007, at a time when the BIA had treated her as a "person of
- 19 authority" within the Tribe and was entering into P.L. 638 federal contract funding with
- 20 her for the Tribe as the "person of authority" or authorized representative or
- 21 spokesperson for the Tribe, despite her no longer being recognized as the Tribe's
- 22 Chairperson, because the Tribe was unorganized and without a recognized
- 23 government.
- 24 4. Directing Defendants to clarify Burley's status as a "person of authority"
- 25 with respect to the Fee Agreement signed in 2007 with Plaintiff.
- 26 5. Awarding Plaintiff damages, attorney's fees and costs incurred in
- 27 connection with this action; and
- 28 6. Granting such other relief as the court deems just and proper.

DATED: October 13, 2023

s/ Manuel Corrales, Jr.
Manuel Corrales, Jr., Esq.
In Pro Per

EXHIBIT “1”

ADMITTED TO
PRACTICE IN:
CALIFORNIA, UTAH
AND NEW MEXICO

MANUEL CORRALES, JR.

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mannycorrales@yahoo.com

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June 24, 2023

Ms. Deb Haaland
SECRETARY OF THE INTERIOR
U.S. Department of the Interior
1849 C Street N.W., MS-6554
Washington, D.C., 20240

Mr. Bryan Newland
ASSISTANT SECRETARY OF THE INTERIOR
U.S. Department of the Interior
1849 C Street N.W., MS-6554
Washington, D.C., 20240

Mr. Robert Anderson
OFFICE OF THE SOLICITOR
U.S. Department of the Interior
1849 C Street N.W., MS-6554
Washington, D.C., 20240

Via Fax and U.S. Mail
(202) 208-5048

Re: California Valley Miwok Tribe: Silvia Burley's prior designation as a "person of authority": Request for Clarification

Dear Madam Secretary and Messrs. Newland and Anderson:

I am a former attorney for the California Valley Miwok Tribe ("the Tribe"). I am presently involved in a legal action to recover attorney's fees under a Fee Agreement I entered into with Silvia Burley who signed the agreement on behalf of the Tribe. **I am requesting clarification of her authority as a Bureau of Indian Affairs ("BIA") designated "person of authority" at the time of the execution of the Fee Agreement on December 13, 2007.**

The Tribe has raised a defense to my fee claim on the grounds that, in light of a pending leadership dispute at the time of the signing of the Fee Agreement, the court lacks subject matter jurisdiction to decide the claim, because to do so would require the court to resolve a dispute about Tribal law, i.e., a Tribal leadership dispute, over which it has no jurisdiction. The case of Cayuga Nation v. Tanner (2nd Cir. 2016) 824 F.3d 321 (attached) resolved this dilemma by holding that a court need not decide a tribal



leadership dispute under similar circumstances. Instead, the court can simply defer to the BIA's recognition of a person authorized to act on behalf of the Tribe for 638 federal contract funding on an interim basis, in the midst of a leadership dispute, notwithstanding the limited issue that occasioned that recognition, and conclude that that person may initiate litigation on behalf of the Tribe. 824 F.3d at 330.

The Tribe here insists that even though the BIA treated Burley as a "person of authority" at the time of the signing of the Fee Agreement, which gave her the authority to enter into 638 federal contract funding for the Tribe, and that authority under Cayuga, supra, gave her the authority to initiate suits on behalf of the Tribe, that designation did not give her authority to enter into contracts with lawyers to initiate any lawsuits. As a result, the Tribe contends that Cayuga, supra, does not hold that Burley had the authority to enter into contracts with lawyers, and specifically me to initiate lawsuits. The state court here has adopted the Tribe's assertion and has refused to rule on my fee claim on lack of subject matter jurisdiction grounds.

I performed legal work for the Tribe for almost 13 years, and deserve to be paid. The Fee Agreement provides that I am to be paid from the presently held Revenue Sharing Trust Fund ("RSTF") proceeds that are accumulating with the California Gambling Control Commission, pending resolution of a Tribal leadership and membership dispute.

On November 30, 2009, I sent a letter to the Secretary of the Interior asking for approval of my Fee Agreement. Your Solicitor's Office responded on March 11, 2010, stating that the Secretary is no longer required to approve contracts for legal services between Tribes and their attorneys. Based on your letter, I proceeded to perform legal services under the Fee Agreement signed by Burley on behalf of the Tribe for almost 13 years.

To avoid confusion and continued litigation over this subject matter, it seems practical for me to obtain from you, and therefore **I am hereby requesting, a short letter clarifying that at the time Burley executed the Fee Agreement with me, in accordance with Cayuga, supra, she was authorized to initiate lawsuits on behalf of the Tribe, given her BIA-designation at the time as a "person of authority," and that authority included signing the subject Fee Agreement for legal services that included litigation on behalf of the Tribe.**

While the ASI Kevin Washburn ruled that as of December 31, 2015, no one, including Burley, presently represents the Tribe, the issue for my purposes is whether at the time Burley signed the Fee Agreement in December 2007, she had the authority to do so per Cayuga, supra. In addition, since the Tribe remains "unorganized," and no one presently represents the Tribe, there is no Tribal Court for me to go to for resolution.

I am attaching the following documents to assist you:

1. My letter dated November 30, 2009, to you with the Fee Agreement, asking that it be approved.
2. Your letter dated March 11, 2010, advising that the Secretary was not required to approve my Fee Agreement with the Tribe.
3. Letter dated December 12, 2008, from Edith Blackwell, Associate Solicitor, Indian Affairs, to the California Attorney General, reiterating that Burley was a “spokesperson” or “person of authority” for the Tribe for the purpose of awarding Federal contract.
4. Letter dated March 26, 2004, from Dale Risling, Sr., Superintendent, BIA, Central California Agency, to Burley, telling Burley that the BIA is recognizing her as a “person of authority” with the Tribe.
5. Letter dated May 20, 2004, from Scott Keep, Assistant Solicitor, to the California Gambling Control Commission, reiterating that Burley is the authorized representative for the Tribe.
6. Letter dated February 11, 2005, from Michael Olsen, Principal Deputy—Acting Assistant Secretary—Indian Affairs, to Yakima Dixie, informing him that Burley is recognized as a “person of authority” for the Tribe.
7. Declaration of Janice Whipple-Depina, dated September 21, 2005, stating that Burley continues to be a “person of authority” despite the suspension of 638 federal contract funding.
8. Letter dated January 29, 2007, from the BIA to Burley, informing her that she is a “person of authority” for the Tribe, and resuming 638 federal contract funding.
9. Letter dated November 16, 2007, from Troy Burdick, Superintendent at the BIA, Central California Agency, to Burley, enclosing an executed 638 federal contract which she signed on September 21, 2007.
10. Cayuga Nation v. Tanner (2nd Cir. 2016) 824 F.3d 321.

Thank you. I look forward to your letter of clarification.

Very truly yours,



Manuel Corrales, Jr.

Enclosures (As stated)

Cc: Troy Burdick
BIA, Central California Agency
650 Capital Mall, Suite 8-500
Sacramento, CA 95814-4710

ADMITTED TO
PRACTICE IN:
CALIFORNIA, UTAH
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MANUEL CORRALES, JR.

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COPY

November 30, 2009

Mr. Ken Salazar
SECRETARY OF THE INTERIOR
184 C Street, N.W.
Washington, D.C. 20240

Via Fax and U.S. Mail
(202) 208-5048

- Re: California Valley Miwok Tribe v. California Gambling Control Com.
Case No. D054912 (Court of Appeal); Case No. 37-2008-00075326-CU-
CTL (San Diego Superior Court)
- Re: California Valley Miwok Tribe v. Kempthorne
Case No. 09-15466 (9th Cir. Ct of Appeals); Case No. S-08-3164 (U.S.
District Court, Eastern District of California)

REQUEST FOR APPROVAL OF FEE AGREEMENT
25 U.S.C. Section 81

Dear Secretary Salazar:

Enclosed is a copy of an attorney's fee agreement entered into between me and the California Valley Miwok Tribe ("the Tribe"), entitled "Second Amendment to December 13, 2007 'Hybrid Contingency Fee Agreement with Monthly Rate'", which was executed by the Tribe on March 10, 2009.

The fee agreement covers two (2) pending matter, one against the California Gambling Control Commission for payment of "Revenue Sharing Trust Fund" distributions, and the other against your office for federal contract funding.

Pursuant to 25 U.S.C. Section 81, I respectfully request approval of this agreement covering these two pending matters.

①

Should you have any questions, concerning this matter, please feel free to call or write me directly. My Email address is mannycorrales@yahoo.com.

Thank you for your anticipate cooperation.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Manny Corrales, Jr.', with a long, sweeping line extending from the end of the signature.

Manuel Corrales, Jr.

CC: Larry Echo Hawk
Assistant Secretary—Indian Affairs w/enclosures

Silvia Burley
Chairperson, California Valley Miwok Tribe w/o enclosures

3/10/2009

ADMITTED TO
PRACTICE IN:
CALIFORNIA, UTAH
AND NEW MEXICO

MANUEL CORRALES, JR.
ATTORNEY AT LAW

E-MAIL:
mannycorrales@yahoo.com

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**SECOND AMENDMENT TO DECEMBER 13, 2007
"HYBRID CONTINGENCY FEE AGREEMENT
WITH MONTHLY RATE"**

The parties hereby amend the December 13, 2007 "Hybrid Contingency Fee Agreement with Monthly Rate" (hereinafter referred to as "the original fee agreement") (a copy of which is attached and marked as Exhibit "1") as follows:

1. In addition to the services Attorney agrees to provide to the Client with respect to seeking recovery of Revenue Sharing Trust Fund ("RSFT") money from the California Gambling Control Commission ("the Commission"), as set forth in the original agreement, Attorney agrees to provide the following services:

a. Attorney will file, make court appearances, and litigate in federal court claims against the Bureau of Indian Affairs ("BIA"), and other potential relevant parties, for recovery of P.L. 93-638 funds for the Client.

b. Attorney agrees to work with Troy M. Woodward, an Indian Law legal specialist, who will provide Attorney with necessary research and drafts of pleadings for filing in the federal court in California. Mr. Woodward is not licensed to practice law in California.

2. In consideration for providing these additional services, Client agrees to compensate Attorney as follows:

a. Attorney's contingency fee in the original agreement shall be increased to 20% of the gross amount the Client recovers against the Commission for RSTF money the Commission is withholding from the Client, or the gross amount of RSTF money the Commission ultimately releases for payment to the Client. Attorney's contingency fee shall not be reduced by Client's payment of other fees to other lawyers. By way of an example only, if the total recovery is \$1 million, and Client has also promised to pay another lawyer 20%, Attorney's fee is \$200,000.00 (not 20% of \$800,000, i.e., not \$160,000.00). The fee is based on the gross amount, notwithstanding



any other promises or arrangements Client makes with other lawyers or persons for a percentage of the recovery.

b. The capped payment of \$3,000 per month is temporarily suspended. Instead, Client agrees to pay for the actual costs of prosecuting both the federal case (i.e., California Valley Miwok Tribe v. Kempthorne, Case No. S-08-3164 FCD/EFB, U.S. Dist. Ct. Eastern Dist. Of Cal.) and the state case (California Valley Miwok Tribe v. California Gambling Control Commission, Case No. 37-2008-00075326-CU-CO-CTL, San Diego County Superior Court), both of which are presently on appeal, including but not limited to, filing fees, docketing fees, costs of preparing a clerk's transcript, costs of preparing a reporter's transcript. Travel expenses (if necessary) to attend court hearings, and other actual expenses.

c. Upon recovery of any P.L. 93-638 funds or the RSTF money, by way of judgment or settlement, Client also agrees to pay Attorney forthwith from those recovered funds any and all fees owed under the original agreement (as allowed by federal law pertaining to the PL 638 funding recovery), and in full, with respect to the RSTF litigation that may have been deferred and have accumulated to the amount allowed by allocated funds.

3. **Limited Waiver of Sovereign Immunity:** Client agrees to a limited waiver of any defense of sovereign immunity in connection with this Amended Agreement and the original fee agreement, including a limited waiver of sovereign immunity against Attorney for enforcement of this Amended Agreement and the original fee agreement, the collection of attorney's fees and costs owed under these agreements, and the enforcement of any terms and conditions under these agreements. This limited waiver of sovereign immunity shall apply to any dispute with respect to payment of fees and costs associated with either the RSTF litigation or the P.L. 93-638 litigation.

4. Except as modified by this amendment, the original agreement remains in full force and effect, and is hereby incorporated herein by reference.

Executed at Stockton, California, on March 10, 2009.

CLIENT

CALIFORNIA VALLEY MIWOK TRIBE

By: *Silvia Burley*
Silvia Burley, Chairperson

ATTORNEY

MANUEL CORRALES, JR.
Attorney at Law

Manuel Corrales 3/10/09
Manuel Corrales, Esq.

[Handwritten signature]

ADMITTED TO
PRACTICE IN
CALIFORNIA, UTAH
AND NEW MEXICO

MANUEL CORRALES, JR.

ATTORNEY AT LAW

E-MAIL:
manuelcorrales@yahoo.com

11763 AVENIDA SIERRA
SAN DIEGO, CALIFORNIA 92128
TEL (619) 521-0634
FAX (619) 521-0633



HYBRID CONTINGENCY FEE AGREEMENT WITH MONTHLY RATE

THIS IS AN AGREEMENT between The California Valley Miwok Tribe, hereinafter referred to as "Client", and Manuel Corrales, Jr., Esq., hereinafter referred to as "Attorney". Unless a different Agreement is made in writing, this Agreement alone shall govern their respective rights and responsibilities.

1. **Claims Covered by Agreement:** Client retains Attorney to represent Client in connection with a claim for damages or other appropriate relief against whomever is responsible for the injury or loss suffered by Client arising out of the following incident or transaction: The California Gambling Control Commission is refusing to authorize release of Revenue Sharing Trust Fund money belonging to The California Valley Miwok Tribe ("Tribe"). Client seeks to recover these funds and to obtain a judicial determination, if necessary, that the Tribe is entitled to continue to receive such funds in the future. Other parties may be sued on various theories to maximize recovery.

2. **Services to be Performed by Attorney:** Attorney agrees to perform the following legal services, if necessary, with respect to the claims described above:

- o Investigation of claims
- o Determining responsible parties
- o Preparation and filing of lawsuit
- o Settlement procedures and negotiations
- o Prosecution of claim by arbitration or legal action until award or judgment is obtained
- o If judgment is obtained in Client's favor, opposing a motion for new trial by an opposing party

3. **Services Not Covered by This Agreement:** If additional services are necessary in connection with Client's claims, and Client requests Attorney to perform such services, additional fee arrangements must be made between Attorney and Client. Such additional services may be required, for example:

- o In defense of any lawsuit, cross-complaint or other cross-demand filed against Client in connection with the above matter or otherwise
- o If the judgment obtained is not in Client's favor, or the amount thereof is unsatisfactory to Client
- o If the judgment obtained is in Client's favor, and an opposing party appeals from the judgment

Fee Agreement
Page 2

- If a retrial is ordered after a motion for new trial or mistrial, or reversal of the judgment on appeal
- In judgment enforcement proceedings

4. **No Guarantee as to Result:** Client acknowledges that Attorney has made no guarantee as to the outcome or the amounts recoverable in connection with Client's claims.

5. **Litigation Costs and Expenses:** Attorney is authorized to incur reasonable costs and expenses in performing legal services under this Agreement. Client agrees to pay for such costs and expenses by use of the monthly fee discussed below.

(a) **Particular costs and expenses:** The costs and expenses necessary in this case may include any or all of the following items. (The lists is not exclusive)

- Court filing fees
- Process serving fees
- Fees to private investigators
- Fees to photographers or graphic artists
- Fees to experts for consultation and/or for appearance at deposition or trial
- Jury fees
- Mail, messenger and other delivery charges
- Parking and other local travel at .35 cents/mile
- Transportation, meals, lodging and other costs of necessary out-of-town travel
- Long distance telephone charges
- Photocopying (in office) at .20 cents/page
- Word processing charges at the standard rate
- Computer legal research at the contractual rate
- Other computer time at the prevailing rate

(b) **Client's responsibility regarding costs:** Once the \$3,000 monthly retainer is exhausted, Attorney may advance such costs and expenses on Client's behalf, but is not obligated to do so. Client agrees to reimburse Attorney upon demand for any such services. Client is responsible for such reimbursement regardless of the status or outcome of the litigation, or the amount of any recovery. Monthly expenses are capped at \$3,000 and additional monthly expenses must be specifically approved by Client in writing.

6. **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

Fee Agreement
Page 3

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.

Bearing in mind that the contingency fee is negotiable, Client agrees that the above fee arrangement is fair and reasonable, and agrees to pay Attorney those amounts.

(a) Costs and expenses as affecting contingency fee: Costs and expenses paid in connection with Client's claim shall be reimbursed at the final recovery of the case, and shall be calculated after the contingency fee is computed. (For example, if the claim is settled for \$1,000, and \$100 has been expended for litigation costs, the contingency fee shall be computed based on the \$1,000 gross recovery. The \$100 cost amount is deducted from the amount remaining after the fee is paid to Attorney).

(b) Setoffs and cross-complaints do not affect contingency fee: The amount of recovery for purposes of this Agreement shall be computed without regard to any setoff, counterclaim, cross-complaint or other demand for affirmative relief asserted by any party against Client, whether or not related to the claims covered by this Agreement.

(c) Form of recovery as affecting contingency fee: If the recovery consists of payments to be made over a period of time, or other property not entirely cash or cash-equivalent, the contingency fee shall be based on the present cash value of the recovery as determined by generally recognized accounting and appraisal standards. (For example, if the recovery consists of \$1,000 payable at \$10/year over 10 years, its present value may be approximately \$380, depending on prevalent interest rates.) The contingency fee shall be paid out of the first funds or property received by Client.

(d) Sanctions awards not part of recovery: Monetary sanctions awarded to Attorney during the course of this litigation shall not be considered part of Client's recovery in this action. Such sanctions shall be deemed compensation to counsel for extraordinary time and effort expended as a result of an opposing party's bad faith conduct or failure to comply with discovery demands, court orders or similar obligations. But if the sanctions award includes a costs item (such as the filing fee for making the motion), the amount thereof shall be credited to the Client's costs obligations when received by Attorney.

(e) Fee award by court not a limit on contingency fee: Any fee awarded by the court, pursuant to statute or contract, in connection with the subject matter of this representation, shall be paid to Attorney and shall be applied against Client's fee obligation under this Agreement, but shall not limit or discharge Client's fee obligation.

Client hereby assigns the right to such a fee award to Attorney to the extent it is assignable. If nonassignable, Client agrees to preserve the right to a fee award in any settlement

Fee Agreement
Page 4

or compromise of Client's claims, to diligently seek a fee award for Attorney's services, and to pay Attorney the full amount of any such fee award upon receipt.

7. Effect of Withdrawal by Attorney: Attorney may withdraw as counsel for Client for good cause. "Good cause" shall include without limitation, Client's failure to cooperate with Attorney, failure to comply with this Agreement, or requesting Attorney to act in a manner that would violate the Rules of Professional Conduct of the State Bar of California. Such withdrawal shall not affect Client's obligation to reimburse Attorney for costs previously incurred. In addition, Attorney shall be entitled to the reasonable value of legal services performed prior to withdrawal, to be paid by Client from any subsequent recovery on the claims covered by this Agreement.

The reasonable value of Attorney's services prior to withdrawal shall be based on the following factors: the number of hours expended; Attorney's hourly rate of \$250 per hour; Attorney's experience, reputation and ability; the amount of recovery; and the extent to which Attorney's services have contributed to the recovery.

8. Effect of Discharge by Client: Client shall have the right to discharge Attorney at any time upon written notice to Attorney. Such discharge shall not affect the Client's obligation to reimburse Attorney for costs incurred prior to such discharge. In addition, Attorney shall be entitled to the reasonable value of legal services performed prior to such discharge to be paid by the Client from any subsequent recovery on claims covered by this Agreement. Such reasonable value shall be based on the factors enumerated in the preceding paragraph.

9. Attorney's Lien: Client hereby grants Attorney a lien on Client's claim and any cause of action or lawsuit filed thereon, and on any recovery Client may obtain by settlement, judgment or otherwise and for any other sums due and owing to Attorney for fees and costs at the conclusion of Attorney's services.

Client acknowledges that it has been advised that Client may seek the advice of an independent lawyer of Client's choice regarding the fairness of this lien and of this Agreement, and that Client must be given a reasonable opportunity to seek such advice.

10. Choice of Law: The rights and obligations of the parties under this Agreement shall be determined under the laws of the State of California, regardless of the laws of the place of residence or business of any party or of the place where the services required hereunder are rendered.

11. Limited Waiver of Sovereign Immunity: The Client hereby waives any defense of Sovereign Immunity against Attorney in connection with this Agreement, including the enforcement of any of its terms and conditions.

ES

Fee Agreement
Page Five

12. **Client's Receipt of Agreement and Knowledge of Terms:** Client acknowledges that he/she has read and fully understands all of the terms and conditions of this Agreement before signing it, and has received a copy of this Agreement upon execution thereof.

Executed at Stockton, California, on December 13, 2007.

CLIENT

ATTORNEY

CALIFORNIA VALLEY MIWOK TRIBE

MANUEL CORRALES, JR.
Attorney at Law

By: *Silvia Burley*
(signature)

Manuel Corrales, Jr.

Silvia Burley
(print name)

10601 Escandido Pl.
Stockton, Calif. 95212
(address)

209-931-4567
(telephone number)



United States Department of the Interior

OFFICE OF THE SOLICITOR

1849 C STREET N.W., MS-6554

WASHINGTON, DC 20240

MAR 11 2010

Manuel Corrales, Jr., Esquire
112753 Avenida Sivrita
San Diego, California 92128

Dear Mr. Corrales:

This letter is in response to your letter of November 30, 2009 to Secretary Salazar. I apologize for the delay in responding to your request to have the second amendment to your fee agreement with the California Valley Miwok Tribe approved by the Secretary of the Interior pursuant to 25 U. S. C. § 81.

On May 14, 2000, Congress enacted Section 2 of Public Law 106-179, 114 Stat. 46. The amendment to Section 81 expressly states that the Secretary is not required to approve contracts for legal services between federally recognized Indian tribes and their attorneys. The Department will not, therefore, take any action on your request. Please find enclosed a copy of Public Law 106-179 as it appears at 114 Stat. 46. If you have any questions regarding Section 81, please contact Angela Kelsey at (202) 219-2407.

Sincerely

Pilar M. Thomas
Deputy Solicitor for Indian Affairs

Enclosure (1)

2



LEXSEE 114 STAT. 46

UNITED STATES PUBLIC LAWS
106th Congress -- 2nd Session
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PUBLIC LAW 106-179 [S. 613]
MAR. 14, 2000

INDIAN TRIBAL ECONOMIC DEVELOPMENT AND CONTRACT ENCOURAGEMENT ACT OF 2000

106 P.L. 179; 114 Stat. 46; 2000 Enacted S. 613; 106 Enacted S. 613

BILL TRACKING REPORT: 106 Bill Tracking S. 613
FULL TEXT VERSION(S) OF BILL: 106 S. 613
CIS LEGIS, HISTORY DOCUMENT: 106 CIS Legis. Hist. P.L. 179

An Act

To encourage Indian economic development, to provide for the disclosure of Indian tribal sovereign immunity in contracts involving Indian tribes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[*1] SECTION 1. <25 USC 71 note> SHORT TITLE.

This Act may be cited as the "Indian Tribal Economic Development and Contract Encouragement Act of 2000".

[*2] SEC. 2. CONTRACTS AND AGREEMENTS WITH INDIAN TRIBES.

Section 2103 of the Revised Statutes (~~25 U.S.C. 87~~) is amended to read as follows:

2103 "§ 2103.(a) In this section:

"(1) The term 'Indian lands' means lands the title to which is held by the United States in trust for an Indian tribe or lands the title to which is held by an Indian tribe subject to a restriction by the United States against alienation.

"(2) The term 'Indian tribe' has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450)(e)).

"(3) The term 'Secretary' means the Secretary of the Interior.

"(b) No agreement or contract with an Indian tribe that encumbers Indian lands for a period of 7 or more years shall be valid unless that agreement or contract bears the approval of the Secretary of the Interior or a designee of the Secretary.

106 P.L. 179, *2; 114 Stat. 46, **;
2000 Enacted S. 613; 106 Enacted S. 613

"(c) Subsection (b) shall not apply to any agreement or contract that the Secretary (or a designee of the Secretary) determines is not covered under that subsection.

"(d) The Secretary (or a designee of the Secretary) shall refuse to approve an agreement or contract that is covered under subsection (b) if the Secretary (or a designee of the Secretary) determines that the agreement or contract--

"(1) violates Federal law; or

"(2) does not include a provision that--

"(A) provides for remedies in the case of a breach of the agreement or contract;

"(B) references a tribal code, ordinance, or ruling of a court of competent jurisdiction that discloses the right of the Indian tribe to assert sovereign immunity as a defense in an action brought against the Indian tribe; or

"(C) includes an express waiver of the right of the Indian tribe to assert sovereign immunity as a defense [**47] in an action brought against the Indian tribe (including a waiver that limits the nature of relief that may be provided or the jurisdiction of a court with respect to such an action).

"(e) Not later than 180 days after the date of enactment of the Indian Tribal Economic Development and Contract Encouragement Act of 2000, the Secretary shall issue regulations for identifying types of agreements or contracts that are not covered under subsection (b).

"(f) Nothing in this section shall be construed to--

"(1) require the Secretary to approve a contract for legal services by an attorney;

"(2) amend or repeal the authority of the National Indian Gaming Commission under the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.); or

"(3) alter or amend any ordinance, resolution, or charter of an Indian tribe that requires approval by the Secretary of any action by that Indian tribe."

[*3] SEC. 3. CHOICE OF COUNSEL.

Section 16(e) of the Act of June 18, 1934 (commonly referred to as the "Indian Reorganization Act") (48 Stat. 987, chapter 576; 25 U.S.C. 476(e)) is amended by striking ", the choice of counsel and fixing of fees to be subject to the approval of the Secretary".

DESCRIPTORS: INDIAN TRIBAL ECONOMIC DEVELOPMENT AND CONTRACT ENCOURAGEMENT ACT; INDIANS; ECONOMIC DEVELOPMENT; DEPARTMENT OF INTERIOR; COMMERCIAL LAW; PRIVILEGES AND IMMUNITIES; ADMINISTRATIVE LAW AND PROCEDURE; INDIAN REORGANIZATION ACT; LAWYERS; PROFESSIONALS' FEES



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

In reply, please address to:
Main Interior, Room 6513

Peter Kaufman, Esq.
Deputy Attorney General
110 West A Street, Suite 1100
San Diego, CA 92101

DEC 12 2008

Dear Mr. Kaufman:

This letter is in response to your telephone inquiry requesting information on the status of the leadership for the California Valley Miwok Tribe (CVMT). CVMT presents the Bureau of Indian Affairs (BIA) with a unique situation. The following summarizes the history of the Tribe and the current leadership dispute.

CVMT began as a rancheria set up for 12 individual Indians in 1916. The government set aside .92 acres of land on which those twelve individuals could live. In 1935, the sole adult member of the rancheria voted not to reject the Indian Reorganization Act (IRA).¹ In 1966, the Federal government undertook to terminate the rancheria by, among other things, distributing the assets of the rancheria to the rancheria's residents. Ultimately, the Federal government failed to take the steps necessary to complete terminate of the Federal relationship with the rancheria and the rancheria continued to exist. There was one resident, Mabel Hodge Dixie. For reasons that are not relevant to your inquiry, the government did not convey the property to Ms. Dixie successfully and ultimately held it in trust for her. When she died, her heirs inherited the 0.92 acre held in trust by the government. In 1998, Ms. Dixie's son, Yakima Dixie, resided on the rancheria land and was its only known member. That same year, Silvia Burley, a distant relative of Mr. Dixie, approached Mr. Dixie about adopting her, her two daughters, and her granddaughter into the Tribe so that they would be eligible for Indian health and education benefits. Mr. Dixie adopted Ms. Burley and her family.

Mr. Dixie and Ms. Burley became interested in organizing the tribe formally— that is establishing a tribal government. In 1999, the two of them approached the BIA for assistance. At that time, Mr. Dixie acted as the Tribe's leader and he held the title of "Chairman." On April 20, 1999, Ms. Burley submitted a purported letter of resignation from Mr. Dixie. The next day, Mr. Dixie asserted he never resigned his position and refused to do so. He claims that Ms. Burley forged his name on the resignation letter. After Mr. Dixie's purported resignation, Ms. Burley became leader of the Tribe, having been elected by herself and one of her daughters. Ms. Burley claimed the title of

¹ While it is common for people to refer to the Indians of a reservation as voting to accept the IRA, the act applied to a reservation unless a majority of the Indians voted against its application within a year, later extended for another year. See 25 U.S.C. § 478.

“Chairman.” The BIA accepted her in this position but noted the leadership dispute between her and Mr. Dixie. On March 7, 2000, the BIA wrote in a letter to Ms. Burley that it would not interfere in the dispute unless the dispute continued without resolution and the government-to-government relationship between the United States and the Tribe became threatened. If the government-to-government relationship were to become threatened, the BIA advised, it would advise the Tribe to resolve the dispute within a reasonable period of time.

Ms. Burley and her daughters responded by attempting to organize the Tribe. Initially, they sought to organize the government under the provisions of the Indian Reorganization Act, but the BIA failed to call the requisite election on the proposed constitution.

In 2002, counsel purporting to represent the California Valley Miwok Tribe and Ms. Burley filed suit in the United States District Court for the Eastern District of California claiming the United States had breached its trust responsibilities and violated the California Rancheria by conveying the less than one acre of land to Ms. Dixie in 1967 when the tribe had potentially 250 members. The court dismissed the suit on grounds that it was filed beyond the six-year statute of limitations. The Ninth Circuit Court of Appeals affirmed in an unpublished opinion. See *California Valley Miwok Tribe v. United States*, No. 04-16676, 2006 WL 2373434 (9th Cir., Aug. 17, 2006)

Ultimately, in 2003, Ms. Burley tried to organize the Tribe under the Tribe’s inherent sovereign authority without the supervision of the BIA. Ms. Burley submitted the Tribe’s constitution to the BIA for informational purposes. The BIA reviewed the constitution and determined that it was not valid because Ms. Burley had failed in the process of developing and adopting the constitution to include other Indians with legitimate ties to the Tribe. On March 26, 2004, the BIA informed Ms. Burley that the Tribe remained unorganized and had no government. Because the Tribe had no government, it could not have a governmental leader. The BIA would not recognize Ms. Burley as Chairman, that is, the governmental leader of the Tribe. Instead the BIA would deal with her as a “spokesperson” or “person of authority” for the Tribe for the purposes of awarding Federal contracts.

Meanwhile, Mr. Dixie continued to assert that he was the hereditary leader of the Tribe and that he had never resigned his position. In March 2005, a representative of the Assistant Secretary – Indian Affairs decided Mr. Dixie’s appeal of the BIA’s acceptance of Ms. Burley as tribal Chairman. In the letter dismissing Mr. Dixie’s appeal, the Deputy Assistant Secretary informed Mr. Dixie that Ms. Burley was not the governmental leader of the Tribe. In fact, the letter explained, the Tribe could have no governmental leader until it had a government developed through an organizational process that included the broader tribal community of other Indians with legitimate ties to the Tribe.

Thus, the BIA faced a stand-off between Ms. Burley, who insisted the Tribe had organized properly under her constitution, and Mr. Dixie, who claimed to be the hereditary leader of the Tribe. Ms. Burley sued the BIA in Federal district court in the District of Columbia, claiming that the BIA improperly denied her constitution’s validity.

The district court granted the BIA's motion to dismiss for failure to state a claim. The Court of Appeals affirmed. See *California Valley Miwok Tribe v. United States*, 424 F. Supp. 2d 197 (D.D.C. 2006), *aff'd* 515 F.3d 1262 (D.C. Cir. 2008)

When the district court granted its motion to dismiss, the BIA worked with both Ms. Burley and Mr. Dixie to assist the Tribe in organizing itself. After initial efforts by the BIA to find a mutually agreeable solution, Ms. Burley chose not to cooperate. The BIA decided to initiate the organization process by identifying those persons who are lineal descendants of the original twelve Indians for whom the government established the rancheria, the single resident who voted in 1935 on the IRA, and the sole distributee, Mabel Hodge Dixie. Ms. Burley appealed the BIA's decision to the Interior Board of Indian Appeals (IBIA), *California Valley Miwok Tribe v. Pacific Regional Director*, Docket No.: IBIA 07-100-A. Under the Department's regulations, a decision of a Regional Director that has been appealed to IBIA is not final and effective except under certain circumstances, not present here, which effectively stayed the BIA's effort to assist the Tribe in organizing itself. See 25 C.F.R. § 2.6(a).

When the BIA is faced with a situation such as this, when it cannot determine who the legitimate leader of the Tribe is, the BIA must first defer to the Tribe to resolve the dispute. See, e.g., *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 65 (1978); *Fisher v. District Court*, 424 U.S. 382, 386-89 (1976); *Smith v. Babbitt*, 100 F.3d 556, 559 (8th Cir. 1996); *Wheeler v. Department of the Interior*, 811 F.2d 549 (10th Cir. 1987). The difficulty with CVMT is that because it has no government, it has no governmental forum for resolving the dispute. In similar situations, the BIA would turn to a tribe's general council, that is, the collective membership of the tribe. *Johannes Wanatee v. Acting Minneapolis Area Director*, 31 IBIA 93 (1997). But because CVMT has not even taken the initial step of determining its membership, a general council meeting is not possible.

The only answer is for the BIA to wait for the Tribe to organize itself. The Tribe will be able to do so once the IBIA decides Ms. Burley's appeal. The IBIA has a significant workload but the briefing on Ms. Burley's appeal was completed essentially a year ago and the D.C. Circuit Court opinion of earlier this year has been served as supplemental authority in the IBIA proceedings so we could expect a decision at any time. In the meantime, neither the BIA nor any court has authority to resolve the leadership dispute that is crippling the Tribe. See, *Goodface v. Grassrope*, 708 F.2d 335 (8th Cir. 1983).

I hope that this letter provides all the information you need. Should you need additional information or have further questions, please contact Jane Smith (202-208-5808), the member of my staff handling this matter.

Sincerely,



Edith R. Blackwell
Associate Solicitor, Indian Affairs



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814

IN REPLY REFER TO

MAR 26 2004

Certified Mail No. 7003 1680 0002 3896 9127
Return Receipt Requested

Ms. Sylvia Burley, Chairperson
California Valley Miwok Tribe
10601 Escondido Pl.
Stockton, California 95121

Dear Ms. Burley:

This letter acknowledges our February 11, 2004, receipt of a document represented to be the tribal constitution for the California Valley Miwok Tribe. It is our understanding that the Tribe has shared this tribal constitution with the Bureau of Indian Affairs (BIA) in an attempt to demonstrate that it is an "organized" tribe. Regrettably, we must disagree that such a demonstration is made.

Although the Tribe has not requested any assistance or comments from this office in response to your document, we provide the following observations for your consideration. As you know, the BIA's Central California Agency (CCA) has a responsibility to develop and maintain a government-to-government relationship with each of the 54 federally recognized tribes situated within CCA's jurisdiction. This relationship, 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 and this view is borne out not only by the document that you have presented as the tribe's constitution but additionally, by our relations over the last several decades with members of the tribal community in and around Sheep Ranch Rancheria. (Let me emphasize that being an organized vis-à-vis unorganized tribe ordinarily will not impact either your tribe's day-to-day operations but could impact your tribe's continued eligibility for certain grants and services from the United States).

Where a tribe that has not previously organized seeks to do so, BIA also has a responsibility to determine that the organizational efforts reflect the involvement of the whole tribal community. We have not seen evidence that such general involvement was

4

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attempted or has occurred with the purported organization of your tribe. For example, we have not been made aware of any efforts to reach out to the Indian communities in and around the Sheep Ranch Rancheria, or to persons who have maintained any cultural contact with Sheep Ranch. To our knowledge, the only persons of Indian descent involved in the tribe's organization efforts, were you and your two daughters. We are unaware of any efforts to involve Yakima Dixie or Mr. Dixie's brother Melvin Dixie or any offspring of Merle Butler, Tillie Jeff or Lenny Jeff, all persons who are known to have resided at Sheep Ranch Rancheria at various times in the past 75 years and persons who have inherited an interest in the Rancheria. We are also not aware of any efforts to involve Indians (such as Lena Shelton) and their descendents who once lived adjacent to Sheep Ranch Rancheria or to investigate the possibility of involving a neighboring group. We are aware that the Indians of Sheep Ranch Rancheria were in fact, part of a larger group of Indians residing less than 20 miles away at West Point. Indeed, at your February 23, 2004 deposition, you yourself testified you were at one time of the West Point Indian Community; we understand as well, that you had siblings residing there for many years. The BIA remains available, upon your request, to assist you in identifying the members of the local Indian community, to assist in disseminating both individual and public notices, facilitating meetings, and otherwise providing logistical support.

It is only after the greater tribal community is initially identified that governing documents should be drafted and the Tribe's base and membership criteria identified. The participation of the greater tribal community is essential to this effort. We are very concerned about the designated "base roll" for the tribe as identified in the submitted tribal constitution; this "base roll" contains only the names of five living members all but one whom were born between 1960 and 1996, and therefore would imply that there was never any tribal community in and around Sheep Ranch Rancheria until you met with Yakima Dixie, asking for his assistance to admit you as a member. The base roll, thus, suggests that this tribe did not exist until the 1990's, with the exception of Yakima Dixie. However, BIA's records indicate with the exception not withstanding, otherwise.

Base membership rolls are used to establish a tribe's cohesiveness and community at a point in time in history. They would normally contain the names of individuals listed on historical documents which confirm Native American tribal relationships in a specific geographical region. Since tribes and bands themselves did not usually possess such historical documents, therefore, tribal base rolls have included persons listed on old census rolls, Indian Agency rolls, voters rolls, etc. Our experience with your sister Miwok tribes (e.g., Shingle Springs Rancheria, Tuolumne Rancheria, Ione Band, etcetera) leads us to believe that Miwok tradition favors base rolls identifying persons found in Miwok tribes stretching from Amador County in the North to Calaveras and Mariposa Counties in the South. The Base and Enrollment criteria for these tribes vary; for example, Amador County tribes use the 1915 Miwok Indian Census of Amador County, El Dorado County tribes utilize the 1916 Indian Census Roll, tribe(s) in Tuolumne County utilize a 1934 IRA voters' list. The base roll typically constitutes the

Page 3 of 4

cornerstone of tribal membership and based upon our experience, has been the basic starting point and foundation for each of the Miwok tribes in our jurisdiction, i.e., the Ione Band of Miwok Indians, Shingle Springs Rancheria and Tuolumne Rancheria.

We must continue to emphasize the importance of the participation of a greater tribal community in determining membership criteria. We reiterate our continued availability and willingness to assist you in this process and that via PL 93-638 contracts intended to facilitate the organization or reorganization of the tribal community, we have already extended assistance. We urge you to continue the work that you have begun towards formal organization of the California Valley Miwok Tribe.

If we can assist your efforts in any way, please contact Raymond Fry, Manager, Tribal Services, at (916) 930-3794.

Should you wish to appeal any portion of this letter, you are advised that you may do so by complying with the following:

This decision may be appealed to the Regional Director, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825. In accordance with the regulations in 25 CFR Part 2 (copy enclosed). Your notice of appeal must be filed in this office within 30 days of the date you receive this decision. The date of filing or notice is the date it is post marked or the date it is personally delivered to this office. Your notice of appeal must include your name, address and telephone number. It should clearly identify the decision to be appealed. If possible attach a copy of the decision. The notice of and the envelope which it is mailed, should be clearly labeled "NOTICE OF APPEAL." The notice of appeal must list the names and addresses of the interested parties known to you and certify that you have sent them copies of the notice.

You must also send a copy of your notice to the Regional Director, at the address given above.

If you are not represented by an attorney, you may request assistance from this office in the preparation of your appeal.

Page 4 of 4

If no timely appeal is filed, this decision will become final for the Department of the Interior at the expiration of the appeal period. No extension of time may be granted for filing a notice of appeal.

Sincerely,

Dale Risling, Sr.

Dale Risling, Sr.
Superintendent

CC: Pacific Regional Director
Debra Luther, Assistant US Attorney
Myra Spicker, Deputy Solicitor
Yakima Dixie-Tribal Member



Case 1:05-cv-00739-JR Document 25-5 Filed 09/22/05 Page 5 of 16
United States Department of the Interior

OFFICE OF THE SOLICITOR
1849 C STREET N.W.
WASHINGTON, DC 20240

In reply, please address to:
Main Interior, Room 6456

Mr. Gary Qualset
Deputy Director for Licensing & Compliance
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 200
Sacramento, CA

May 20, 2004

Re: California Valley Miwok Tribe

Dear Mr. Gary Qualset:

The purpose of this letter is to confirm to you that the Department of the Interior does have pending before it an appeal from Yakima Dixie contesting the Department's recognition of Silvia Burley as the spokesperson of the California Valley Miwok Tribe. In addition, the Department is a defendant in litigation in the United States District Court for the Eastern District of California brought by the California Valley Miwok Tribe under the apparent direction of Ms. Burley. In that litigation, Brian Golding, the Tribal Operations Specialist for both the Central California Agency of the Bureau of Indian Affairs (BIA) and for the Pacific Region of the BIA recently described Ms. Burley's status as follows:

9. At the present time, the Bureau of Indian Affairs acknowledges Silvia Burley as the authorized representative of the California Valley Miwok Tribe with whom government-to-government business is conducted. However, the BIA does not view the Tribe to be an organized tribe and, therefore declines to recognize Ms. Burley as a "tribal chairperson" in the traditional sense as one who exercises authority over an organized Indian tribe.

Declaration of Brian Golding, at 4, ¶ 9. A copy of Mr. Golding's declaration is enclosed for your convenience.

The status of the California Valley Miwok Tribe as an unorganized tribe lacking a sufficiently defined governmental structure and membership is described in more detail in other paragraphs of Mr. Golding's declaration and the March 26, 2004, letter to Ms. Burley from the Superintendent of the Central California Agency, a copy of which was attached to Mr. Golding's declaration as Exhibit "b," and a copy of which is enclosed for your ready reference.

We will be glad to try to keep you informed of the status of the litigation and the dispute over the organization and leadership of the California Valley Miwok Tribe. In the meantime, if you have

**Declaration S. KEEP
Exhibit 1**

CVMT-2011-000528

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Case 1:05-cv-00739-JR Document 25-5 Filed 09/22/05 Page 6 of 16

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any questions or if we can be of any assistance in the future in some other matter, please don't hesitate to call on us.

Sincerely,



Scott Keep
Assistant Solicitor
Branch of Tribal Government and Alaska
Division of Indian Affairs

Enclosures

cc: John W. Spittler, Esq.
California Gambling Control Commission
2399 Gateway Oaks Drive, Suite 200
Sacramento, CA

Thomas Wolfrum, Esq.
1460 Maria Lane, Suite 340
Walnut Creek, CA 94596

Deborah G. Luther, Esq.
Assistant United States Attorney
United States Attorney's Office
Eastern District of California
501 I Street, Suite 10-100
Sacramento, CA 95814

Phillip E. Thompson, Esq.
Thompson Associates
9450 Pennsylvania Avenue
Suite 4
Upper Marlboro, MD 20772

Brian Golding
Tribal Operations Specialist
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

FEB 11 2005

Mr. Yakima K. Dixie
Sheep Ranch Rancheria of MiWok Indians of California
11178 Sheep Ranch Rd.
P.O. Box 41
Sheep Ranch, California 95250

Dear Mr. Dixie:

I am writing in response to your appeal filed with the office of the Assistant Secretary – Indian Affairs on October 30, 2003. In deciding this appeal, I am exercising authority delegated to me from the Assistant Secretary – Indian Affairs pursuant to 209 DM 8.3 and 110 DM 8.2. In that appeal, you challenged the Bureau of Indian Affairs' ("BIA") recognition of Sylvia Burley as tribal Chairman and sought to "nullify" her admission, and the admission of her daughter and granddaughters into your Tribe. Although your appeal raises many difficult issues, I must dismiss it on procedural grounds.

Your appeal of the BIA's recognition of Ms. Burley as tribal Chairman has been rendered moot by the BIA's decision of March 26, 2004, a copy of which is enclosed, rejecting the Tribe's proposed constitution. In that letter, the BIA made clear that the Federal government did not recognize Ms. Burley as the tribal Chairman. Rather, the BIA would recognize her as "a person of authority within California Valley Miwok Tribe." Until such time as the Tribe has organized, the Federal government can recognize no one, including yourself, as the tribal Chairman. I encourage you, either in conjunction with Ms. Burley, other tribal members, or potential tribal members, to continue your efforts to organize the Tribe along the lines outlined in the March 26, 2004, letter so that the Tribe can become organized and enjoy the full benefits of Federal recognition. The first step in organizing the Tribe is identifying putative tribal members. If you need guidance or assistance, Ray Fry, (916) 930-3794, of the Central California Agency of the BIA can advise you how to go about doing this.

In addition, your appeal to my office was procedurally defective because it raised issues that had not been raised at lower levels of the administrative appeal process. In May 2003, you contacted the BIA to request assistance in preparing an appeal of the BIA's recognition of Ms. Burley as tribal Chairman. You specifically stated that you were not filing a formal Notice of Appeal. In June 2003, you filed an "Appeal of inaction of official," pursuant to 25 C.F.R. §2.8, with the Central California Agency Superintendent challenging the BIA's failure to respond to your request for assistance. In August 2003, you filed another "Appeal of inaction of official"

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with the Acting Regional Director challenging the failure of the Superintendent to respond to your appeal of the BIA's inaction. Your appeal with my office, however, was not an "Appeal of inaction of official." Rather, your "Notice of Appeal" challenged the BIA's recognition of Ms. Burley as tribal Chairman and sought to nullify the Tribe's adoption of her and her family members. Those issues were not raised below. They are not, therefore, properly before me.

In addition, your appeal appears to be untimely. In 1999, you first challenged the BIA's recognition of Ms. Burley as Chairman of the Tribe. In February 2000, the BIA informed you that it defers to tribal resolution of such issues. On July 18, 2001, you filed a lawsuit against Ms. Burley in the United States District Court for the Eastern District of California challenging her purported leadership of the Tribe. On January 24, 2002, the district court dismissed your lawsuit without prejudice and with leave to amend, because you had not exhausted your administrative remedies by appealing the BIA's February 2000 decision. After the court's January 24, 2002, order, you should have pursued your administrative remedies with the BIA. Instead, you waited almost a year and a half, until June 2003, before raising your claim with the Bureau. As a result of your delay in pursuing your administrative appeal after the court's January 24, 2002, order, your appeal before me is time barred.

In light of the BIA's letter of March 26, 2004, that the Tribe is not an organized tribe, however, the BIA does not recognize any tribal government, and therefore, cannot defer to any tribal dispute resolution process at this time. I understand that a Mr. Troy M. Woodward has held himself out as an Administrative Hearing Officer for the Tribe and purported to conduct a hearing to resolve your complaint against Ms. Burley. Please be advised that the BIA does not recognize Mr. Woodward as a tribal official or his hearing process as a legitimate tribal forum. Should other issues arise with respect to tribal leadership or membership in the future, therefore, your appeal would properly lie exclusively with the BIA.

Sincerely,



Michael D. Olsen
Principal Deputy
Acting Assistant Secretary - Indian Affairs

Enclosure

cc: Sylvia Burley
Troy M. Woodward, Esq.
Thomas W. Wolfrum, Esq.
Chadd Everone

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CALIFORNIA VALLEY MIWOK TRIBE,)
formerly SHEEP RANCH OF ME-WUK)
INDIANS OF CALIFORNIA,)

Plaintiff,)

v.)

UNITED STATES OF AMERICA,)

GALE A. NORTON, Secretary of the)
Interior,)

MICHAEL D. OLSEN, Acting Assistant)
Secretary - Indian Affairs,)

Defendants.)

No. 1:03CV00739
Judge James Robertson

DECLARATION OF JANICE WHIPPLE-DEPINA



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I, JANICE WHIPPLE-DEPINA, declare:

1. I am the Awarding Official at the BIA's Central California Office located in Sacramento, California. I have personal knowledge of the facts set forth in this Declaration.

2. In 2002, I awarded (pursuant to the Superintendent's authority) a P.L. 93-638 contract between the BIA and the California Valley Miwok Tribe. An annual funding agreement with respect to this contract was signed on February 8, 2005, and reflects FY 2005 funding.

3. On July 19, 2005, I sent a letter to Sylvia Burley enclosing a modification of the "638" contract which "suspends the current ["638"] contract in its entirety." I explained my reasons for my action in this letter. Nothing in this letter should be read to indicate that BIA is taking the position that Ms. Burley is no longer "a person of authority" within the Tribe.

4. Based upon the recommendations of the Office of the Solicitor, on August 19, 2005, I sent Ms. Burley a succeeding modification of the "638" contract the substance of which is described as follows:

"The contract is hereby reinstated only for the purposes of fulfilling the Scope of Work and approved Standards for the Aid to Tribal Government Program as outlined in the original contract dated April 10, 2002."

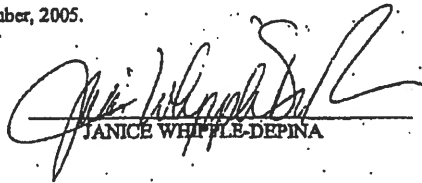
The quoted language is not intended in any way to that the BIA recognizes Ms. Burley as the Tribal Chairperson of the California Valley Miwok Tribe. It is my understanding that her status continues to be that of a person of authority within the Tribe.

5. The August 19th reinstatement of the contract, in my view, amounted to a complete revocation of the July 19th suspension of the contract.

6. On August 24, 2005, I returned a telephone call to Mr. Cy Rickards, an employee of the California Gambling Control Commission. He requested that I provide him a copy of BIA's August 19, 2005, modification of the Tribe's "638" contract. I sent him both a copy of the modification and a copy of the August 19th letter transmitting that modification to Ms. Burley. At the end of our conversation, Mr. Rickards informed me that the Commission had decided to reverse its prior decision of August 4, 2005, to not release the current quarterly distribution of RSTF (Revenue Sharing Tribal Funds) monies to the California Valley Miwok Tribe and would now be releasing these monies to the Tribe.

Pursuant to the provisions of 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 21 day of September, 2005.


JANICE WHITTLE-DEPINA





IN REPLY REFER TO

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

JAN 29 2007

CERTIFIED MAIL NO. 7002 3150 0005 2284 7789
RETURN RECEIPT REQUESTED

Ms. Silvia Burley
10601 Escondido Place
Stockton, California 95212

Dear Ms. Burley:

This letter is in response to your letter dated January 3, 2007, in which you requested on behalf of the California Valley Miwok Tribe (Tribe), "aka" as the Sheep Ranch Rancheria that a lump sum payment be scheduled for the Tribe's FY-2007 P.L. 93-638.

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.

Therefore, until the organizational process of the Tribe is completed, I am exercising my discretion to continue to impose a quarterly payment schedule for the Tribe's FY-2007 contract as expressly authorized by P.L. 93-638 (25 U.S.C. § 450j(b) and § 450l(b)).

Sincerely,


Regional Director

cc: Superintendent, Central California Agency

TAKE PRIDE
IN AMERICA 

④



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Central California Agency
650 Capitol Mall, Suite 8-500
Sacramento, CA 95814-4710

IN REPLY REFER TO

Indian Self-Determination

NOV 16 2007

Silvia Burley
California Valley Miwok Tribe
10601 Escondido Place
Stockton, California 95212

Dear Ms. Burley:

Enclosed is a fully executed duplicate of Modification No. Twenty-Six (26) for Contract No. CTJ51T62802 (FY 07 Aid to Tribal Government Program-Mature Status).

For future payments regarding this contract, please contact Tina Fourkiller, Indian Self-Determination Specialist at (916) 930-3744.

Should you have any questions regarding this contract, please contact Janice Whipple-DePina, Indian Self-Determination Officer at (916) 930-3742.

Sincerely,

Troy Burdick
Superintendent

Enclosures

RECEIVED
NOV 16 2007

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT				DUPLICATE	PAGE 1 OF 1 PAGES
2. AMENDMENT/MODIFICATION NO. Twenty-Five (25) 26 Jc		3. EFFECTIVE DATE 9/21/07	4. REQUISITION/PURCHASE REQ. NO.		5. PROJECT NO. (If applicable)
8. ISSUED BY CODE		7. ADMINISTERED BY (If other than Item 6) CODE			
Bureau of Indian Affairs Central California Agency 650 Capitol Mall, Suite 8-500 Sacramento, California 95814					
8. NAME AND ADDRESS OF CONTRACTOR (No. street, county, State and ZIP Code)					
California Valley Miwok Tribe 10601 Escondido Place Stockton, California 95212 (209) 931-4567					
9A. AMENDMENT OF SOLICITATION NO.					
9B. DATED (SEE ITEM 11)					
10A. MODIFICATION OF CONTRACT/ORDER NO. CTJ51T62802					
10B. DATED (SEE ITEM 11)					

FACILITY CODE **01/01/02**

11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers is extended, is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing items 8 and 15, and returning copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment your desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (if required)
017 J51628 07/08 T9370 252I \$46,950.00 (Contract Support)

13. THIS ITEM ONLY APPLIES TO MODIFICATION OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM

CHECK ONE	A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.
	B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).
	C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF
X	D. OTHER (Specify type of modification and authority) SECTION 1 - Model Agreement, Attachments 1 and 2

E. IMPORTANT: Contractor is not X is required to sign this document and return copies to the issuing office.


14. DESCRIPTION OF AMENDMENT/MODIFICATION (organized by UCF section headings, including solicitation/contract subject matter where feasible.)
Modification No. Twenty-Five (25) 26 Jc to Contract No. CTJ51T62802 (FY 07 Aid to Tribal Government Program, Mature Status) is issued to make the following change(s):

1. **\$46,950.00** is added to this contract for Contract Support Costs:
 "The final distribution of FY 2007 CSC funds and the CSC Award is represented as follows:
 - The amount of **\$35,584.00** is provided which represents the tribes negotiated lump sum indirect cost for FY 2007 and is based on the negotiated need.
 - The amount of **\$11,366.00** is provided for Direct Contract Support Cost (DCSC) which represents the FY 2007 tribes pro-rata share based on program salaries. This Contract Support Cost is provided in accordance with the management letter dated July 24, 2007 and the CSC Policy of May 2006".
2. The contract total for FY 07 is **\$240,896.00**.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED AND IN FULL FORCE AND EFFECT.
 Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print) Silvia Burley - Chairperson		16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print) Janice Whipple-DePina, Awarding Official BIA-2005-L1-000024	
15B. CONTRACTOR/OFFEROR BY Silvia Burley (Signature of person authorized to sign)		15C. DATE SIGNED 9-21-07	16B. UNITED STATES OF AMERICA BY Janice Whipple-DePina (Signature of Contracting Officer)
		16C. DATE SIGNED 9/21/07	

Cayuga Nation v. Tanner, 824 F.3d 321 (2016)

 KeyCite Yellow Flag - Negative Treatment
Declined to Extend by *Cayuga Nation v. Campbell*, N.Y., October 29, 2019

824 F.3d 321
United States Court of Appeals, Second Circuit.

CAYUGA NATION, John Does, 1–20,
Plaintiffs–Appellants,

v.

Howard TANNER, Village of Union
Springs Code Enforcement Officer, in his
Official Capacity, Edward Trufant, Village
of Union Springs Mayor, in his Official
Capacity, Chad Hayden, Village of Union
Springs Attorney, in his Official Capacity,
Board of Trustees of the [Village of Union
Springs, New York](#), and [Village of Union
Springs, New York](#),
Defendants–Appellees.

Docket No. 15–1667–cv; 15–1937–cv

August Term, 2015

Argued: January 28, 2016

Decided: June 2, 2016

Synopsis

Background: Indian tribe, and individual officers, employees, and representatives of tribe brought action against village, village board, and individual village officials, seeking declaratory and injunctive relief, and alleging that the Indian Gaming Regulatory Act (IGRA) preempted village’s efforts to enforce a local anti-gambling ordinance against a gaming facility located on land owned by tribe. Village moved to dismiss for lack of subject matter jurisdiction. The United States District Court for the Northern District of New York, [David N. Hurd, J.](#), granted motion. Tribe and representatives appealed.

Holdings: The Court of Appeals, [Gerard E. Lynch](#), Circuit Judge, held that:

^[1] decision of Bureau of Indian Affairs (BIA) recognizing

individual as tribe’s federal representative on an interim basis was sufficient to provide individual authority to initiate lawsuit on behalf of tribe, and

^[2] individual officers of tribe had standing to challenge application of a village anti-gambling ordinance.

Vacated and remanded.

West Headnotes (12)

[1] Federal Courts → Jurisdiction

The Court of Appeals reviews the district court’s dismissal of a complaint for lack of subject matter jurisdiction de novo, accepting as true the allegations in the complaint and drawing all reasonable inferences in favor of the plaintiff. *Fed. R. Civ. P. 12(b)(1)*.

9 Cases that cite this headnote

[2] Indians → Federal courts

Federal courts lack authority to resolve internal disputes about tribal law.

8 Cases that cite this headnote

[3] Indians → Government of Indian Country, Reservations, and Tribes in General

It is a bedrock principle of federal Indian law that every tribe is capable of managing its own affairs and governing itself.

2 Cases that cite this headnote

10

Cayuga Nation v. Tanner, 824 F.3d 321 (2016)

- [4] **Indians** → Authority in general
Indians → Duties and liabilities
Indians → Government of Indian Country, Reservations, and Tribes in General

The Bureau of Indian Affairs (BIA) has the authority to make recognition decisions regarding tribal leadership, but only when the situation has deteriorated to the point that recognition of some government was essential for Federal purposes; thus, 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.

10 Cases that cite this headnote

- [5] **Indians** → Authority in general
Indians → Government of Indian Country, Reservations, and Tribes in General

Internal dysfunction or paralysis within tribal governance standing alone does not permit the Bureau of Indian Affairs (BIA) to decide who constitutes the legitimate leadership of a tribe.

5 Cases that cite this headnote

- [6] **Indians** → Standing

A recognition decision from the Bureau of Indian Affairs (BIA) is sufficient for the Court of Appeals to find that the recognized individual has the authority to initiate a lawsuit on behalf of a tribe.

6 Cases that cite this headnote

- [7] **Indians** → Standing

Decision of Bureau of Indian Affairs (BIA) recognizing individual as tribe's federal representative on an interim basis for purposes

of administering existing Indian Self-Determination and Education Assistance (ISDA) contracts was sufficient to provide individual authority to initiate lawsuit on behalf of tribe; although decision was interim decision issued for a specific purpose, decision was the only evidence of who was recognized by the Executive Branch as tribe's governing body, there was no evidence that Executive Branch recognized any other group as tribe's governing body and decision explicitly disclaimed recognition of any other group, and there was nothing to suggest that BIA would recognize different tribal leadership in connection with other functions relevant to tribe's dealings with federal government, including its courts.

3 Cases that cite this headnote

- [8] **Indians** → Actions

Individual officers of tribe had standing to challenge application of a village anti-gambling ordinance to a tribe-owned gaming facility located on land owned by tribe, since there was a credible threat that ordinance would be enforced against them; individuals alleged that they intended to conduct bingo games, which was clearly prohibited by ordinance, and village announced its intention to enforce ordinance against tribe and group of individuals, individuals were directly involved in institution and ongoing management of gaming at facility, and were obvious targets of any criminal enforcement of ordinance, and village warned tribe that failure to comply may constitute offense punishable by fine or imprisonment or both. U.S. Const. art. 3, § 2, cl. 1.

8 Cases that cite this headnote

- [9] **Federal Civil Procedure** → In general; injury or interest
Federal Civil Procedure → Causation; redressability

Standing under Article III of the Constitution

Cayuga Nation v. Tanner, 824 F.3d 321 (2016)

requires that an injury be concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling. U.S. Const. art. 3, § 2, cl. 1.

village anti-gambling ordinance to a tribe-owned gaming facility located on land owned by tribe. U.S. Const. art. 3, § 2, cl. 1.

1 Case that cites this headnote

7 Cases that cite this headnote

[10] **Constitutional Law** → **Criminal Law**

When a plaintiff has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.

18 Cases that cite this headnote

[11] **Federal Civil Procedure** → **In general; injury or interest**

The identification of a credible threat sufficient to satisfy the imminence requirement of injury in fact for Article III standing necessarily depends on the particular circumstances at issue, and will not be found where plaintiffs do not claim that they have ever been threatened with prosecution, that a prosecution is likely, or even that a prosecution is remotely possible. U.S. Const. art. 3, § 2, cl. 1.

23 Cases that cite this headnote

[12] **Indians** → **Actions**

Injury alleged by individual officers of tribe, the threat of criminal prosecution from violating ordinance, could be redressed by a favorable decision finding that village ordinance was preempted as applied to gaming at tribe's gaming facility, as required for officers' standing to bring challenge to application of

*323 Plaintiffs–Appellants, the Cayuga Nation, a federally recognized Indian tribe, and individual officers, employees, and representatives of the Cayuga Nation, filed this action in the United States District Court for the Northern District of New York (David N. Hurd, *Judge*) against the Village of Union Springs, the Board of Trustees of the Village, and individual Village officials, seeking declaratory and injunctive relief. Plaintiffs contend that the federal Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701-2721, preempts the defendants' efforts to enforce a local anti-gambling ordinance against a gaming facility located on land owned by Cayuga Nation. The district court dismissed the complaint, holding that it lacked subject matter jurisdiction to hear the case because it could not determine, in light of an ongoing leadership dispute within Cayuga Nation, whether the lawsuit was authorized as a matter of tribal law. Following a motion for reconsideration, the district court additionally held that the individual plaintiffs lacked Article III standing to sue in their own right.

*324 On appeal, the plaintiffs argue that the district court had jurisdiction because the Bureau of Indian Affairs had recognized Clint Halftown, who initiated this suit, as the Cayuga Nation's "federal representative," thereby relieving the court of the need to resolve questions of tribal law, and because the individual plaintiffs had standing to challenge the anti-gaming ordinance. We agree and therefore VACATE the district court's order dismissing the complaint and REMAND for further proceedings consistent with this opinion.

Attorneys and Law Firms

David W. DeBruin (Joshua M. Segal and Matthew E. Price, on the brief), Jenner & Block LLP, Washington, D.C., for Plaintiffs–Appellants.

Cornelius D. Murray, O'Connell and Aronowitz, P.C., Albany, N.Y., for Defendants–Appellees.

Before: Calabresi, Lynch, and Lohier, Circuit Judges.

Opinion

Cayuga Nation v. Tanner, 824 F.3d 321 (2016)

Gerard E. Lynch, Circuit Judge:

Plaintiffs-appellants—the Cayuga Nation (“the Nation”), a federally recognized Indian tribe, and individual officers, employees, and representatives of the Nation—filed an action in 2014 in the United States District Court for the Northern District of New York (David N. Hurd, *Judge*) against the Village of Union Springs, the Board of Trustees of the Village, and individual Village officials (collectively “the Village”), seeking declaratory and injunctive relief. Plaintiffs contend that the federal Indian Gaming Regulatory Act (“IGRA”), 25 U.S.C. §§ 2701-2721, preempts the application of a local anti-gambling ordinance to a Nation-owned gaming facility, Lakeside Entertainment (“Lakeside”), located on land owned by the tribe.

The Village moved to dismiss the complaint, arguing that the district court lacked subject matter jurisdiction to determine whether the plaintiffs had authority under tribal law to sue on behalf of the Nation, and that the suit was barred by *res judicata*. The district court dismissed the complaint for lack of subject matter jurisdiction, and, following a motion for reconsideration, also concluded that the individual plaintiffs lacked standing as they had not sufficiently alleged an injury-in-fact.¹ On appeal, the Nation argues that this decision was in error because the Bureau of Indian Affairs (“BIA”) had previously recognized Clint Halftown, who initiated this suit, as the Nation’s federal representative, and federal courts may defer to that determination without resolving questions of tribal law. The Nation further argues that the individual plaintiffs adequately alleged a credible threat of prosecution and need not make any further showing of imminent injury to bring a preenforcement challenge to a criminal statute.

We conclude that the district court had subject matter jurisdiction, as it was not required to resolve questions of tribal law to hear the lawsuit, and that the individual plaintiffs have standing to sue. We therefore VACATE the district court’s order dismissing the complaint and REMAND for further proceedings consistent with this opinion.

BACKGROUND

In 2003, the Nation adopted a Class II gaming ordinance pursuant to IGRA, which was then approved by the National Indian Gaming Commission (“NIGC”), and formed a Class II Gaming Commission (“the

Commission”).² Thereafter, the Nation *325 opened Lakeside on land it claimed was within the limits of its reservation. The Village objected on the ground that the construction of Lakeside violated local land use and zoning laws. The Nation sued, seeking a declaratory judgment stating that the property on which Lakeside is located is within Indian Country within the meaning of 18 U.S.C. § 1151(a), that the Nation has jurisdiction over that property, and that the Village’s zoning and land use laws are preempted as applied to Lakeside. That lawsuit was dismissed following the Supreme Court’s decision in *City of Sherrill v. Oneida Indian Nation of N.Y.*, 544 U.S. 197, 125 S.Ct. 1478, 161 L.Ed.2d 386 (2005), leading to the closure of Lakeside in 2005.³

In 2013, members of the Nation, led by Clint Halftown, decided to reopen Lakeside.⁴ Halftown reconstituted the Commission with himself as chairman, and two of his supporters—Tim Twoguns and Gary Wheeler—as members. The Nation resumed contact with the NIGC through the Commission.

Lakeside reopened on July 3, 2013. On that same day, defendant Howard Tanner, the Code Enforcement Officer for the Village, visited the facility and expressed concern about whether the Nation’s conduct of Class II gaming activities was permissible under local law and further stated that the Nation would need a Certificate of Occupancy for the facility. Five days later, the Village’s Board of Trustees determined at an executive meeting that it would enforce a 1958 anti-gambling ordinance (“the Ordinance”) against the Nation. The Ordinance makes the “unauthorized conduct of a bingo game ... punishable as a misdemeanor.” J.A. 290. The following day, the Nation was served with an Order to Remedy Violations that cited the Nation for operating bingo without a license in violation of the Ordinance, and for zoning violations. The Order warned that “[f]ailure to remedy the [violations] ... and to comply with the applicable provisions of law may constitute an offense punishable by fine or imprisonment or both.” J.A. 25. In response, Lakeside’s manager submitted a completed application for a Certificate of Occupancy. Tanner requested additional information from the Nation, which was provided in December 2013.

In the same month, defendant Chad Hayden, the Village Attorney, was quoted in a newspaper article as saying that the Village would move to shut down Lakeside. Shortly thereafter, the Nation was served with two additional Orders to Remedy Violations citing the Ordinance and local zoning rules, as well as state regulations.

The Nation then informed the Village that it would seek a temporary restraining order, as well as preliminary and

Cayuga Nation v. Tanner, 824 F.3d 321 (2016)

injunctive relief. The Village and the Nation subsequently agreed to a “Standstill Agreement” which provided that the Village would take no action against Lakeside *326 without notice and the Nation would not change the nature of the gaming offered there. During this “Standstill” period, the Village maintained the illegality of the Lakeside operation and the viability of enforcement against Halftown. Hayden informed the Nation by letter that “Mr. Halftown’s group [was] in violation of the [Ordinance]” and that Tanner “has served violation notices on Mr. Halftown’s group and will be proceeding in court to compel compliance.” J.A. 674.

Ten months after the parties entered into the Standstill Agreement, the Village advised the Nation that it intended to bring an enforcement action under the Ordinance. Pursuant to the authorization of Halftown, Twoguns, and Wheeler, the Nation filed the instant action and motion for a preliminary injunction the following day.

The Village moved to dismiss the complaint, arguing that the district court lacked subject matter jurisdiction and that the suit was barred by *res judicata*. The district court granted that motion on the ground that it lacked subject matter jurisdiction because determining whether the lawsuit was properly authorized by the Nation would require resolution of questions of tribal law.

The district court’s concern arises from a long-standing leadership dispute within the Nation. The Nation is governed by a Council. In 2003, pursuant to a letter signed by all of the members of the Council, the BIA recognized Halftown as the Nation’s representative for government-to-government purposes. Beginning shortly thereafter, and continuing to the present, there have been attempts to oust Halftown from his position as federal representative.

As of 2006, the Council consisted of six members divided into two groups. The first, which supports Halftown as the federal representative (“the Halftown group”), includes Halftown, Twoguns, and Wheeler. The second, called the “Unity Council,” which believes that Halftown was removed from the Council and his position as federal representative under tribal law, includes the three remaining Council members. In 2009, the Interior Board of Indian Appeals (“IBIA”) affirmed a BIA decision rejecting a demand that it withdraw its recognition of Halftown on the grounds that he had been removed from his position as a matter of tribal law and had misused federal and tribal funds. *George*, 49 IBIA 164 (2009).

In 2011, following a request by the Unity Council that the BIA recognize new federal representatives, the Eastern

Regional Director of the BIA issued a decision regarding the composition of the Council. Based on representations that Halftown had been removed from his position as Council member and federal representative, the Regional Director recognized a new Council. The Halftown group appealed that decision to the IBIA. In January 2014, the IBIA reversed the Regional Director’s determination because it impermissibly intruded into internal tribal affairs. The IBIA took no position in the ongoing leadership dispute and clarified that the BIA may make a recognition decision *only* when such recognition is necessary for a federal purpose.

In February 2015, the Eastern Regional Director of the BIA issued a decision recognizing the 2006 Council, with Halftown as federal representative, for the purposes of administering Indian Self-Determination and Education Assistance (“ISDA”) contracts. The BIA stated that, under the circumstances,

it will on an interim basis recognize the Nation 2006 Council as the last undisputed leadership of the Nation, with Clint Halftown as the Nation’s representative for purposes of administering existing ISDA contracts. As explained below, *327 this *interim* recognition decision is intended to provide the Nation with additional time to resolve this dispute without BIA interference.

J.A. 741 (emphasis in original). In explaining its decision, the BIA stated that it had the option of either making a recognition decision based on its understanding of the Nation’s law, or extending interim recognition to the Nation’s last undisputed leadership. The BIA chose to recognize on an interim basis the last undisputed tribal leadership—the 2006 Council, with Halftown as federal representative—because rendering a new recognition decision would impermissibly intervene in the ongoing leadership dispute. The BIA also noted that circumstances had changed since the issuance of the vacated 2011 decision removing Halftown from his position as federal representative, and that serious questions of legitimacy precluded recognition of either the Halftown group or the Unity Council.

In determining that it could not establish whether this lawsuit was properly authorized by the Nation, the district court observed that the Nation’s law generally required consensus and that three members of the Council supported the lawsuit and three members opposed it. The district court further found that the 2015 BIA decision was insufficient to establish that Halftown was authorized to initiate the lawsuit as “[t]here is nothing in the language of the BIA decision that provides Halftown with the unilateral authority to initiate lawsuits.” S.A. 9. On reconsideration, the district court determined that the individual plaintiffs—three of whom were named in the

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complaint as John Does, but who were identified in a proposed amended complaint prior to the district court's decision as Halftown, Twoguns, and Wheeler—lacked standing as individuals because there had been no specific threat to enforce the ordinance against any person rather than the Nation generally. This appeal followed.

DISCUSSION

^[1]We review the district court's dismissal of the complaint under Fed. R. Civ. P. 12(b)(1) de novo, accepting as true the allegations in the complaint and drawing all reasonable inferences in favor of the plaintiff. *Town of Babylon v. Fed. Hous. Fin. Agency*, 699 F.3d 221, 227 (2d Cir. 2012). We consider first whether the district court lacked jurisdiction to hear the Nation's claim before considering the standing of the individual plaintiffs.

I. The Nation

The parties characterize their dispute as concerning whether Halftown had “standing” to initiate this lawsuit on behalf of the Nation. We note at the outset, however, that this issue is not a question of “standing” in the Article III sense, as there is no doubt that the Nation, which is the principal named plaintiff in this action, has standing to bring the claim asserted in the complaint. Rather, the dispute between the parties concerns whether Halftown is authorized by tribal law to initiate this lawsuit on behalf of the Nation. Though not a question of constitutional standing, that issue nonetheless implicates the subject matter jurisdiction of this Court.

^[2] ^[3] ^[4] ^[5]Several principles of law guide our analysis. First, and most significantly, federal courts lack authority to resolve internal disputes about tribal law. See *Shenandoah v. U.S. Dep't of Interior*, 159 F.3d 708, 712 (2d Cir. 1998); *Runs After v. United States*, 766 F.2d 347, 352 (8th Cir. 1985). It is “a bedrock principle of federal Indian law that every tribe is capable of managing its own affairs and governing itself.” *Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1263 (D.C. Cir. 2008) *328 (internal quotation marks omitted). Second, the BIA has the authority to make recognition decisions regarding tribal leadership, but “only when the situation [has] deteriorated to the point that recognition of some government was essential for Federal purposes.” *Wadena*, 30 IBIA 130, 145 (1996) (emphasis added). Thus, 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.” *United Keetoowah Band of Cherokee Indians*, 22 IBIA 75, 80 (1992). Internal dysfunction or paralysis within tribal governance standing alone, however, does not permit the BIA to decide who constitutes the legitimate leadership of a tribe. Cf. *Goodface v. Grassrope*, 708 F.2d 335, 338–39 (8th Cir. 1983); *Alturas Indian Rancheria*, 54 IBIA 138, 143–44 (2011).

The foregoing principles compel the conclusion that we lack jurisdiction to resolve the question of whether this lawsuit was properly authorized as a matter of tribal law. But we do not need to address that question in order to establish the jurisdiction of the court. To conclude that the case may go forward only if those who filed it were authorized to do so under tribal law either would require the court to answer disputed questions of tribal law—the very thing that federal courts are forbidden to do—or else would prevent the tribe from suing at all, thus rendering the tribe helpless to defend its rights in court. The Village's position would mean that whenever any faction within a tribe asserted a claim to leadership under tribal law that is inconsistent with the claim of authority made by those who filed the lawsuit, the resulting internal division would raise a question of tribal law that the district court would need to resolve to hear the suit, but that the court lacked jurisdiction to answer. That result would be convenient for litigants engaged in disputes with the tribe, but disastrous for the tribe's rights. We therefore hold that where the authority of the individual initiating litigation on behalf of a tribe has been called into dispute, 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.

^[6]As both parties acknowledge, deference to the Executive Branch is appropriate in addressing this question. The BIA has special expertise in dealing with Indian affairs, and we have previously indicated that the BIA's decision to recognize a tribal government can determine a plaintiff's claims. See, e.g., *Shenandoah*, 159 F.3d at 712–13 (noting that the “BIA's determination that [an individual] does not represent the Nation may well moot plaintiffs' claims”); see also *Timbisha Shoshone Tribe v. Salazar*, 678 F.3d 935, 938–39 (D.C. Cir. 2012) (dismissing lawsuit brought by one group on behalf of the tribe after the Executive Branch recognized a different group as the tribe's governing body). Furthermore, as the Supreme Court has acknowledged in the analogous context of foreign relations, recognition of foreign nations “is a topic on which [the United States] must speak with

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one voice,” and that voice must emanate from the Executive. *Zivotofsky ex rel. Zivotofsky v. Kerry*, — U.S. —, 135 S.Ct. 2076, 2086, 192 L.Ed.2d 83 (2015) (internal quotation marks and alteration omitted). Based on those principles, we hold that a recognition decision from the BIA is sufficient for us to find that the recognized individual has the authority to initiate a lawsuit on behalf of a tribe.

¹⁷The Village does not dispute that an unambiguous decision from the BIA acknowledging Halftown as the federal representative, with the authority to initiate *329 lawsuits, would be sufficient to establish his authority to bring the instant lawsuit on behalf of the Nation. The Village argues, however, that the February 2015 BIA decision—which recognized Halftown as the Nation’s federal representative “on an interim basis ... for purposes of administering existing ISDA contracts,” J.A. 741, and did not address the authority of the federal representative with respect to the initiation of litigation—does not have the same effect. We conclude that it is does.

The BIA decision, though couched in limiting language, is the only evidence in the record before us of who is recognized by the Executive Branch as the Nation’s governing body. That decision recognizes the 2006 Council, with Halftown as the federal representative, as the government of the Nation. There is no evidence that the Executive Branch has recognized the Unity Council, or any other group, as the Nation’s governing body and, in fact, the 2015 BIA decision explicitly disclaims recognition of any other group.

Moreover, there is nothing in the BIA’s *reasoning* in the 2015 decision 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. In deciding to recognize Halftown as the federal representative, the BIA explained that changes to intra-tribe dynamics “render it inappropriate for the BIA to take steps that could intrude in the Nation’s ongoing governmental dispute.” J.A. 745. But, because it was necessary for a federal purpose for the United States government to recognize a tribal government to administer ongoing contracts, the BIA recognized, on an interim basis, the last undisputed leadership of the Nation—the 2006 Council, with Halftown as federal representative—as the body with whom it would deal. The reasoning that led the BIA to recognize the 2006 Council would apply with equal force to any situation in which there was a need to recognize one person or group as authorized to act on behalf of the tribe. The authority of the Nation to bring a lawsuit in

federal court is one such situation.⁵

Any finding that the 2015 BIA decision is not sufficient to permit Halftown to initiate litigation on behalf of the Nation would have serious practical implications for the ability of a tribe to initiate or defend litigation in federal court. The BIA, of course, regularly recognizes a tribe’s undisputed leadership without limitations through its course of dealing with the tribe. When there is a conflict over tribal leadership, however, the BIA is precluded from issuing a recognition decision *except* where a federal purpose requires recognition. For that reason, such decisions will typically carry some kind of limiting language. *See, e.g., Acting Governor Leslie Wandrie-Harjo*, 53 IBIA 121, 123 (2011) (discussing BIA decision recognizing an official “for purposes of the ISDA contract modifications and related drawdown requests”); *Timbisha*, 678 F.3d at 937 (citing BIA decision that recognized one faction “for the limited purpose of conducting government-to-government relations necessary for holding a special election”). To require tribes to cite a BIA *330 decision recognizing a tribal government for all purposes, or for the specific purpose of initiating litigation in order to establish the authority of particular individuals to initiate litigation on behalf of the tribe could in many situations prevent tribes from vindicating their rights in federal court. Like the BIA, which must determine whom to recognize as a counterparty to administer ongoing contracts on behalf of the Nation, the courts must recognize someone to act on behalf of the Nation to institute, defend, or conduct litigation. Lacking jurisdiction to resolve the question of governmental authority under tribal law, and lacking the authority under federal law (not to mention the resources and expertise of the BIA) to question the decision of the Executive about whom the federal government should recognize as speaking for the Nation, the only practical and legal option is for the courts to consider the available evidence of the present position of the Executive and then defer to that position.

The Village contends that deference to the BIA’s decision is inappropriate because “[t]he scope of the powers of the federal representative is a question of Nation law” that we lack jurisdiction to consider. J.A. 741 n.1. It is thus possible that Halftown, even if he is accepted as the federal representative, lacks the authority to initiate this lawsuit as a matter of tribal law. We cannot conclude, however, that the possibility that Halftown’s actions run contrary to tribal law requires dismissal of this lawsuit. Such a conclusion would again lead to an untenable result: tribes could be thrown out of federal court by the mere suggestion that the individual or group of individuals initiating litigation on behalf of the tribe had

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overstepped their tribal authority. Moreover, as the BIA has previously suggested, the proper remedy for the misuse of tribal authority is recourse to tribal law or, where applicable, federal laws governing the conduct of the tribal officer. *George*, 49 IBIA at 165-66. It is not for the courts either to decide whether Halftown has exceeded his authority under tribal law, or effectively to deny his authority by the very act of refusing to decide.

The BIA's decision in this case, though an interim decision issued for a specific purpose, is the only evidence in the record before us of who is recognized by the Executive Branch as the governing body of the Nation—the 2006 Council, with Halftown as the federal representative. We hold that we are entitled to defer to the BIA's recognition of an individual as authorized to act on behalf of the Nation, notwithstanding the limited issue that occasioned that recognition. We thus may, and do, conclude that Halftown may initiate litigation on behalf of the Nation in the instant matter, without resolving any questions of tribal law.

II. Individual Plaintiffs

^[8]The district court ruled that the individual plaintiffs—twenty John Doe members of the Nation, three of whom have been identified as Halftown, Twoguns, and Wheeler—lack standing to bring a lawsuit in their own right. The plaintiffs argue that the district court's ruling was erroneous, contending that the individual plaintiffs have standing because there was a credible threat that the Ordinance would be enforced against them. At least with respect to Halftown, Twoguns, and Wheeler, we agree.⁶

*331 ^[9] ^[10] ^[11]“Standing under Article III of the Constitution requires that an injury be concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149, 130 S.Ct. 2743, 177 L.Ed.2d 461 (2010). Preenforcement challenges to criminal statutes—such as the Ordinance—are cognizable under Article III. When a plaintiff “has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder, he should not be required to await and undergo a criminal prosecution as the sole means of seeking relief.” *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298, 99 S.Ct. 2301, 60 L.Ed.2d 895 (1979) (internal quotation marks omitted). “Put differently, the Court held that a plaintiff has standing to make a preenforcement challenge ‘when fear

of criminal prosecution under an allegedly unconstitutional statute is not imaginary or wholly speculative’ ” *Hedges v. Obama*, 724 F.3d 170, 196 (2d Cir. 2013), quoting *Babbitt*, 442 U.S. at 302, 99 S.Ct. 2301. “The identification of a credible threat sufficient to satisfy the imminence requirement of injury in fact necessarily depends on the particular circumstances at issue,” and will not be found where “plaintiffs do not claim that they have ever been threatened with prosecution, that a prosecution is likely, or even that a prosecution is remotely possible.” *Knife Rights, Inc. v. Vance*, 802 F.3d 377, 384 (2d Cir. 2015) (internal quotation marks omitted). The standard established in *Babbitt* “sets a low threshold and is quite forgiving to plaintiffs seeking such preenforcement review,” as courts are generally “willing to presume that the government will enforce the law as long as the relevant statute is recent and not moribund.” *Hedges*, 724 F.3d at 197 (internal quotation marks omitted).

Under that framework, the identified individual plaintiffs here have adequately alleged that they face a credible threat of prosecution. Those plaintiffs have alleged that they intend to conduct bingo games, which is clearly prohibited by the Ordinance, and the Village has announced its intention to enforce the Ordinance against the Nation and “Mr. Halftown's group.” J.A. 674.⁷ Halftown, Twoguns, and Wheeler are directly involved in the institution and ongoing management of gaming at Lakeside in their roles on the Commission, and are obvious targets of any criminal enforcement of the Ordinance. Moreover, the Village has warned the Nation that “[f]ailure ... to comply with the applicable provisions of law may constitute an offense punishable by fine or imprisonment or both.” J.A. 25. Since “imprisonment” is a remedy available only against individuals, and since Halftown, Twoguns, and Wheeler are the members of the Nation most directly involved in opening and operating Lakeside, the individual plaintiffs have plausibly alleged that they have been directly threatened with prosecution. Where, as here, there is reason to believe that the plaintiffs will be targets of criminal prosecution, and there has been no disavowal of *332 an intention to prosecute those individuals,⁸ the plaintiffs have adequately alleged a credible threat of prosecution. See *Knife Rights*, 802 F.3d at 386–87.⁹

^[12]The Village additionally argues that the plaintiffs lack standing because the relief requested is not likely to redress their alleged injuries, as there is no private right of action under IGRA. That argument confuses the *merits* of the plaintiffs' claim with the standing inquiry. The injury alleged by the plaintiffs—threat of criminal prosecution—could be redressed by a favorable decision

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finding that the Ordinance is preempted as applied to gaming at Lakeside. It may well be the case that individual members of the Nation do not have a cause of action under IGRA; however, whether a private cause of action exists goes to the merits of the claim and is properly addressed via a Fed. R. Civ. P. 12(b)(6) motion rather than as a component of the standing inquiry. *See, e.g., Republic of Iraq v. ABB AG*, 768 F.3d 145, 171 (2d Cir. 2014) (affirming district court’s dismissal of a complaint under Rule 12(b)(6) because the Foreign Corrupt Practices Act does not provide a private right of action); *Lopez v. Jet Blue Airways*, 662 F.3d 593, 597–98 (2d Cir. 2011) (affirming district court’s dismissal of a complaint under Rule 12(b)(6) because the Air Carrier Access Act does not provide a private right of action).

The Village further argues that the plaintiffs have failed to show redressability because the Nation may decide to cease its gaming activities. That argument also fails. Although the Nation’s decision to stop its gaming activities could moot the plaintiffs’ claims, a favorable decision may redress the injury alleged in the complaint by preventing the Village from enforcing the Ordinance against the plaintiffs, which is all that is required to establish Article III standing. We do not believe that the standing of the individual plaintiffs—who will suffer an

injury distinct from any felt by the Nation should the Ordinance be enforced *333 against them—should turn on the hypothetical possibility that the Nation will voluntarily cease its current activities.

Accordingly, we conclude that the identified individual plaintiffs have standing in their own right to raise whatever claims they have against enforcement of the Ordinance.¹⁰

CONCLUSION

For the foregoing reasons, the judgment of the district court dismissing the complaint is VACATED and the case is REMANDED for further proceedings consistent with this opinion.

All Citations

824 F.3d 321

Footnotes

- 1 The district court did not reach the Village’s *res judicata* argument.
- 2 Class I gaming consists of social games played for no significant financial stakes or traditional forms of Indian gaming. 25 U.S.C. § 2703(6). Class II gaming includes “the game of chance commonly known as bingo,” and certain card games. *Id.* § 2703(7)(A)(i). Class III is a residual category consisting of non-Class I or II games, including casino-style games and slot machines. *Id.* § 2703(8). Different classes of gaming are subject to different regulation and oversight.
- 3 *City of Sherrill* addressed the manner in which tribes could establish sovereignty over property that was acquired through open-market purchases. 544 U.S. at 198, 125 S.Ct. 1478. Though potentially relevant to the merits of the instant action, *City of Sherrill* has no bearing on the issues of subject matter jurisdiction or standing, which are the only issues addressed in this opinion.
- 4 As will be discussed further below, Halftown and his supporters claim to act on behalf of the governing Council of the Nation; other members of the Nation dispute that claim. By referring to the Halftown group here as “members of the Nation” rather than as “the Council,” we intend neither to endorse nor disparage their claim to authority under tribal law, on which we take no position.
- 5 In a situation in which the BIA has no indication of which tribal leadership it might recognize, the Eighth Circuit has sent the question back to the BIA, “ordering the BIA to recognize one governing body.” *Goodface*, 708 F.2d at 339. Where, as here, however, the BIA has issued an interim decision and there is no reason to believe that the BIA would render a different

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recognition decision if confronted with the precise issue at hand, such remand is unnecessary.

- 6 Our determination that the three identified individual plaintiffs have standing resolves any jurisdictional questions. We leave it to the district court to address, if and when the record develops, whether the seventeen unidentified John Doe plaintiffs—who are alleged to be “unknown officers, employees, and/or representatives of the Nation who are at risk of criminal or civil penalties for conduct relating to the operation of [Lakeside],” J.A. 810, and who are included in the notice of appeal—similarly face a credible threat of enforcement.
- 7 During the Standstill period, Hayden sent the Nation a letter stating that “*Mr. Halftown’s group* is in violation of the [Ordinance]” and that Tanner “has served violation notices on *Mr. Halftown’s group* and will be proceeding in court to compel compliance.” J.A. 674 (emphasis added).
- 8 Far from disavowing any intention to prosecute individuals, the Village maintains, even in its appellate brief, that “[a]lthough the Village cannot seek relief against the Nation, tribal officials ... can be prosecuted for criminal and civil violations of the Village’s laws and ordinances,” and thus the Village “would not be barred from bringing suit against tribal officials and other individuals who are responsible for the illegal activity on the Nation’s property.” Appellee Br. 51.
- 9 In finding that the individual plaintiffs lacked standing, the district court relied primarily on a district court case, *Jones v. Schneiderman*, which declined to apply the “credible threat of prosecution” standard to a Fifth Amendment preenforcement challenge on the ground that it applied only to First Amendment preenforcement challenges. 101 F.Supp.3d 283, 289 n. 4 (S.D.N.Y. 2015). Thus, the court required the plaintiff to show that the threat of prosecution “must target the plaintiff’s planned conduct with some degree of specificity” in order to meet the higher “certainly impending” or “substantial risk” standards for alleging imminent injury. *Id.* at 289–91. However, in *Knife Rights*, which was decided by this Court after *Jones*, we applied the “credible threat of prosecution” standard to a Fifth Amendment challenge to a criminal statute and held that an individual plaintiff could establish standing even where there was no express threat of prosecution specifically directed at the plaintiff. *Knife Rights*, 802 F.3d at 384 n. 4, 386–87.
- Thus, even outside the First Amendment context, the plaintiffs need not allege that the threat of prosecution is directed specifically at them as individuals. But even if we were to impose such a requirement, the allegations in the complaint are sufficient to meet that higher standard. The Village has not declared its intention of enforcing the Ordinance generally, but rather its intention of enforcing it against *the Nation*. As noted in the text above, Halftown, Twoguns, and Wheeler, who are the sole members of the commission responsible for authorizing and managing gaming at Lakeside, are the inevitable targets of any criminal enforcement of the Ordinance.
- 10 Having concluded that the district court erred in dismissing this action for lack of jurisdiction to address issues of tribal law and for lack of standing on the part of the individual plaintiffs, we decline to address in the first instance the merits of the Village’s motion for dismissal on *res judicata* grounds or the plaintiffs’ motion for a preliminary injunction, which were not addressed by the district court. See *Thompson v. Cty. of Franklin*, 15 F.3d 245, 253–54 (2d Cir. 1994). We note that the district court did enter a stay pending appeal but did not consider whether the plaintiffs were likely to succeed in the underlying action, only whether they were likely to succeed on appeal.

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EXHIBIT “2”

California Valley Miwok Tribe: Letter of Clarification

From: Manuel Corrales (mannycorrales@yahoo.com)
To: stephanie.cloud@bia.gov
Bcc: terry@terringsingleton.com; rosspeabody@outlook.com
Date: Wednesday, August 2, 2023 at 11:36 AM PDT

Stephanie Cloud
U.S. DEPARTMENT OF INTERIOR--INDIAN AFFAIRS
1849 C Street N.W., MS-6554
Washington, D.C., 20240

Dear Stephanie:

I tried reaching you several times for the past couple of weeks to get a status on responding to the letter I sent to the Assistant Secretary of Interior, etc., on June 24, 2023. When I spoke with Rene at your office, she confirmed that you had my letter and that you are the designated person handling correspondence for the Assistant Secretary of Interior--Indian Affairs, and that you had my letter. I am attaching another copy.

Please let me know when I might receive a response to my letter. All I need is a short statement to the effect stating that on December 13, 2007, when Silvia Burley signed the Fee Agreement with Manuel Corrales, Jr., she was the designated "person of authority" within the California Valley Miwok Tribe, and she therefore had the authority to sign the Fee Agreement for the Tribe.

That's all I need. Can you write me a letter that states that? It would be greatly appreciated.

Thank you.

Manuel Corrales, Jr., Esq.
Attorney at Law
17140 Bernardo Center Drive, Suite 358
San Diego, California 92128
Tel: (858) 521-0634
Fax: (858) 521-0633
mannycorrales@yahoo.com

 LetterInteriorClarificationFeeAgreementMiwok24June23.pdf
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EXHIBIT “3”

Letter of Clarification: Fee Agreement with California Valley Miwok Tribe

From: Manuel Corrales (mannycorrales@yahoo.com)
To: amy.dutschke@bia.gov
Bcc: terry@terrysingleton.com; rosspeabody@outlook.com
Date: Tuesday, August 8, 2023 at 11:02 AM PDT

Amy Dutschke
Pacific Regional Director
Bureau of Indian Affairs
Pacific regional Office
2800 Cottage Way
Sacramento, CA 95825

Dear Ms. Dutschke:

This confirms our telephone conversation on August 8, 2023. I was told that you were the person who could provide me with a letter of clarification concerning the attached letter I had sent to Interior on June 24, 2023. You requested that I send you the June 24, 2023, letter I had sent to Interior for your review.

All I need is a short statement to the effect stating that on December 13, 2007, when Silvia Burley signed the Fee Agreement with Manuel Corrales, Jr., she was the designated "person of authority" within the California Valley Miwok Tribe, and she therefore had the authority to sign the Fee Agreement for the Tribe.

That's all I need.

The attached letter to Interior dated June 24, 2023, contains various correspondence from Interior and the BIA that shows Ms. Burley was a "person of authority" for the Tribe when she signed my Fee Agreement.

Thank you for your assistance.

Manuel Corrales, Jr., Esq.
Attorney at Law
17140 Bernardo Center Drive, Suite 358
San Diego, California 92128
Tel: (858) 521-0634
Fax: (858) 521-0633
mannycorrales@yahoo.com



LetterInteriorClarificationFeeAgreementMiwok24June23.pdf
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EXHIBIT “4”



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way, Room W-2820
Sacramento, CA 95825

IN REPLY REFER TO:

Manuel Corrales, Jr.
17140 Bernardo Center Drive, Suite 358
San Diego, CA 92128

Dear Mr. Corrales,

We are in receipt of your letter dated June 24, 2023, asking the Department of the Interior to draft a letter in support of your assertion that you are entitled to attorney's fees for your work related to the California Valley Miwok Tribe. The Department declines your request.

Sincerely,

AMY

DUTSCHKE

Regional Director

Digitally signed by
AMY DUTSCHKE
Date: 2023.09.27
14:08:14 -07'00'

CC: Email to mannycorrales@yahoo.com

4

EXHIBIT “5”

Re: Letter of Clarification: Fee Agreement with California Valley Miwok Tribe

From: Manuel Corrales (mannycorrales@yahoo.com)
To: amy.dutschke@bia.gov
Cc: cariannesteinman@outlook.com; hcskanchy@hotmail.com; milanaavanesov45@gmail.com
Bcc: terry@terrysingleton.com
Date: Thursday, September 28, 2023 at 02:45 PM PDT

Ms. Dutschke:

Thank you for your response to my letter dated June 24, 2023. In your letter you state incorrectly that I am asking the Department of Interior for a "letter in support of [my] assertion that [I] am entitled to attorney's fees for [my] work related to the California Valley Miwok Tribe," and you therefore declined my request.

As set forth in my letter, I clearly state that I am asking for a one sentence letter stating to the effect that on December 13, 2007, when Silvia Burley signed the the Fee Agreement with me, she was the designated "person of authority" within the California Valley Miwok Tribe, and therefore she had the authority to sign the Fee Agreement for the Tribe. I say nothing about a letter supporting my assertion that I am entitled to attorney's fees. I am merely asking whether Burley had the authority to sign the Fee Agreement for the Tribe, in light of her designation as a "person of authority" within the Tribe. Can you state that?

I am attaching a copy of your letter for your convenience, so you can review what you sent me.

Thank you for your anticipated cooperation in this regard.

Manuel Corrales, Jr., Esq.
Attorney at Law
17140 Bernardo Center Drive, Suite 358
San Diego, California 92128
Tel: (858) 521-0634
Fax: (858) 521-0633
mannycorrales@yahoo.com

 AmyDutschkeLetter27Sept23.pdf
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5

EXHIBIT “6”

CALIFORNIA VALLEY MIWOK TRIBE

14807 Avenida Central, La Grange CA 95329 Ph: (209) 931.4567

Website: <http://www.californiavalleymiwok.us> E-mail: office@cvmmt.net



Via US mail and Email

Email: mannycorrales@yahoo.com

May 22, 2020

Manual Corrales, Jr.
Attorney at Law
17140 Bernardo Center Dr.
Suite 358
San Diego, California 92128

Re: NOTICE OF TERMINATION

Dear Mr. Corrales,

As the Chairperson of the California Valley Miwok Tribe, I am hereby informing you that this is an Official Notice of Termination, by the California Valley Miwok Tribe, effective immediately.

Attached to this letter is an official Notice of Termination Resolution R-1-05-14-2020

On Thursday, May 14th, 2020, the Governing Body (Tribal Council) of the California Valley Miwok Tribe had discussed and determined in a regularly scheduled meeting that it is in the best interest of the Tribe to terminate your services (Manual Corrales, Jr. Attorney at law) as the attorney representing the California Valley Miwok Tribe in all state and federal legal matters, Ramah litigation, and/or otherwise, effective immediately.

Respectfully,

A handwritten signature in blue ink that reads "Silvia Burley".

Silvia Burley,
Chairperson



CALIFORNIA VALLEY MIWOK TRIBE

14807 Avenida Central, La Grange, CA 95329 Ph: (209) 931.4567

Website: www.californiavalleymiwok.us Email: office@cvmt.net



TRIBAL COUNCIL
GOVERNING BODY OF THE
CALIFORNIA VALLEY MIWOK TRIBE

RESOLUTION OF MAY 14, 2020

R-1-05-14-2020

**AN OFFICIAL NOTICE OF TERMINATION RESOLUTION BY THE
CALIFORNIA VALLEY MIWOK TRIBE OFFICIALLY TERMINATING ATTORNEY
SERVICES AND/OR LEGAL REPRESENTATION(S) OF OR BY
MANUEL CORRALES, JR., ATTORNEY AT LAW; EFFECTIVE IMMEDIATELY**

- Whereas,** the California Valley Miwok Tribe retains and maintains its Tribal identity, its governing body, and its sovereign powers; and
- Whereas,** the California Valley Miwok Tribe is a federally recognized American Indian Tribe and is organized under a resolution form of government established under tribal resolution GC-98-01; and
- Whereas,** the Tribal Council is the duly constituted governing body of the California Valley Miwok Tribe by the authority of the resolution form of government established under tribal resolution GC-98-01; and
- Whereas,** the duly elected Tribal Council ("Tribal Council") of the California Valley Miwok Tribe ("Tribe") is vested with responsibility and authority to retain and/or terminate counsel on behalf of the Tribe; and
- Whereas,** the Tribal Council has determined that it is in the best interests of the Tribe to terminate legal representation by Manuel Corrales Jr. in connection with any and all state and/or federal law suits filed on behalf of or against the California Valley Miwok Tribe, including but not limited to the Ramah litigation; and
- Whereas,** the California Valley Miwok Tribe, Tribal Council approves and authorizes the Chairperson Silvia Burley to terminate the attorney services of Manuel Corrales Jr. effective immediately; and

Whereas, this resolution shall serve as official notice of termination of all services and Representation's in accordance with the section, (Effect of Discharge by Client) of the attorney / client contract, by and between Manuel Corrales, Jr. and the California Valley Miwok Tribe; and

NOW, THEREFORE BE IT RESOLVED, that the Tribal Council of the California Valley Miwok Tribe approves and authorizes the termination of services of Manuel Corrales Jr, Attorney at Law, effective immediately; and

BE IT FURTHER RESOLVED, that Manuel Corrales Jr. shall no longer represent the California Valley Miwok Tribe in any legal capacity and/or otherwise.

CERTIFICATION

This is to certify that the above matter was considered and heard at a duly noticed regular meeting of the California Valley Miwok Tribe Tribal Council, at which time a quorum was present, held on May 14, 2020, and that this resolution was adopted by a vote of 3 in favor, 0 opposed, and 0 abstaining.

ATTEST:

Silvia Burley
Silvia Burley, Chairperson

May 14 2020
Date

Anjelica Paulk
Anjelica Paulk, Vice Chairperson

05-14-2020
Date

Rashel K. Reznor
Rashel Reznor, Secretary-Treasurer

May 14, 2020
Date



EXHIBIT “7”

DEPOSITION OF
SILVIA BURLEY
CORRALES, JR. V. THE CA GAMBLING CONTROL COMM
TAKEN ON
MAY 26, 2021



PHONE 855.525.3860 | 323.938.8750

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Deposition of
SILVIA BURLEY

CORRALES, JR. V. THE CA GAMBLING CONTROL COMM
May 26, 2021

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1	I N D E X	1	E X H I B I T S
2	WITNESS: SILVIA BURLEY	2	(CONTINUED)
3	EXAMINATION BY	3	PLAINTIFF'S
4	MR. PEABODY	4	EX 53
5	MR. WEST	5	
6		6	EX 54
7	E X H I B I T S	7	
8	DESCRIPTION	8	EX 55
9	EX 1	9	
10	Second Amendment to	10	
11	December 13, 2007, "Hybrid	11	EX 56
12	Contingency Fee Agreement	12	
13	with Monthly Rate"	13	EX 70
14		14	
15	EX 3	15	
16	Notice of Termination,	16	EX 72
17	May 22, 2020	17	
18	EX 6	18	EX 75
19	Amended Notice of Lien	19	
20	EX 7	20	EX 87
21	Letter dated December 30,	21	
22	2015, from United States	22	EX 88
23	Department of the Interior	23	
24	Document entitled "Sheep	24	EX 91
25	Ranch Rancheria, Calaveras	25	
	County, California: A History		
	of Its Residents and Their		
	Relationships"		
	EX 9		
	Letter dated May 30, 2019,		
	from United States Department		
	of the Interior		
	EX 12		
	638 letters		
	EX 13		
	Letter dated August 15, 2001,		
	from California Gambling		
	Control Commission to		
	Chairperson Silvia Burley		
	///		
	///		
Page 6		Page 8	
1	E X H I B I T S	1	WEDNESDAY, MAY 26, 2021
2	(CONTINUED)	2	
3	DESCRIPTION	3	THE VIDEOGRAPHER: Good morning. We are now
4	EX 14	4	on the record. Today's date is May 26th, 2021. Time
5	Letter dated July 12, 2000,	5	on the record is 9:33 a.m. Pacific Time.
6	from United States Department	6	This is the video deposition of Silvia Burley
7	of the Interior to Silvia	7	in the matter of Corrales versus The California
8	Burley, Chairperson	8	Gambling Control Commission. This case is filed in the
9	EX 15	9	Superior Court of the State of California. Case number
10	Letter dated June 7, 2001,	10	is 37-2019-00019079-CU-MC-CTL.
11	from United States Department	11	This deposition is taking place via web
12	of the Interior to Silvia Burley,	12	videoconference, all participants attending remotely.
13	Chairperson	13	My name is Ryan LaFond. I am the videographer. Our
14	EX 24	14	court reporter today is Victoria Gifford. We represent
15	Letter dated July 26, 2000,	15	The Sullivan Group of Court Reporters.
16	from Bureau of Indian Affairs	16	Would counsel on the conference please
17	to Kevin Gover	17	identify yourself and state whom you represent
18	EX 25	18	beginning with the questioning attorney.
19	Letter dated March 26, 2004,	19	MR. PEABODY: Thank you. Good morning. My
20	from United States Department	20	name is Ross Peabody. I'm appearing on behalf of the
21	of the Interior to Silvia Burley,	21	plaintiff, Manuel Corrales. I'm also here with
22	Chairperson	22	Attorney Terry Singleton.
23	EX 26	23	MR. CORRALES: Manuel Corrales here in pro
24	California Valley Miwok Tribe,	24	per.
25	Resolution of May 07, 2001,	25	MR. LEPSCH: My name is Peter Lepsch. I'm
	R-1-5-07-2001		
	EX 36		
	Handwritten letter dated		
	August 5th, 1998, from Yakima		
	Dixie		
	EX 43		
	Resolution GC-98-01		
	EX 49		
	Letter dated December 7, 2007,		
	from Manuel Corrales, Jr., to		
	Tiger Polk [sic]		
	EX 50		
	California Valley Miwok Tribe		
	Coversheet dated December 11,		
	2007		
	EX 51		
	Letter dated December 10, 2007,		
	from Manuel Corrales, Jr., to		
	Tiger Paulk and Silvia Burley		
	EX 52		
	Letter dated January 19, 2008,		
	from Manuel Corrales, Jr., to		
	Tiger Paulk		

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1 with the law firm of Peebles Kidder. I'm representing
2 the California Valley Miwok Tribe and the Burley
3 Administration and, in today's deposition,
4 Silvia Burley. No one is with me today. Thank you.
5 MR. WEST: This is Colin West of Morgan,
6 Lewis & Bockius. I represent the Defendant-Intervenors
7 California Valley Miwok Tribe and a number of its
8 members, nonBurley Administration.
9 MR. WAIAN: This is James Waian. I'm from
10 the California Attorney General's Office. I'm
11 representing the California Gambling Control
12 Commission.
13 THE VIDEOGRAPHER: Thank you. Would the
14 reporter please swear in the witness.
15
16 SILVIA BURLEY,
17 HAVING BEEN DULY ADMINISTERED AN
18 OATH REMOTELY BY THE REPORTER, WAS EXAMINED
19 AND TESTIFIED AS FOLLOWS:
20
21 -EXAMINATION-
22
23 BY MR. PEABODY:
24 Q. Good morning. Ms. Burley, can you hear me?
25 A. Yes.

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1 Q. Okay. If at any time you cannot hear me or
2 need for me to slow down, please let me know. Okay?
3 A. Okay.
4 Q. This is an unusual circumstance taking
5 depositions remotely. We're all still getting used to
6 it even though it's been a year, so we'll work our way
7 through this procedure together. Anyway, let's get
8 started.
9 Do you understand you just took an oath to
10 tell the truth?
11 A. Yes.
12 Q. And have you had your deposition taken
13 before?
14 A. Not with -- for the Gambling Control
15 Commission.
16 Q. I understand that. But at any time in your
17 life, have you gone through this procedure where you
18 had a court reporter present and your testimony was
19 being taken?
20 A. Yes.
21 Q. And how many occasions have you -- have you
22 been deposed?
23 A. One.
24 Q. Okay. And that was back in what? Like 2014?
25 A. I think back like in 2000- -- maybe 2000,

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1 2001. Somewhere in there. I'm not sure.
2 Q. Okay. Well, clearly it's been a long time
3 since your deposition was taken. So I'm going to run
4 through the ground rules or admonitions for a
5 deposition. There will be a couple extras since we are
6 in separate locations. So bear with me during this
7 admonition, but it's a reminder for you and also I want
8 it on the record so that it's clear that you were given
9 these instructions. Okay?
10 A. Okay.
11 Q. First of all, you've been deposed. And you
12 said you understand you're -- you're under oath and you
13 understand that; correct?
14 A. Yes.
15 Q. And you understand that even though we're
16 sitting in relatively informal settings, that your
17 testimony today has the force and effect as though you
18 were in court in front of a judge and a jury.
19 Do you understand that?
20 A. Yes.
21 Q. In fact, in the event that you're either
22 unavailable or under other circumstances where we may
23 need to show inconsistent testimony, this tape can be
24 played before a jury. Do you -- or the judge.
25 Do you understand that?

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1 A. I understand that.
2 Q. I'm going to ask you a series of questions in
3 this deposition. If at any time you do not understand
4 one of my questions, please let me know.
5 Will you do that?
6 A. I will.
7 Q. If you go ahead and answer my question, we're
8 going to assume that you understood my question. So
9 I'm placing the burden on you to let me know that I'm
10 not making sense to you or that you don't understand.
11 Is that clear?
12 A. Yes.
13 Q. Okay. The reason I -- I give this admonition
14 is because none of us want you to answer a question
15 that you don't understand, and we also don't want to
16 hear that at the time of trial that "I didn't
17 understand the question" because I'm putting the burden
18 on you to let me know if it's not making sense to you.
19 Fair enough?
20 A. Fair.
21 Q. Okay. Thank you.
22 The deposition is going to be typed up into a
23 booklet form. When it's finished, you'll have an
24 opportunity to read it and make any changes or
25 corrections that you feel are necessary. I want to

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1 members of the tribe as of August 5th, 1998?
 2 A. Yes.
 3 Q. It goes on to say at the next paragraph
 4 (reading), At the conclusion of our meeting, you were
 5 going to reconsider [sic] what enrollment criteria
 6 should be applied to future prospective members. Our
 7 understanding is that such criteria will be used to
 8 identify other members eligible to participate in the
 9 initial organization of the tribe. Eventually, such
 10 criteria would be included in the tribe's constitution.
 11 Did I read that correctly?
 12 A. That's correct.
 13 Q. Was that your understanding after you left
 14 that meeting, that you were -- you folks would put
 15 together criteria for -- for allowing other members
 16 other than the five of you into the tribe?
 17 MR. LEPSCH: Objection. Objection. Calls
 18 for legal reasoning.
 19 MR. WEST: And leading.
 20 BY MR. PEABODY:
 21 Q. Let me read that again because I understand I
 22 misread it.
 23 (Reading) At the conclusion of our meeting,
 24 you were going to consider what enrollment criteria
 25 should be applied to future prospective members. Our

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1 understanding is that such criteria will be used to
 2 identify other persons eligible to participate in the
 3 initial organization of the tribe. Eventually, such
 4 criteria would be included in the tribe's constitution.
 5 Did I read that properly?
 6 A. Yes.
 7 Q. And was that discussed at the meeting,
 8 that the tribe's five members were to -- to consider
 9 enrollment criteria for future members?
 10 A. That's correct.
 11 Q. Was a general council established as a means
 12 to organize the tribe at a later date?
 13 A. A general council was established.
 14 Q. Was it established at or about this time in
 15 September of 1998?
 16 A. Yes.
 17 Q. And the general council consisted of which
 18 members?
 19 A. Yakima Dixie, Silvia Burley, Rashel Reznor,
 20 Angelica Paulk, and Tristian Wallace.
 21 Q. So all five of you were part of the general
 22 council?
 23 A. The general council was Yakima Dixie,
 24 Silvia Burley, and, um, Rashel Reznor because that was
 25 everybody over 18.

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1 Q. Okay. And at the time, Tristian was not 18?
 2 A. No. Tristian or Angelica were under 18.
 3 Q. Okay.
 4 A. They were tribal citizens.
 5 Q. All right. So there were five tribal
 6 citizens, and three were part of the general council;
 7 correct?
 8 A. That's correct.
 9 Q. And were there any other members to the tribe
 10 back in September of 1998 other than the five you --
 11 you mentioned?
 12 A. No.
 13 Q. And did you have an understanding that until
 14 the tribe was formally organized, the general council
 15 had authority to conduct business for the tribe?
 16 A. Yes.
 17 Q. And did that authority include the -- the
 18 hiring of a lawyer?
 19 A. Yes.
 20 MR. WEST: Belatedly object. Legal
 21 conclusion and leading.
 22 MR. PEABODY: You can take down that
 23 document, please.
 24 Turning to Exhibit 43. Please display that.
 25 (Exhibit 43 marked for identification.)

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1 BY MR. PEABODY:
 2 Q. For the record, Exhibit 43 is a three-page
 3 document entitled Resolution hash tag GC -- or number
 4 GC-98-01. There's three pages here.
 5 Are you familiar with this document?
 6 A. Yes.
 7 Q. Have you seen this document before?
 8 A. Yes.
 9 Q. Do you recognize this document as the
 10 document that established the general council for the
 11 tribe?
 12 A. Yes.
 13 Q. Did the BIA, or the Bureau of Indian Affairs,
 14 assist you and Dixie in creating this document?
 15 A. Yes.
 16 Q. How did they do that?
 17 A. They went through the process and told us
 18 that everything that we were going through in the
 19 meeting, that it would be coming to -- there would be
 20 policies and procedures that we would have to put into
 21 our documentation, um, for the general council. And
 22 then they started going into, um -- oh, let me see.
 23 They started going into who else could possibly, um, be
 24 in the tribe or come to the tribe. But Mr. Dixie
 25 himself said that his brothers were all deceased,

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1 A. I can't really see what it says. I'd have to
2 go through my documents and find the letter.
3 Q. Are you having trouble seeing the screen?
4 A. The -- the wording on these documents get
5 kind of blurry on my screen.
6 Q. Okay. Do you have those documents -- is
7 there a way to make them bigger so that they're not?
8 A. I sure can see that now.
9 Q. Okay. Well, that's what we want.
10 Do you know the -- so this is a letter that
11 you received in your capacity as the chairperson for
12 the -- for the tribe; true?
13 A. Yes.
14 Q. And it was written to you in your -- in your
15 capacity as chairperson?
16 A. That's correct.
17 Q. Was it your understanding that in March of
18 2004, that the tribe had been deemed unorganized?
19 MR. WEST: Objection. Vague. Legal
20 conclusion. Calls for speculation.
21 THE WITNESS: Could you rephrase that?
22 Because in 2004, we were still federally recognized and
23 organized, and federal recognition was never taken
24 away. So could you just rephrase that?
25 MR. WEST: Object -- and move to strike that

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1 answer as nonresponsive.
2 BY MR. PEABODY:
3 Q. Did you submit a tribal constitution to the
4 Bureau of Indian Affairs --
5 A. Yes.
6 Q. -- in an attempt to have your tribe be
7 deemed, quote, "organized," end quote?
8 MR. LEPSCH: Objection. Calls for legal
9 conclusion.
10 THE REPORTER: I'm sorry. Who said that?
11 MR. LEPSCH: Mr. Lepsch.
12 THE REPORTER: Thank you.
13 MR. LEPSCH: You can answer.
14 BY MR. PEABODY:
15 Q. Do you have the question in mind, Ms. Burley,
16 or do you need it reread?
17 A. Um, I can't recall at this time.
18 Q. Okay. Let me -- let me ask this question
19 because I'm not sure what you're answering, frankly.
20 Did you have an understanding that a tribal
21 constitution had been submitted to the Bureau of Indian
22 Affairs in March of 2004?
23 A. Yes.
24 Q. Correct?
25 A. Correct.

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1 Q. And when you received this letter, did you
2 understand that the BIA had disagreed that you had
3 demonstrated that the tribe was an organized tribe?
4 MR. LEPSCH: Objection. Again, calls for a
5 legal conclusion.
6 MR. PEABODY: I'm asking for her
7 understanding.
8 MR. LEPSCH: Still requires her knowledge of
9 law.
10 MR. WEST: Join. And can we have an
11 agreement that joining is not necessary?
12 MR. PEABODY: Yes. Yes, please.
13 MR. WEST: Okay.
14 BY MR. PEABODY:
15 Q. Ms. Burley, after all the attorney talk, do
16 you have the question in mind, or would you like the
17 court reporter to read it back?
18 A. I see it. And the letter says that they must
19 disagree. So I -- I see it's corrected. That is what
20 they said in the letter.
21 Q. Did the -- since the tribe was unorganized,
22 did the BIA advise you that you -- that -- that they
23 would recognize you as a, quote, "person of
24 authority" --
25 A. Yes.

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1 Q. -- end quote? Okay.
2 So -- so was it your understanding that you
3 were no longer the chairperson, but rather a person of
4 authority within the tribe? Correct?
5 MR. WEST: Objection. Legal conclusion.
6 THE WITNESS: Within the tribe, I considered
7 myself and the tribal council considered myself as the
8 chairperson.
9 BY MR. PEABODY:
10 Q. And did you have an understanding about your
11 capacity to conduct business for the tribe at that
12 time?
13 MR. WEST: Objection. Legal conclusion and
14 vague.
15 THE WITNESS: The council believe that
16 GC-98-01 was still in effect, so I was still the
17 chairperson.
18 BY MR. PEABODY:
19 Q. And that was your understanding in March of
20 2004; true?
21 A. Yes.
22 MR. WEST: Object. Leading. I didn't hear
23 an answer.
24 BY MR. PEABODY:
25 Q. I want you to turn to page 3.

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1 In March 2004, was the tribal council making
 2 efforts to organize the tribe under the
 3 Indian Reorganization Act of 1935?
 4 A. No.
 5 Q. Were you advised by the Bureau of Indian
 6 Affairs that the participation of the greater tribal
 7 community was essential to your effort?
 8 A. Yes.
 9 Q. And that effort was to increase or to -- to
 10 enroll additional -- to establish membership criteria;
 11 correct?
 12 A. Correct.
 13 MR. WEST: Objection. Leading.
 14 THE WITNESS: That's correct.
 15 BY MR. PEABODY:
 16 Q. Did you choose not to pursue the
 17 Indian Reorganization Act constitution of the tribe?
 18 MR. WEST: Objection. Vague as to time.
 19 Vague as to "you."
 20 THE WITNESS: That's correct.
 21 BY MR. PEABODY:
 22 Q. We're talking about this document in 2004.
 23 You understood that; correct?
 24 A. Correct.
 25 Q. And did the general council choose not to

1 this way: What -- what date was it that he was no
 2 longer, um, considered part of the tribal council?
 3 MR. WEST: Objection. Speculation. Legal
 4 conclusion.
 5 THE WITNESS: To the best of my knowledge,
 6 October 1999.
 7 BY MR. PEABODY:
 8 Q. Up until today, has the tribe ever been
 9 organized under the Indian Reorganization Act?
 10 A. No, it has --
 11 MR. WEST: Objection. Legal conclusion.
 12 Speculation.
 13 THE WITNESS: No, it has not.
 14 BY MR. PEABODY:
 15 Q. Did you ever become aware of Yakima Dixie
 16 attempting to establish a rival -- rival tribe after he
 17 resigned?
 18 A. Yakima Dixie tried three or four times to --
 19 and he'd bring in different people every time he tried.
 20 But being a citizen of the tribe does not give him a
 21 right to go out and organize or -- or accept members.
 22 It has to go through the council.
 23 MR. WEST: Objection -- actually, I'm going
 24 to move to strike that answer after yes as
 25 nonresponsive and legal conclusion.

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1 organize the tribe under the Indian Reorganization Act
 2 of 1935?
 3 MR. WEST: Objection. Vague as to time.
 4 THE WITNESS: That's correct.
 5 MR. WEST: Legal conclusion.
 6 BY MR. PEABODY:
 7 Q. Why did the tribal council, to your
 8 understanding, not seek to organize the tribe under the
 9 Indian Reorganization Act of 1935?
 10 A. Tribes had the right to organize any way that
 11 they want, even -- like we're a resolution form of
 12 government. So our -- our government goes under
 13 resolutions, but we do not have to organize under the
 14 IRA.
 15 Q. Did the BIA ever recognize Yakima Dixie as a
 16 person of authority after he resigned?
 17 MR. WEST: Objection. Calls for speculation.
 18 Calls for legal conclusion.
 19 THE WITNESS: No, they did not.
 20 BY MR. PEABODY:
 21 Q. Was he ever part of the tribal council after
 22 he resigned?
 23 A. No, he was not -- oh, after what time?
 24 Excuse me. After what date?
 25 Q. Well, what date -- what date -- let me ask it

1 THE WITNESS: My answer is true.
 2 BY MR. PEABODY:
 3 Q. He's just making objections. It's fine.
 4 Just listen to my questions and answer truthfully, and
 5 he has the right to protect his client to make
 6 objections.
 7 Did you ever consent to Yakima Dixie
 8 enrolling any other members after he resigned?
 9 MR. WEST: Objection. Vague as to "you."
 10 MR. PEABODY: Let me rephrase.
 11 BY MR. PEABODY:
 12 Q. Did you, Ms. Burley, ever consent to Dixie
 13 enrolling any other members after he resigned?
 14 A. You're talking about me by myself?
 15 Q. Yes, for the purposes of this question.
 16 A. I can't -- I can't answer me by myself. It
 17 would have to go through the council.
 18 Q. Okay. Did the tribal council ever consent to
 19 Dixie enrolling any other members after he resigned?
 20 A. No, it did not.
 21 MR. PEABODY: We've been going about a little
 22 over an hour. Why don't we take a ten-minute break or
 23 so.
 24 MR. WEST: Works for me.
 25 MR. PEABODY: Off the record.

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1 THE VIDEOGRAPHER: Off the record at
2 10:56 a.m.
3 (Recess.)
4 THE VIDEOGRAPHER: Back on the record at
5 11:08 a.m.
6 MR. PEABODY: Thank you. Ryan, could you put
7 Exhibit 25 back up, please.
8 BY MR. PEABODY:
9 Q. Ms. Burley, this is the document that we were
10 referring to before the break. In the first
11 paragraph -- actually, the second paragraph, it
12 begins -- in Exhibit 25, beginning with the paragraph
13 "Although," let me just read certain parts of that
14 document, and I have a couple extra questions for you.
15 (Reading) Although the tribe has not
16 requested any assistance or comments from this office
17 in response to your document, we provide the following
18 observations for your consideration. As you know, the
19 BIA's Central California Agency (CCA) has a
20 responsibility to develop and maintain a
21 government-to-government relationship with each of the
22 54 federally recognized tribes situated within CCA's
23 jurisdiction. This relationship, includes among other
24 things, the responsibility of working with the person
25 or persons from each tribe who are either rightfully

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1 elected to a position of authority within a tribe or
2 who otherwise occupy a position of authority within an
3 unorganized tribe. To that end, the BIA has recognized
4 you, as a person of authority within the California
5 Valley Miwok Tribe. However, the BIA does not yet view
6 your tribe to be an "organized" Indian tribe and this
7 view is borne out not only by the document that you
8 have presented as the tribe's constitution but
9 additionally by our relations over the last several
10 decades with members of the tribal community in and
11 around Sheep Ranch Rancheria.
12 Did I read that properly?
13 A. Yes.
14 Q. Now, you've told us that you considered
15 yourself the chairperson in the tribal council;
16 correct?
17 A. Correct.
18 Q. After reading this document, do you have an
19 understanding that the BIA was recognizing you as a
20 person of authority as opposed to a chairperson?
21 MR. WEST: Object --
22 MR. LEPSCH: Object.
23 MR. WEST: -- counsel is leading the witness.
24 Calls for conclusion.
25 MR. LEPSCH: Legal conclusion as well, yeah,

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1 I agree.
2 BY MR. PEABODY:
3 Q. You can answer the question.
4 A. If you go to the top of the letter, it says,
5 "Silvia Burley, Chairperson."
6 Q. Okay. When you read this document, did you
7 understand that the BIA was recognizing you as a person
8 of authority within the tribe?
9 MR. WEST: Same objection.
10 THE WITNESS: Yes.
11 MR. PEABODY: Thank you. You can take down
12 that document, please.
13 BY MR. PEABODY:
14 Q. I'm going to go back in time a little bit,
15 Ms. Burley, to Exhibit 26.
16 For the record, Exhibit 26 is the Tribal
17 Council Governing Body of the California Valley Miwok
18 Tribe, also known as Sheep Ranch Rancheria of Me-Wuk
19 Indians of California, Resolution of May 7, 2001,
20 R-1-5-07-2001.
21 (Exhibit 26 marked for identification.)
22 BY MR. PEABODY:
23 Q. Have you seen this document before,
24 Ms. Burley?
25 A. Yes.

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1 Q. What is it?
2 A. It's a resolution that's changing our name
3 from Sheep Ranch Rancheria to California Valley Miwok
4 Tribe.
5 Q. And this was accomplished in May of 2001?
6 A. That's correct.
7 Q. And the changing of the name of the tribe was
8 done through the resolution process; is that correct?
9 A. That's correct.
10 Q. And did the tribal council authorize you
11 to -- did the tribal council -- is that the governing
12 body that authorized the changing of the name to the
13 California Valley Miwok Tribe?
14 MR. WEST: Objection. Leading. Legal
15 conclusion.
16 MR. PEABODY: Madam Reporter, can you reread
17 my question.
18 (Record read page 64, lines 10 through 13.)
19 MR. WEST: Same objection.
20 THE WITNESS: That's correct.
21 BY MR. PEABODY:
22 Q. Did you -- did the tribal council contact the
23 BIA to have the tribe's name changed?
24 A. Yes.
25 Q. And thereafter, the tribe was recognized

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1 with the question before you jump in and object, I'd
2 appreciate it.
3 MR. WEST: I would ask that the witness wait
4 until the question is done and wait for the objection
5 before she jumps in with her answer.
6 MR. PEABODY: That was part of the
7 admonitions. Thank you.
8 MR. WEST: I understand that, but she's not
9 following the admonitions. Also, Counsel, you're
10 asking almost exclusively leading questions. Do I have
11 to continue to make the objection that you're leading
12 the witness, or can we -- can we have a standing
13 objection that you're leading?
14 MR. PEABODY: No. There's no standing
15 objection.
16 MR. WEST: Okay. Well, then we'll proceed
17 doing it that way.
18 And I'm going to ask that the witness,
19 before -- after Mr. Peabody gets done with his
20 question, that the witness await my objection.
21 MR. LEPSCH: Mr. West, I appreciate your
22 concern. I think our client will heed to the
23 admonitions and move forward. Let's try to be a little
24 more collegial.
25 MR. WEST: I appreciate that --

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1 MR. LEPSCH: We don't need to -- we don't
2 need to raise the tone level, please. No reason here.
3 MR. WEST: I appreciate that and --
4 MR. LEPSCH: This is not a laid-back case.
5 MR. WEST: And -- and I know you're doing the
6 best you can, Ms. Burley, and I didn't mean my tone to
7 suggest otherwise.
8 BY MR. PEABODY:
9 Q. My question is, did you, Ms. Burley, have the
10 authority to enter into 638 contract funding on behalf
11 of the tribe as reflected in these documents?
12 MR. WEST: Objection. Vague as to time.
13 Legal conclusion.
14 THE WITNESS: Yes.
15 BY MR. PEABODY:
16 Q. What I'm going to do is go through each of
17 these letters and have you describe what is being --
18 what the resolution is and ask whether they are 638.
19 That way you can familiarize yourself with the 42 pages
20 here. Because I don't want you to guess at what --
21 Looking at page 1 of Exhibit 12, do you
22 recognize the letter addressed to you dated December 7,
23 2000?
24 A. Yes, I do.
25 Q. And what is this?

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1 A. This is the acknowledgement from the
2 Bureau of Indian Affairs of a December 7, 2000, um --
3 it's kind of hard to see. It's about the Indian
4 self-determination.
5 Q. Is this an application for a 638 contract?
6 A. This would be the acknowledgement that they
7 received the contract.
8 Q. Down to page 2. Have you seen this document
9 before?
10 A. Yes.
11 Q. What is it?
12 A. It's too hard to read.
13 MR. CORRALES: Make it bigger.
14 MR. PEABODY: Mr. Videographer, can you
15 somehow make this bigger, or is that --
16 MR. CORRALES: He can do that.
17 THE VIDEOGRAPHER: The plus sign right next
18 to the minus -- yep.
19 MR. CORRALES: Scoot it over a little bit.
20 BY MR. PEABODY:
21 Q. Is that better, Ms. Burley?
22 A. Yes. Thank you.
23 Yes. It's a -- where they revoked the
24 application -- the 638 -- 638 contract.
25 Q. Okay. So in this letter, um, is it your

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1 understanding that the BIA had agreed to revoke a
2 suspension of the current 638 contract between the BIA
3 and the California Valley Miwok Tribe?
4 A. Yes.
5 Q. So at some point in time, had the 638 -- at
6 some point in time back in 2005, had the BIA suspended
7 Miwok -- the California Valley Miwok Tribe's ability to
8 secure 638 contract funding?
9 A. Yes.
10 Q. And at some point in time in -- say, in
11 August of 2005, did -- were you again able to secure
12 638 contract funding for the tribe through tribal
13 council?
14 A. Yes.
15 Q. Now, was it through the tribal council, or
16 were you, as the chairperson or person of authority,
17 able to enter into these contracts?
18 MR. WEST: Objection. Legal conclusion.
19 THE WITNESS: It goes through the tribal
20 council.
21 BY MR. PEABODY:
22 Q. Okay. So you need council's approval in
23 order to conduct business for 638 contracts; true?
24 MR. WEST: Same objection.
25 THE WITNESS: True.

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1 BY MR. PEABODY:
2 Q. Were you ever asked to return the money that
3 you received for the tribe pursuant to a 638 contract?
4 A. No.
5 Q. Were you ever advised by the BIA that you
6 should never have received the funds?
7 A. No.
8 Q. After they did not recognize you -- so when
9 you were a person of authority, you continued to
10 receive these funds true?
11 MR. LEPSCH: Objection. Vague, the use of
12 the word "you."
13 THE WITNESS: Can you rephrase that?
14 BY MR. PEABODY:
15 Q. Sure. Did the Bureau of Indian Affairs, when
16 they were -- when they recognized you as a person of
17 authority, did they ever advise that you should not
18 have received these funds pursuant to the 638
19 contracts?
20 A. No.
21 Q. Did the BIA or the federal government ever
22 sue the California Valley Miwok Tribe to recover funds
23 paid to you on behalf of the tribe?
24 A. No.
25 Q. Did the BIA ever advise that you never had

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1 the authority to enter into 638 federal contract
2 funding with the Bureau of Indian Affairs?
3 A. No.
4 Q. Did the Bureau of Indian Affairs ever tell
5 you that the 638 federal contract funding awarded to
6 the tribe through you, as the person of authority, was
7 invalid?
8 A. No.
9 Q. These 638 contract funds that are part of
10 Exhibit 12 were awarded to the tribe when the Bureau of
11 Indian Affairs considered you to be the authorized
12 spokesperson for what it determined to be an
13 unorganized tribe; true?
14 MR. WEST: Objection. Compound.
15 Speculation. Legal conclusion.
16 MR. LEPSCH: Join.
17 THE WITNESS: That's correct.
18 BY MR. PEABODY:
19 Q. Are you aware of any documents that revoke
20 your ability to act as the person of authority for the
21 Miwok Indians?
22 MR. WEST: Objection. Legal conclusion.
23 THE WITNESS: I do not recall at this time.
24 MR. PEABODY: Mr. Videographer, can you take
25 down this document and put up Exhibit 13.

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1 (Exhibit 13 marked for identification.)
2 BY MR. PEABODY:
3 Q. There's 49 pages here. I'm going to scroll
4 down through them. Tell me if I'm going -- I just want
5 you to see that they're letters from the California
6 Gambling Control Commission.
7 For the record, Exhibit 13 is a group of
8 correspondence pertaining to the reserve -- or revenue
9 sharing trust fund. Excuse me.
10 Ms. Burley, I've now scrolled through the
11 49 pages. I know you didn't have a chance to read
12 word-for-word what they said, but did you recognize the
13 substance of those documents?
14 A. Yes.
15 Q. And did they appear to all pertain to the
16 revenue sharing trust fund payments over the years?
17 A. Yes.
18 Q. Did the -- and many of those letters were
19 written to you in your capacity as either chairperson
20 or person of authority; true?
21 MR. WEST: Objection. Leading.
22 THE WITNESS: That's true.
23 BY MR. PEABODY:
24 Q. And during -- since 1999, you've been either
25 a chairperson or person of authority within the tribe;

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1 correct?
2 MR. WEST: Objection. Leading.
3 THE WITNESS: That's correct.
4 BY MR. PEABODY:
5 Q. Did the Commission ever ask you to return any
6 of the revenue sharing trust fund payments that it made
7 to the tribe?
8 A. No.
9 Q. Did the Commission ever sue you or the tribal
10 council or the tribe to get that money back?
11 A. No.
12 Q. Were you ever advised by the Commission that
13 it was a mistake to send you these funds to you on
14 behalf of the tribe?
15 A. Can you rephrase that?
16 Q. Sure. Were you ever told by the Commission,
17 by either letter or verbally, that it was a mistake to
18 send these funds to you as in your capacity as
19 chairperson or person of authority for the tribe?
20 MR. LEPSCH: Objection. Vague as to the use
21 of the word "you."
22 THE WITNESS: The funds always went to the
23 California Valley Miwok Tribe. It didn't come to me as
24 the chairperson or otherwise.
25 BY MR. PEABODY:

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1 Q. Okay. So it always came, what, made -- made
2 payable to the tribe itself?

3 A. That's correct.

4 Q. And were you, as the spokesperson, ever
5 advised that it was a mistake to send these funds to
6 the tribe?

7 A. As a chairperson, the answer is no.

8 Q. What about as a person of authority?

9 A. Um, can you say the question again?

10 Q. Sure. Were you ever advised, as the person
11 of authority for the tribe, by the Commission that it
12 was a mistake to send these funds to the tribe?

13 A. No.

14 Q. Were you ever advised by the -- and "you," I
15 mean in your capacity as the chairperson or person of
16 authority ever advised that you had no authority to
17 receive these funds for the tribe at any time after
18 they were disbursed to the tribe?

19 A. No.

20 Q. The checks, again, were made payable to the
21 tribe, but they were sent to you as -- you personally
22 as the chairperson or the person of authority; correct?

23 A. They were sent to the tribe.

24 Q. Okay. And was the tribe's address the same
25 as yours?

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1 A. Yes.

2 Q. So they were sent to the tribe at your home
3 address, but they were addressed to the tribe, and they
4 were made payable to the tribe; is that accurate?

5 A. They were sent to the tribal office, payable
6 to the tribe.

7 Q. And that address for the tribal office was
8 what?

9 A. Same.

10 Q. Has it been the same for the last 20 years --

11 THE REPORTER: Mr. Peabody, your voice is
12 trailing off.

13 MR. PEABODY: I apologize.

14 BY MR. PEABODY:

15 Q. Has the address been the same for 20 years,
16 or were there two different addresses?

17 MR. WEST: Objection. Vague.

18 THE WITNESS: The -- the, um, revenue sharing
19 trust fund monies were addressed to the tribe that
20 always came to the address that I was at.

21 BY MR. PEABODY:

22 Q. Okay.

23 A. That the council was at.

24 Q. And what is that address?

25 A. It all changed over the years. So which

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1 address are you talking about?

2 Q. That's what I wanted to clarify. So they
3 would send it to wherever you were living at the time;
4 true?

5 A. That's correct.

6 Q. And wherever you were living at the time,
7 that was recognized as the tribal office?

8 A. That's correct.

9 MR. WEST: Belated objection. Speculation
10 and vague.

11 BY MR. PEABODY:

12 Q. The revenue sharing trust fund payments were
13 suspended in 2005; correct?

14 A. That's correct.

15 Q. After the payments were suspended, the
16 Bureau of Indian Affairs still recognized you as the
17 person of authority for the governing body of the
18 tribe; correct?

19 MR. WEST: Objection. Speculation, legal
20 conclusion, and leading.

21 THE WITNESS: That's correct.

22 BY MR. PEABODY:

23 Q. Do you have an understanding that anybody
24 else was considered to be the person of authority other
25 than yourself?

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1 A. No.

2 MR. PEABODY: You can take that -- those
3 documents down, please.

4 Mr. Videographer, can you please display
5 Exhibit 87.

6 (Exhibit 87 marked for identification.)

7 MR. PEABODY: This is, for the record, a
8 three-page document marked as Exhibit 87 to this
9 deposition.

10 BY MR. PEABODY:

11 Q. And I'm going to scroll down the three pages
12 and allow you to look at them, Ms. Burley. Making them
13 a little bit larger.

14 First of all, tell me -- I'm on page 2 -- can
15 you read the print?

16 A. Okay. There you go. Yeah. It's from the
17 awarding official at the Bureau of Indian Affairs.

18 Q. Have you seen this document before?

19 A. Yes.

20 Q. And are you familiar with the -- the
21 declarant, Janice Whipple-Depina?

22 A. Yes.

23 Q. When did you first see this document?

24 A. I don't recall.

25 Q. Referring to page 2 of the declaration of

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1 Janice Whipple-Depina dated December 21, 2005, um --
 2 let's go to page 3.
 3 Do you know her signature, first of all?
 4 A. Yes.
 5 Q. Is -- do you recognize the signature on the
 6 third page as being her signature, that of
 7 Janice Whipple-Depina?
 8 A. That's correct.
 9 Q. And it would appear from the document that
 10 she executed this on the 21st day of September 2005.
 11 True?
 12 A. True.
 13 Q. Going back up to page 2 under paragraph 2,
 14 Ms. Whipple-Depina declares that (reading) in 2002, I
 15 awarded (pursuant to the superintendent's authority) a
 16 PL 93-638 contract between BIA and California Miwok
 17 Tribe. An annual funding agreement with respect to
 18 this contact was signed on February 8, 2005, and
 19 reflects fiscal year -- or FY 2005 funding.
 20 Did I read that properly?
 21 A. Yes.
 22 Q. So in 2002, was the tribe awarded a
 23 638 contract as represented here?
 24 A. Yes.
 25 Q. Getting down to Exhibit [sic] 3, it reads as

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1 follows (reading): On July 19, 2005, I sent a letter
 2 to Silvia Burley enclosing a modification of the "638"
 3 contract which "suspends the current (638) contract in
 4 its entirety." I explained my reasons for my action in
 5 this letter. Nothing in this letter should read to
 6 indicate that the BIA is taking the position that
 7 Ms. Burley is no longer a person of authority within
 8 the tribe.
 9 Did I read that properly?
 10 A. Yes.
 11 Q. In July of 2005, is that when the 638
 12 contracts were temporarily suspended, as we discussed a
 13 few minutes ago?
 14 A. Yes.
 15 Q. After reading her declaration, was it your
 16 understanding that you were -- remained a person of
 17 "authority," quote, end quote, within the tribe?
 18 A. Yes.
 19 Q. So you have always been a recognized, to your
 20 knowledge, by the BIA, a -- at the very least, a person
 21 of authority since 1999; true?
 22 MR. WEST: Objection. Vague. Vague as to
 23 time. Speculation. Legal conclusion.
 24 THE WITNESS: True.
 25 BY MR. PEABODY:

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1 Q. Going down to 4 under her declaration -- that
 2 being Janice Whipple-Depina -- the last sentence in
 3 that paragraph says (reading), It is my understanding
 4 that her status continues to be that of a person of
 5 authority within the tribe.
 6 Did I read that properly?
 7 A. Yes.
 8 Q. And did you share that understanding, that
 9 you were a person of authority within the tribe and
 10 that was your status with the BIA?
 11 MR. WEST: Objection. Vague. Compound.
 12 THE WITNESS: Yes.
 13 BY MR. PEABODY:
 14 Q. So even during the time that the 638
 15 contracts were suspended, you were still the person of
 16 authority for the tribe; true?
 17 MR. WEST: Objection. Legal conclusion.
 18 BY MR. PEABODY:
 19 Q. It was your understanding; true?
 20 A. True.
 21 MR. PEABODY: We can take that document down,
 22 please.
 23 If you could display Exhibit 72.
 24 (Exhibit 72 marked for identification.)
 25 BY MR. PEABODY:

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1 Q. Ms. Burley, have you seen this letter before?
 2 A. Yes.
 3 Q. This is, Exhibit 72, a letter dated
 4 January 29, 2007, addressed to you from the regional
 5 director, whose signature --
 6 THE REPORTER: Whose signature what?
 7 MR. PEABODY: Is difficult to read.
 8 BY MR. PEABODY:
 9 Q. Do you -- do you recognize the person who
 10 signed this, that signature?
 11 A. I think it -- it looks like Clay Gregory.
 12 Q. Okay. And this is mail -- certified mailed
 13 to you back in January of 2007?
 14 A. Yes.
 15 Q. And the letter was sent to you in
 16 January 2007 in response to a request that a lump sum
 17 payment be scheduled for the tribe pursuant to the
 18 638 contract; correct?
 19 A. That's correct.
 20 Q. Now, the second paragraph states that
 21 (reading) the Bureau of Indian Affairs' (Bureau)
 22 current position is that the tribe lacks a governing
 23 body duly recognized by the Bureau and that you are
 24 recognized as a "person of authority within the tribe."
 25 Did I read that properly?

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1 A. Yes.

2 Q. Was that your understanding of the BIA's

3 current position with respect to how they viewed the

4 tribe?

5 MR. LEPSCH: Objection. Calls for legal

6 conclusion.

7 THE WITNESS: Can you repeat that?

8 BY MR. PEABODY:

9 Q. Sure. Was it your understanding that the

10 Bureau -- that the Bureau's current position in

11 January 2007 was that the tribe lacked a governing body

12 duly recognized by the Bureau? Did you understand that

13 to be the status of the tribe at that time?

14 A. Yes, I understood it.

15 Q. Did you also understand that you were being

16 recognized by the Bureau of Indian Affairs, that you

17 were recognized as a, quote, "person of authority

18 within that tribe"?

19 A. Yes.

20 MR. PEABODY: You can take that document

21 down.

22 I'm noticing that it's noon. I'm about to

23 launch into the fee agreement. I think now will be an

24 appropriate time to take 30 minutes.

25 MR. WEST: Works for me.

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1 THE VIDEOGRAPHER: Off the record at

2 12:04 p.m.

3 (Lunch recess 12:04 p.m. to 12:42 p.m.)

4 THE VIDEOGRAPHER: All right. Back on the

5 record at 12:42 p.m.

6 MR. PEABODY: Okay. Ready? All right. 49.

7 (Exhibit 49 marked for identification.)

8 THE VIDEOGRAPHER: 49 is up. Do you see

9 that, Mr. Peabody?

10 MR. PEABODY: I do now. I just lost my --

11 and wasn't sure if I was muted or not. Okay. I can't

12 see -- I'd like to see Ms. Burley somehow. Can you

13 help me?

14 THE VIDEOGRAPHER: You're going to want to

15 click "View" on your Zoom screen and -- up in the top

16 right.

17 MR. PEABODY: All right. Now all I see is

18 myself, so that's not a good thing.

19 MR. CORRALES: Pin her.

20 THE VIDEOGRAPHER: Maybe gallery.

21 MR. PEABODY: Oh, pin her. Okay. So -- I

22 don't want to just see her either.

23 MR. CORRALES: Put it on gallery.

24 MR. PEABODY: All right. There. Good

25 enough. Ready?

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1 THE VIDEOGRAPHER: We're on the record.

2 MR. PEABODY: Okay. Thank you. Hope all

3 that wasn't. I don't think you needed to put all that

4 on there.

5 BY MR. PEABODY:

6 Q. Ms. Burley, I hope you had a good lunch.

7 We're about to resume. I had the videographer put up

8 Exhibit 49 to this deposition, which is a letter from

9 Mr. Corrales to Tiger Paulk, although I think the name

10 is misspelled.

11 Have you seen this document before?

12 A. Yes.

13 Q. And Tiger Paulk, even though the name is

14 misspelled, that's your husband. He was your husband

15 at the time?

16 A. He's a consultant for the tribe.

17 Q. Okay. But that's the same Tiger who you were

18 married to at one point; correct?

19 A. That's correct.

20 Q. Were you -- were you still married in 2007?

21 A. Yes.

22 Q. Yes. Okay.

23 And did he share this letter with you back in

24 December 2007?

25 A. He shared it with the tribe and myself.

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1 Q. Okay. Did he share that letter with you at a

2 special council -- tribal council meeting on

3 December 11th or before?

4 A. I can't recall.

5 Q. You understood this letter was from

6 Mr. Corrales, the plaintiff in this case; correct?

7 A. Correct.

8 Q. And that -- were you aware that he had been

9 contacted by Tiger Paulk regarding possible

10 representation?

11 A. Yes.

12 Q. And I take it when he shared this with --

13 this letter, Exhibit 49, with you, you saw the contents

14 of the letter. Correct?

15 A. With myself and the tribe.

16 Q. Okay. So who was all there? Was it yourself

17 and who all -- what other tribal members were there?

18 A. Myself, Rashel Reznor, Angelica Paulk.

19 Q. Okay. And the representation was going to be

20 to represent the tribe in potential litigation against

21 the California Gambling Control Commission and others.

22 Did you have that understanding?

23 A. That's correct.

24 Q. And after reviewing this letter, was there a

25 special tribal council meeting planned within a week?

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1 that legal -- that the tribal council had unanimously
2 approved --
3 A. Yes.
4 Q. -- Mr. Corrales' contract?
5 A. Yes.
6 Q. And this was after consulting with your
7 tribal consultant, Tiger Paulk; correct?
8 A. That's consulting with Tiger Paulk and
9 Mr. Corrales.
10 Q. Okay. Was that an in-person meeting?
11 A. No.
12 Q. A telephonic meeting, what, among the three
13 of you? You, Tiger, and Mr. Corrales?
14 A. Yes.
15 Q. How long did that conversation take?
16 A. I don't recall.
17 Q. And when you were having that conversation,
18 you already had his proposed fee agreement in hand;
19 true?
20 A. I can't recall. I'm -- hold on a second.
21 Yes, I believe that contract was sent on the 10th or --
22 I think we contacted him like three times. I think it
23 was the 10th.
24 Q. You sent the contract back to him on the
25 11th; correct?

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1 A. Yes.
2 Q. Via fax. And then you were going to mail him
3 the contract as well; correct?
4 A. That's correct.
5 MR. PEABODY: Why don't we take down that
6 exhibit and display Exhibit 1, please.
7 (Exhibit 1 marked for identification.)
8 BY MR. PEABODY:
9 Q. Exhibit 1 is shown on this screen. It's
10 seven pages. Pages 3 through 7, if you count back, is
11 the hybrid contingency fee agreement with monthly rate,
12 which was the original fee agreement signed.
13 So let me move to that away from this first
14 page. Thank you.
15 I don't know if you -- have you seen this
16 document before, Ms. Burley? Or do you want me to
17 scroll down the five pages so that you know you've seen
18 it?
19 A. I've seen it.
20 Q. Okay. And is this a true and correct copy of
21 the hybrid contingency fee agreement with monthly rate
22 that you signed along with Mr. Corrales back in
23 December 2007?
24 A. Can you scroll all the way down so I can see
25 how many pages and what --

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1 Q. There's 1. There's 2, 3, 4, 5.
2 A. It's correct.
3 Q. Since we're on page 5 -- or 7 of 7 of the
4 entire exhibit -- this is the signature page to the fee
5 agreement. Do you see that?
6 A. Yes.
7 Q. And is that your signature under "California
8 Valley Miwok Tribe"?
9 A. Yes.
10 Q. And that's your printing under that as far as
11 your address and your name and your phone number; true?
12 A. Yes. True.
13 Q. And you -- were you signing that on behalf of
14 the California Valley Miwok Tribe?
15 A. Yes.
16 Q. And you'd had the authority of the tribal
17 council to enter into this contract as the person of
18 authority for the tribal council; correct?
19 A. Correct.
20 MR. WEST: Objection. Leading. Legal
21 conclusion.
22 THE WITNESS: Sorry.
23 BY MR. PEABODY:
24 Q. Is that correct, Ms. Burley?
25 A. That's correct.

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1 MR. WEST: Same objections.
2 BY MR. PEABODY:
3 Q. And the authority that you had received to
4 sign that was granted to you during the special tribal
5 council meeting of December 11, 2007, as described in
6 Exhibit 91; is that right?
7 A. Yes.
8 Q. Looking at the -- let me make it a little
9 bigger here. Looking at the five pages, were you aware
10 of any other pages to this agreement other than these
11 five pages?
12 A. Not that I recall.
13 Q. Does this document, as I scrolled through it,
14 was it altered in any way as far as the language of the
15 document on the one that you signed back in 2007? Let
16 me get it started here. I apologize.
17 A. Okay. So are --
18 Q. I'm showing you now the original 2007
19 document, the five pages that we previously --
20 A. It's the original because I had my -- my
21 initial on each page.
22 Q. Okay. That's where I was going next. So on
23 page 1, 2 -- and let the record reflect I'm scrolling
24 down -- 3, 4, and page 5 of that document, in the upper
25 right-hand corners, it's got your initials "SB" on all

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1 same phone conversation which you -- in which you came
 2 to understand what you understand about the
 3 relationship between Mr. Corrales and the judge?
 4 A. Yes.
 5 Q. So all the things you said earlier about what
 6 you understand to be the relationship, that's all stuff
 7 that Mr. Corrales told you on the phone?
 8 A. Yes.
 9 Q. And can you provide me an approximate date
 10 for this discussion?
 11 A. I can't -- I can't recall.
 12 Q. Was that the only time that you discussed
 13 this issue with Mr. Corrales?
 14 A. That's true.
 15 Q. And I don't mean to belabor this point.
 16 Sometimes when people remind you of certain things, it
 17 sometimes can trigger memories. And if you don't
 18 remember, you don't remember, but I'm just going to
 19 suggest a couple of things that -- that might assist
 20 your recollection.
 21 You said that Mr. Corrales said this, um,
 22 with regard to learning that Judge Frazier had been
 23 assigned to this case. Um, is it your understanding
 24 that Mr. Corrales told you this somewhat close to -- in
 25 time to when Mr. -- to when Judge Frazier was assigned

1 person of authority that can still go 638 contract
 2 government-to-government and still
 3 government-to-government relationships. That means
 4 person of authority. I could still act as an agent for
 5 the tribe.
 6 Q. And I'm sorry. Mr. -- Ms. Whipple, what did
 7 she tell you about the meaning of a person of
 8 authority?
 9 A. Her short letter was that the person of
 10 authority could still act as the agent -- the
 11 representing agent for 638 contract
 12 government-to-government.
 13 Q. Besides that letter, can you recall any
 14 statement by anyone at the BIA explaining what a person
 15 of authority -- of authority is?
 16 A. I'm sure it's in letters, but I can't recall.
 17 Q. Did anyone from the BIA tell you that you had
 18 the authority to enter into contracts with third
 19 parties like -- like attorneys --
 20 A. Yes.
 21 Q. -- on behalf of the tribe?
 22 A. Yes.
 23 Q. When?
 24 A. When we got the GC-98 -- the resolution for
 25 GC-98. It's all in there.

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1 to this case?
 2 A. Um, it was when he found out that
 3 Judge Frazier was getting this case. Then he was
 4 excited about it. To me, I thought it was wrong.
 5 Q. You -- you testified earlier about, um, the
 6 BIA's identifying you as a, quote, "person of
 7 authority."
 8 A. Yes.
 9 Q. Did you ever come to learn from the BIA or
 10 anywhere else what the term, quote, "person of
 11 authority" means?
 12 A. The authority means that you can still be an
 13 agent for the tribe between government-to-government.
 14 Q. And how did you arrive at that understanding?
 15 A. Being a chairperson for 22 years.
 16 Q. Yeah, but did -- did, for example, anyone
 17 from the BIA give you any sort of documentation or
 18 explain to you what "person of authority" means?
 19 A. You've seen all the documents. They stand as
 20 I see them.
 21 Q. So it's -- it's the documents that -- you
 22 can't think of anything besides the documents we've
 23 talked about today that explain what the term "person
 24 of authority means"; am I correct?
 25 A. From Jan Whipple, it just -- to me, it meant

1 Q. And so in that particular document, you
 2 believe the -- the BIA informed you that you had the
 3 authority to enter into contracts with third parties?
 4 A. Yes. And when Manny first came up with his
 5 contract, the very first one, he sent it into the
 6 Bureau of Indian Affairs, and they sent it back and
 7 said that you would have to go to the tribe because
 8 it's up to the tribe to enter into contracts.
 9 Q. Okay. So I'm -- you're talking about the
 10 GC-98-01?
 11 A. Uh-huh.
 12 Q. And I'm talking about any other instance
 13 where, to your understanding, the BIA informed you that
 14 you had the authority to enter into contracts with
 15 third parties on the tribe's behalf. You have --
 16 A. It's asked and answered because you keep
 17 coming up with the same question, and it's the same
 18 answer for me.
 19 Q. So the same answer as GC-98-01; is that
 20 right?
 21 A. We still go by that today.
 22 Q. And --
 23 MR. WEST: I have no other questions.
 24 MR. PEABODY: Give us two seconds.
 25 Anybody else have any questions?

Deposition of
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1 MR. WAIAN: This is James Waian. I don't
2 have any questions.
3 MR. PEABODY: Thank you.
4 MR. LEPSCH: This is Peter. No questions for
5 me. Thanks.
6 MR. PEABODY: All right. Madam Court
7 Reporter, I don't know if you're -- are you in
8 Southern California or Northern California? I know we
9 treat the originals differently.
10 THE REPORTER: I'm in Southern California.
11 MR. PEABODY: Okay. Mr. West, I'm going to
12 propose -- I don't know if you're familiar with the way
13 that we do things down here, but I know it's different.
14 We don't do per Code.
15 I was going to propose the stipulation that
16 we allow the original to be sent to counsel for
17 Ms. Burley; she'll be given 30 days to read it, sign
18 it, make any corrections; and her counsel will notify
19 all parties that she's signed it and of any changes
20 that she makes within 45 days of their receipt of the
21 transcript.
22 Do you want to maintain custody of the
23 original, or do you want me to, Mr. West?
24 MR. WEST: You can go ahead. I'm -- I'm not
25 that --

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1 MR. PEABODY: Once it's signed, it can be
2 returned to us; we will have it for safekeeping and
3 make it available at any hearing or trial; in the event
4 the original is lost, unsigned, or otherwise
5 unavailable, a certified copy can be used as though it
6 were the original.
7 Everybody okay with that?
8 MR. WEST: All good.
9 MR. LEPSCH: That's fine.
10 MR. WAIAN: That's fine.
11 THE REPORTER: Any copy orders?
12 MR. PEABODY: Pardon me?
13 THE REPORTER: I'm sorry to interrupt. I was
14 asking for copy orders.
15 MR. WEST: I don't believe I need a rough,
16 but I do need a copy.
17 THE REPORTER: Okay.
18 MR. LEPSCH: Same here, please.
19 MR. WAIAN: Yes --
20 MR. PEABODY: We get one with the original.
21 MR. WAIAN: James Waian. Same thing here.
22 THE REPORTER: Okay.
23 THE VIDEOGRAPHER: This concludes --
24 MR. PEABODY: Ms. Burley, thank you for your
25 patience, and it's my pleasure to meet you today, and

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1 have a great afternoon. Thank you.
2 THE WITNESS: You too.
3 THE VIDEOGRAPHER: This concludes today's
4 deposition given by Silvia Burley. Time off the record
5 is 3:53 p.m.
6 (The proceedings concluded at 3:53 p.m.)
7 -oOo-

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1 DEPONENT'S DECLARATION UNDER PENALTY OF PERJURY
2
3 I, SILVIA BURLEY, hereby declare under penalty of
4 perjury under the laws of the State of California that
5 I have read the foregoing deposition transcript.
6 Corrections, additions, and/or changes, if any, were
7 noted in ink, and the same is now a full, true, and
8 correct transcript of my testimony.
9 Executed this ____ day of _____,
10 2021, at _____,
11 California.
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SILVIA BURLEY

