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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

California Valley Miwok Tribe,	)	Case No.15cv622 AJB (JLB)
	)	
Plaintiff,	)	
v.	)	ORDER GRANTING
	)	DEFENDANTS’ MOTIONS TO
The California Gambling Control	)	DISMISS
Commission and Chadd Everone,	)	
	)	(Doc. Nos. 8, 12)
Defendants.	)	

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19           Before the Court are two motions to dismiss, one filed by the California Gambling  
20 Control Commission (“the Commission”) and one filed by Chadd Everone, who is  
21 proceeding pro se. (Mots. Dimiss, Docs Nos. 8, 12.) Plaintiff in this action is California  
22 Valley Miwok Tribe, a federally recognized Indian tribe. (Compl. ¶ 1, Doc. No. 1.)

23           As an initial matter, the Commission asserts that those pursuing this litigation, known  
24 as “the Burley Faction” improperly refer to themselves as California Valley Miwok Tribe,  
25 despite the Burley Faction not being a federally recognized tribe. (Commission Mem. 2,  
26 Doc. No. 8-1.) As the California Court of Appeal noted in its most recent opinion on this  
27 matter, of which this Court takes judicial notice, “Despite strong evidence of a very active  
28 tribal dispute, the Tribe’s appellate briefing argues that the Commission should be required

1 to release the [revenue sharing trust] funds to [Silvia] Burley because there is no longer a  
2 a serious dispute as to the legitimacy of Burley’s leadership [based on statements of another  
3 faction leader or the actions of the Bureau of Indian Affairs].” *California Valley Miwok*  
4 *Tribe v. California Gambling Control Comm’n*, 231 Cal. App. 4th 885, 901 (2014) (*Miwok*  
5 *D*). The appellate court concluded, “[N]either contention has merit.” *Id.*; see also *California*  
6 *Valley Miwok Tribe v. Jewell*, 5 F. Supp. 3d 86 (D.D.C. 2013) (describing the organization  
7 of the tribe). For the purposes of this order, the Court refers to Plaintiff and the tribe  
8 interchangeably, without making a factual finding as to whether those pursuing the litigation  
9 are properly asserting their place in tribal leadership.

## 10 **I. Background**

11 Plaintiff has litigated its grievances on various occasions, as evident from the various  
12 opinions and orders issued in similar litigation between the parties. The present complaint  
13 is another iteration in this longstanding dispute. The fifty-seven page (exclusive of exhibits)  
14 complaint lists the following causes of action: (1) breach of contract, (2) promissory  
15 estoppel, (3) injunctive relief under California law, (4) declaratory relief under California  
16 law, (5) writ of mandate under California law, (6) intentional interference with prospective  
17 economic advantage, and (7) civil conspiracy. (Compl. 1.) The crux of the complaint relates  
18 to a Revenue Sharing Trust Fund (RSTF). Plaintiff alleges that in 1999 the State of  
19 California entered into tribal-state gambling compacts with various Indian tribes in  
20 California, which enabled those tribes to conduct gambling operations and build casinos.  
21 (*Id.* ¶ 24.) In exchange for the right to operate gambling casinos, the compacted tribes are  
22 required to pay the State, through the Commission, certain licensing fees into the RSTF.  
23 (*Id.*) The Commission serves as trustee and administrator of the RSTF. (*Id.*)

24 Tribes who operate fewer than 350 gambling devices are non-compact tribes entitled  
25 to share in the RSTF money. (*Id.*) These tribes are to receive \$1.1 million annually in RSTF  
26 payments, so long as they are federally recognized. (*Id.* ¶ 25.) Plaintiff alleges that it is a  
27 non-compact, federally recognized tribe, and thus is entitled to receive quarterly RSTF  
28 payments. (*Id.* ¶ 26.)

1 From July 2000 until August 2005, the Commission made the quarterly RSTF  
2 payments to Plaintiff, despite various factions competing for tribe leadership. (*Id.* ¶ 30.)  
3 Amid firm leadership issues, including litigation, (*see id.* ¶ 33), in August 2005 the  
4 Commission wrote that, “Once the [Bureau of Indian Affairs] has recognized a Tribal  
5 government and Tribal leadership, the Commission will take immediate steps to distribute  
6 the funds.” (*Id.* ¶ 35.) Plaintiff then took various steps to comply, (*id.* ¶¶ 36-40), but the  
7 Commission refused to release the accumulated RSTF payments that had been placed in a  
8 separate bank account for the benefit of Plaintiff. (*Id.* ¶ 40.) The Commission continued to  
9 withhold the funds, stating it would do so “until such time as the identity and leadership of  
10 [Plaintiff] has finally been determined by the Bureau of Indian Affairs.” (*Id.* ¶ 44.) Plaintiff  
11 alleges this constituted a breach of contract because the Commission knew or should have  
12 known that the Bureau of Indian Affairs does not resolve any tribal leadership disputes and  
13 instead these disputes are handled by a tribe itself. (*Id.*)

14 In addition to the claims brought against the Commission, the complaint also alleges  
15 intentional interference with economic prospective advantage and civil conspiracy<sup>1</sup> as to  
16 Everone. These claims relate to his role assisting a competing faction in the tribe’s  
17 leadership disputes and alleged interference with Plaintiff’s alleged right to the RSTF  
18 distributions. (*See id.* ¶¶ 85-109.)

## 19 II. Discussion

20 The Court is faced with two motions to dismiss, filed by the two defendants. The  
21 Court finds it necessary to start with an evaluation of its subject matter jurisdiction in this  
22 matter, as raised by Defendants. (Commission Mem. 6-10; Everone Mem. 3, Doc. No. 12-1.)  
23 Plaintiff does not include any basis for jurisdiction in its complaint, as required by Federal  
24 Rule of Civil Procedure 8, which provides that a complaint must contain “a short and plain  
25 statement of the claim showing that the pleader is entitled to relief.” Fed R. Civ. P. 8(a)(2).  
26 Diversity jurisdiction is not present because all of the parties reside in California. (*See*  
27 Compl. ¶¶ 1-3.) Based on the statements Plaintiff makes in opposition to the pending  
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<sup>1</sup> The civil conspiracy claim is also brought against the Commission.

1 motions to dismiss, the Court evaluates the present action as asserting federal question  
2 jurisdiction. (*See generally* Pl.’s Mem., Doc. No. 11; *see also* Civil Cover Sheet, Doc. No.  
3 1-1.)

4 “The district courts shall have original jurisdiction of all civil actions, brought by any  
5 Indian tribe or band with a governing body duly recognized by the Secretary of the Interior,  
6 wherein the matter in controversy arises under the Constitution, laws, or treaties of the  
7 United States.” 28 U.S.C. § 1362. Under the “well-pleaded complaint rule, . . . federal  
8 jurisdiction exists only when a federal question is presented on the face of the plaintiff’s  
9 properly pleaded complaint.” *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987)  
10 (internal quotation marks omitted). A federal court is presumed to lack jurisdiction in a  
11 particular case unless the contrary affirmatively appears. *Stock W., Inc. v. Confederated*  
12 *Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989) (citing *California*  
13 *ex rel. Younger v. Andrus*, 608 F.2d 1247, 1249 (9th Cir. 1979)). “[T]he mere presence of  
14 a federal issue in a state cause of action does not automatically confer federal-question  
15 jurisdiction.” *Merrell Dow Pharm., Inc. v. Thompson*, 478 U.S. 804, 813 (1986). “[F]ederal  
16 question jurisdiction does not exist merely because an Indian tribe is a party or the case  
17 involves a contract with an Indian tribe.” *Stock W., Inc.*, 873 F.2d at 1225.

18 The Court’s review of the complaint demonstrates that federal subject matter  
19 jurisdiction is lacking. The causes of action alleged and the relief sought are clearly non-  
20 federal claims. Plaintiff argues that since the filing of the past litigation, events have  
21 occurred that “give rise to the filing of this Complaint in federal court.” (Pl.’s Mem. 1.)  
22 Plaintiff specifically addresses the Commission’s diverting RSTF funds into a separate  
23 account and purporting to make Plaintiff a first party beneficiary of that account. (*Id.*)  
24 Plaintiff also contends the present action, although bringing no federal causes of action,  
25 satisfies federal question jurisdiction because the Commission’s duties with respect to the  
26 management of RSTF monies are governed by compacts and federal law and federal law  
27 must be applied to resolve whether the Commission can continue to withhold RSTF  
28 payments, among other reasons. (Pl.’s Mem. 1-10.)

1 The Court recognizes the present action as an overt attempt to revisit past litigation.  
2 Plaintiff, having fully but unsuccessfully litigated in state court, now attempts to return to  
3 federal court hoping to receive a different outcome. No federal law is raised, nor do the  
4 claims turn on federal law. To the extent Plaintiff has additional questions as to subject  
5 matter jurisdiction, the Court directs Plaintiff to the twenty-three page order written by  
6 United States District Judge William B. Shubb<sup>2</sup> remanding that action to state court due to  
7 lack of subject matter jurisdiction. (*See* Houston Decl. Ex. F, Doc. No. 8-3); *California*  
8 *Valley Miwok Tribe v. California Gambling Control Comm’n*, No. Civ. 08-984, slip op.  
9 (E.D. Cal. July 23, 2008). To the extent Plaintiff seeks information about its underlying  
10 claims, the Court directs Plaintiff to the 2014 California Court of Appeal opinion, which  
11 squarely addressed the substance of the arguments Plaintiff makes. In that instance, Plaintiff  
12 sought a writ of mandate, an injunction, and declaratory relief, “[all] seek[ing] the same  
13 fundamental relief, namely an order requiring the Commission to pay over the RSTF funds  
14 to the Tribe, with Burley as its leader, to distribute according to her discretion.” *See Miwok*  
15 *I*, 231 Cal. App. 4th at 896. The court noted, “[A]ll three causes of action present the  
16 common issue of whether, in carrying out its duty as a trustee of the RSTF, the Commission  
17 is legally justified in maintaining a policy of withholding the RSTF funds from the Tribe  
18 . . . .” *Id.* The court noted it was the third time the case had been before that court, and  
19 affirmed the grant of summary judgment in favor of the Commission. *Id.* at 887. In doing  
20 so, the court issued an exhaustive and careful opinion detailing Plaintiff’s many legal  
21 arguments. The court did not equivocate in rejecting Plaintiff’s assertions.

22 In holding that subject matter jurisdiction lacks in this case, the Court acknowledges  
23 that Everone was not a party in the cited prior actions. This does not change the Court’s  
24 determination. The claims against Everone are intentional interference with prospective  
25 economic advantage and civil conspiracy. These claims are not federal in nature and again  
26 draw on the RSTF dispute. Again, the Court determines subject matter jurisdiction is not  
27 present, and thus, the Court is unable to hear this action.

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28 <sup>2</sup> United States District Court for the Eastern District of California.

1 **III. Conclusion**

2 Because the Court lacks subject matter jurisdiction over the present dispute, the Court  
3 does not address the parties' additional arguments. For the reasons stated, the Court  
4 **GRANTS** Defendants' motions (Doc. Nos. 8, 12) and dismisses this action. The Clerk of  
5 Court is directed to close this case.

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7 **IT IS SO ORDERED.**

8 DATED: September 11, 2015

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11 Hon. Anthony J. Battaglia  
12 U.S. District Judge  
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