

Robert A. Rosette (CA SBN 224437)
Geoffrey M. Hash (CA SBN 227223)
Nicole St. Germain (CA SBN 265361)
ROSETTE, LLP
193 Blue Ravine Rd., Suite 255
Folsom, California 95630
(916) 353-1084 (Office)
(916) 353-1085 (Fax)
rosette@rosettela.com
ghash@rosettela.com

Attorneys for Specially-Appearing Proposed Intervenor
Defendant, the Picayune Rancheria of the Chukchansi
Indians, a federally recognized Indian tribe (Lewis
Faction)

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

THE PICAYUNE RANCHERIA OF
CHUKCHANSI INDIANS,

Plaintiff,

vs.

RABOBANK, a national banking
association, REGGIE LEWIS, CARL
BUSHMAN, and CHANCE ALBERTA,

Defendants.

Case No.: 1:13-CV-00831-LJO-MJS

**REPLY IN SUPPORT OF SPECIALLY-
APPEARING PROPOSED INTERVENOR
DEFENDANT'S (LEWIS FACTION)
MOTION TO INTERVENE (FRCP 24)**

Date: July 26, 2013
Time: 9:30 a.m.
Courtroom: 6

Magistrate Judge Michael J. Seng

I. INTRODUCTION

The Ayala Faction, in Plaintiff's Opposition to the Proposed Intervenor's Motions [sic] to Intervene ("Opposition"), has recycled the same flawed arguments that it stated in the nearly identical context of Case No. 1:13-CV-00609-LJO-MJS ("Rabobank Action"). This Court has already rejected

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1 those same arguments vis-à-vis the Findings and Recommendations Granting Motion to Intervene
 2 (Dkt. No. 26) (“F&Rs”), and the Order to Adopt Findings and Recommendations (Dkt. No. 28).
 3 There is no reason for the Court, in the context of this action, to reach any other conclusion than that
 4 which it reached in the factually and legally analogous Rabobank Action.

5 The only “new” arguments raised by the Ayala Faction in its Opposition are either arguments
 6 that are unsupported and contradicted by the very authorities relied upon by the Ayala Faction, or
 7 arguments that the Ayala Faction has already raised in other papers filed in the Rabobank Action. For
 8 example, in a gross misrepresentation of material fact to this Court, the Ayala Faction claims in its
 9 Opposition that the Bureau of Indian Affairs (“BIA”) has, through its letter addressed to Morris Reid
 10 dated May 16, 2013 (“May 16 BIA Letter”), resolved the *current* leadership dispute existing between
 11 the Ayala Faction and the Lewis Faction. The Ayala Faction made that same misrepresentation to this
 12 Court in Plaintiff’s Objections to Magistrate Judge’s Findings and Recommendations in the Rabobank
 13 Action (Dkt. No. 27, at 3:22 through 4:5) (“Objections to F&Rs”).¹ Though it did not directly address
 14 the Ayala Faction’s misrepresented facts, this Court implicitly rejected them in issuing its Order to
 15 Adopt Findings and Recommendations (Dkt. No. 28). Again, there is no reason for the Court to reach
 16 any other conclusion than that which it reached in the similar context of the Rabobank Action.

17 With this latest Opposition, the Ayala Faction has only added to the list of its dizzying and
 18 inconsistent arguments. To be clear, the Lewis Faction agrees that this Court lacks jurisdiction to
 19 resolve the internal Tribal leadership dispute. The Lewis Faction has not concealed the fact that this
 20 lack of jurisdiction is one of several reasons it will immediately file a motion to dismiss in the event
 21 the Court grants the pending motion to intervene. On the surface, the Ayala Faction claims to agree
 22 with that jurisdictional line as well. Below the surface, however, the Ayala Faction actually seeks to
 23 use this Court to legitimize its own illegitimate tribal court system and tribal council where neither
 24 that court nor that council have ever been recognized as having any authority by any entity other than those
 25 created by the Ayala Faction itself after the attempted take-over of February 21, 2013. In other
 26 words, the Ayala Faction’s Complaint, just as in the Rabobank Action, inherently seeks to have this

27 ¹ As of the filing of this Reply, the BIA has not resolved the current leadership dispute between the Ayala and Lewis
 28 Factions.

1 Court resolve the very internal Tribal leadership dispute that it claims (and the Lewis Faction agrees)
 2 this Court has no jurisdiction to resolve.

3 Finally, this Court does have jurisdiction to determine the only issue presently before it:
 4 intervention. Further, and despite the Ayala Faction's unsubstantiated claims to the contrary, this
 5 Court may address that lone issue and actually allow intervention without ruling on, or considering,
 6 the underlying merits of the internal Tribal dispute.

7 In summary, the Ayala Faction's Opposition only affirms the compelling grounds for
 8 intervention articulated in the Lewis Faction's Memorandum of Points and Authorities In Support of
 9 Motion to Intervene as Specially Appearing Defendant (FRCP 24) ("Motion").

10 II. ARGUMENT

11 The Ayala Faction has failed to set forth any sound argument as to why this Court should
 12 deny the Motion. Thus, the Lewis Faction respectfully requests that this Court grant its request to
 13 intervene as a defendant in this case, for the limited purpose of allowing it to file a motion to dismiss.
 14 *United States v. City of Los Angeles*, 288 F.3d 391, 397 (9th Cir. 2002); *see also Southwest Ctr. for*
 15 *Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001); *Arakaki v. Cayetano*, 159 F.3d 405,
 16 409 (9th Cir. 2003).

17 A. In Its Attempts to Mislead This Court, The Ayala Faction Misrepresents 18 Material Facts And Directly Contradicts Its Own Declarations.

19 The May 16 BIA Letter has been grossly misrepresented by the Ayala Faction in its
 20 Opposition and other papers filed with this Court. Specifically, the Ayala Faction has represented,
 21 both to this Court and to other courts, that the May 16 BIA Letter resolved the current leadership
 22 dispute between the Lewis and Ayala Factions: "Here, the BIA and other federal agencies has [sic]
 23 recognized the Ayala Faction as the duly constituted officials of the Tribe." Opposition at 22:12-13.
 24 However, the May 16, BIA Letter in fact does no such thing. Instead, and as confirmed by Troy
 25 Burdick (Superintendent of the Bureau of Indian Affairs, Department of the Interior and author of the
 26 May 16 BIA Letter), the May 16 BIA Letter did not resolve the present leadership dispute between
 27 the Ayala and Lewis factions, and it did not recognize Nancy Ayala as the Chairperson of the Tribal

1 Council as of May 16, 2013. See Declaration of Robert A. Rosette in Support of Defendant Picayune
 2 Rancheria of the Chukchansi Indians' (Lewis Faction) Opposition to Proposed Intervenor-Defendant
 3 "Reid Council's" Motion to Intervene, filed in this action, Dkt. No. 13-2, ¶¶ 8-10, incorporated by
 4 reference. The May 16 BIA Letter only spoke to the Reid Faction's authority. *Id.*

5 In a similar vein, the Ayala Faction has directly contradicted its own declarations. For
 6 example, in the Declaration of Nancy Ayala In Opposition to the Proposed Intervenor Defendant's
 7 Motion to Intervene in the Rabobank Action ("Ayala Rabobank Decl."), Nancy Ayala plainly states
 8 "Five [including Ayala] voted in favor of suspension with two Tribal Members absent" regarding her
 9 own vote to suspend Brechbuehl and Wynn, two people who she now claims are part of the "Ayala
 10 Quorum." See Ayala Rabobank Dec., 3:17-18 (Dkt. 13-2). After the Lewis Faction called out
 11 Ayala's inconsistencies related to these suspensions, Ayala changed her story.² Now, Ayala declares
 12 "I abstained from voting on the issue." See Declaration of Nancy Ayala In Opposition to Motion to
 13 Intervene, filed in this action, Dkt. 15-17, at 3:28. Neither the original Ayala Rabobank Decl., nor the
 14 official minutes from this Tribal Council meeting support Ayala's most recent change in her story, as
 15 told in declaration under the penalty of perjury.³ In her attempt to fabricate power and control, Ayala
 16 is growing ever-more desperate, now to the point of contradicting herself under the penalty of perjury.

17
 18 **B. The Ayala Faction's Jurisdictional Arguments Expose Its Own Present Efforts
 19 As A Grasp For Recognition of Authority Where There Has Been None to Date.**

20 As in the context of the Rabobank Action, the Ayala Faction has again confused and misstated
 21 the actual law regarding this Court's jurisdiction to determine a motion to intervene in the context of a

22 ² As stated in the Lewis Faction's Reply papers, Ayala failed to explain why, if such suspensions were improper: (1)
 23 she, as the then Tribal Council Chairwoman, voted to suspend then Tribal Council members Brechbuehl and Wynn;
 24 and (2) she took no efforts to correct the alleged mistakes until well after her attempted overthrow of the legitimate
 25 Tribal Council on February 21, 2013. See Reply In Support of Motion to Intervene (FRCP 24), Dkt. No. 15, fn. 2. In
 26 addition, Ayala fails to explain why, if such suspensions were improper, she authored letters to both Wynn and
 27 Brechbuehl that expressly stated "[t]his letter serves to officially confirm the verbal notice that I and Council
 28 provided to you on January 24, 2013 when we voted to temporarily suspend you . . ." Hash Decl, Dkt. No. 5-2, and
 Exhibits F and G, filed therewith.

³ See Exhibit A attached to the Supplemental Declaration of Geoffrey M. Hash In Support of Specially-Appearing
 Proposed Intervenor Defendant The Picayune Rancheria of the Chukchansi Indians' (Lewis Faction) Motion to
 Intervene (FRCP 24) ("Hash Supp. Decl. – USB/Premier") for a true and correct copy of the above-referenced
 minutes. In fact, these Minutes are actually consistent on this point with her first version, as stated in the Ayala
 Rabobank Decl.

1 tribal leadership dispute. Specifically, the Ayala Faction argues that this Court cannot grant the
 2 Lewis Faction's Motion because that action would necessarily involve a determination that the Lewis
 3 Faction is the legitimate leadership of the Tribe. *See, e.g.*, Opposition, page 2, lines 17-21. Under
 4 the Ayala Faction's flawed logic, this Court actually could not deny the Lewis Faction's Motion
 5 because that too would necessarily involve a determination on the merits as to who is the legitimate
 6 leadership of the Tribe (the Ayala Faction in the event of denial).

7 Fortunately, the applicable case law, including that which the Ayala Faction relies upon,
 8 illustrates the flaws in its logic. Indeed, courts in similar contexts – including this Court in the nearly
 9 identical Rabobank Action – have expressly found that they can recognize one group for the purpose
 10 of intervention without either resolving or even considering internal tribal leadership issues over
 11 which they lack jurisdiction.⁴ *See Goodface, et al. v. Grassrope, et al.*, 708 F.2d 335, 339 (8th Cir.
 12 1983).

13 Further, the Ayala Faction's jurisdictional arguments against intervention remain internally
 14 inconsistent. As mentioned above, the Ayala Faction claims that this Court lacks jurisdiction to
 15 decide an internal Tribal leadership dispute, while also arguing for comity and enforcement of a
 16 decision issued from its own court, a decision that the Ayala Faction will assuredly use in an attempt
 17 to resolve that internal Tribal leadership dispute. In doing so, the Ayala Faction expressly seeks
 18 recognition by a federal court of its authority, *i.e.* resolution of the very internal Tribal leadership
 19 dispute that the Ayala Faction correctly states is beyond the jurisdiction of this Court. Under
 20 established principles of comity, this Court cannot do that unless it recognizes the authority of the
 21 Ayala Faction's tribal court, and indirectly the Ayala Faction since it was the Ayala Faction that
 22 created the tribal court. Thus, just as in *Smith v. Babbitt*, a careful examination of the Ayala Faction's
 23 Complaint and the factual record reveals that this action is nothing more than an attempt by it to
 24 appeal the Tribe's Referendum (described in the Motion) and disregard a valid Tribal Court ruling,
 25 along with the decisions of at least three financial institutions as of this time and the District Court for
 26 the Northern District of California's Order in Tillie Hardwick. *Smith et al. v Babbitt et al.*, 100 F.3d

27 ⁴ In yet another example of its misrepresentations to this Court, the Ayala Faction went so far as to mischaracterize
 28 this Court's own F&Rs regarding this very same issue. *See, e.g.*, Objections to F&Rs, Dkt No. 27 at 6:20-26.
 4 Case No.: 1:13-CV-00831-LJO-MJS

1 556, 559 (8th Cir. 1996).

2 **C. Courts Facing Nearly Identical Circumstances Affirm This Court May Grant**
 3 **Intervention.**⁵

4 1. California Valley Miwok Tribe, et al. v. Ken Salazar, et al. Granted
Intervention to Protect Fundamental Tribal Governance Interests.

5 In *California Valley Miwok Tribe, et al. v. Ken Salazar, et. al.*, (“CVMT”) the United States
 6 District Court for the District of Columbia faced two groups embroiled in a leadership and
 7 membership dispute. See *California Valley Miwok Tribe, et al. v. Ken Salazar, et. al.*, Case 1:11-cv-
 8 00160-RWR, United States District Court for the District of Columbia, Dkt no. 52. One group, led by
 9 Yakima Dixie among others (“Dixie Faction”), falsely sued the United States Department of Interior
 10 (“DOI”) in the name of that tribe and tribal council following the DOI’s recognition of a General
 11 Council led by Sylvia Burley as the legitimate tribal government (“Tribal Council”). *Id.* The Dixie
 12 Faction sought declaratory and injunctive relief, like the Ayala Faction does here. *Id.* at p. 6. Like the
 13 Lewis Faction here, the Tribal Council moved to intervene for the limited purpose of filing a motion
 14 to dismiss for lack of subject matter jurisdiction, for failure to join an indispensable party, and for
 15 failure to state a claim. *Id.* at p. 6. The Tribal Council there, like the Lewis Faction here, argued that
 16 intervention was necessary in order to protect the tribe’s fundamental interests in defending its
 17 sovereignty and citizenship, which would be protected via the subsequent motion to dismiss. *Id.* The
 18 CVMT Court granted the Tribal Council’s motion to intervene, and, contrary to the Ayala Faction’s
 19 assertions here, was able to do so without considering or resolving the underlying internal tribal
 20 leadership and membership issues. *Id.* at p. 2.

21 The CVMT Court granted the motion to intervene as of right in part because the Tribal
 22 Council sought to intervene in order to persuade this Court “to refrain from presiding over a
 23 procedurally defective [Complaint] and rendering a ruling on the merits in an action over which its
 24 lacks jurisdiction.” *Id.* at p. 13. That is all that the Lewis Faction seeks to do here. The Lewis

25
 26 ⁵ Given that this Court is well aware of and familiar with its own F&Rs and Order (Dkt. Nos. 26 and 27) issued in the
 27 Rabobank Action, the Lewis Faction does not recite the details of the same herein. However, the Lewis Faction
 28 contends that these materials further illustrate the fact that courts facing nearly identical circumstances have
 permitted intervention, and that such materials support the Lewis Faction’s Motion in this action.

Faction only seeks to stop the Ayala Faction's current effort to have this Court resolve that internal leadership issue, which is the embedded but actual purpose for which the Ayala Faction brought this action. The CVMT Court also reasoned that the Dixie Faction's action threatened to impair the proposed intervenor Tribal Council's legally protected interest "because resolution of the matter in the plaintiff's favor would directly interfere with the governance of the Tribe as currently recognized" *Id* at p.10. There can be no doubt that resolution of this matter in the Ayala Faction's favor would directly interfere with the Lewis Faction's governance of the Tribe as it is currently recognized by the legitimate Tribal Court (as reflected in the accompanying order dated March 27, 2013)⁶ the banks and other third parties involved in the Tribe's business operations, and as it is recognized under established principles of federal Indian law. In contrast, and despite its gross misrepresentations regarding the BIA's May 16, 2013 Letter, no third party has ever recognized the Ayala Faction. Only its sham court has granted recognition in an effort to ultimately obtain recognition by this Court.⁷

2. *Alturas Indian Rancheria v. Kenneth Salazar, et al.*, Granted Intervention To An Opposing Tribal Leadership Group.

In *Alturas Indian Rancheria v. Kenneth Salazar, et al.*, this Court granted intervention to an opposing tribal leadership group in the context of a leadership dispute for the purpose of protecting the interest of the government and its membership. *Alturas Indian Rancheria v. Kenneth Salazar, et al.*, 2:10-cv-01997-LKK-EFB (Dkt. no. 56 (Order Granting Motion to Intervene) and Dkt. no. 42 (Motion to Intervene)). Like *CVMT*, this Court granted the motion to intervene without touching the merits or resolving the underling internal tribal leadership dispute.

The Ayala Faction's counsel in this matter actually represented the group in *Alturas* referred to as the Del Rosa Faction, which sought intervention in that matter, claiming to be the "real" *Alturas* Indian Rancheria. *Alturas Indian Rancheria*, Dkt no. 56, at pages 4 and 8. The *Alturas* plaintiffs

⁶ See Exhibit A to the Supplemental Declaration of Geoffrey M. Hash In Support of Specially-Appearing Proposed Intervenor Defendant The Picayune Rancheria of the Chukchansi Indians' Motion to Intervene (FRCP 24), filed as Dkt. No. 15-1 in the Rabobank Action ("Hash Supp. Decl.").

⁷ As noted, the legitimate and duly constituted Tribal Court issued a ruling on March 27, 2013, inherently recognizing that Proposed Intervenor is, in fact, the validly-authorized body empowered to act on behalf of the Tribe. See Exhibit A attached to the Hash Supp. Decl. Plaintiff's attempt to have this Court recognize Plaintiff's invalid tribal court order necessarily subsumes a determination that Plaintiff, and its created tribal court, represent the Tribe. They do not.

1 objected on essentially the same grounds as the Ayala Faction has objected here, arguing that the case
 2 related to the “rights and entitlements of the Tribe’s interim governing body only,” and that since the
 3 Del Rosa Faction was not that body, it had no protectable interest and was therefore not entitled to
 4 intervention. Ultimately, the Court found that the Del Rosa Faction had significant protectable
 5 interests, allowing it both permissive intervention and intervention of right, while carefully affirming
 6 that it did not have jurisdiction to decide, and was not deciding, the underlying leadership dispute. *Id*
 7 at 8 and 11. Thus, as the Ayala Faction’s counsel argued successfully when the situation was
 8 reversed, a court may grant intervention to an opposing tribal leadership group, in the context of a
 9 leadership dispute, and it may do so without addressing the internal tribal matters over which it lacks
 10 jurisdiction.

11 **D. The Ayala Faction Has Failed To Rebut The Facts Establishing That The Lewis
 12 Faction Qualifies For Mandatory Intervention.**

13 The Ayala Faction’s argument against both mandatory and permissive intervention rests on its
 14 claim that “Proposed Intervenor can only intervene to protect the interests it claims to represent, those
 15 of the Tribe, if the Court determines that the Proposed Intervenor is the majority of the current Tribal
 16 Council of the Tribe.” Opposition, page 6, lines 16-19 (emphasis added). On the authority above,
 17 such a claim is simply mistaken. In contrast, the Lewis Faction sets forth in detail, in its Motion,
 18 substantive reasons as to why its intervention under Fed. R. Civ. P. 24(a) is proper, demonstrating that
 19 it meets this district’s four-part test for intervention as a matter of right in this action because: (1) its
 20 application for intervention was timely; (2) it has a cognizable interest in the pending action; (3)
 21 disposition of this action could impair the Tribe’s ability to protect its various interests; and (4) the
 22 existing parties cannot adequately protect the Tribe’s interests. Fed. R. Civ. P. 24(a); *Sierra Club v.*
 23 *EPA*, 995 F.2d 1478, 1481 (9th Cir. 1993). The Ayala Faction concedes the Lewis Faction’s
 24 demonstration that the application is timely and that disposition of this action could impair the Tribe’s
 25 ability to protect its interests.⁸

26 ⁸ While the Ayala Faction asserts in its Opposition that the Lewis Faction has not demonstrated that disposition of
 27 this action could impair the Tribe’s ability to protect its interests, Plaintiff provides absolutely no substantive
 28 argument related to this factor or authority in support of the same. Thus, Plaintiff has failed to rebut the Lewis
 29 Faction’s argument and has effectively conceded this point.

1. The Lewis Faction Seeks Only To Protect Significant, and Otherwise Unprotected, Tribal Interests.

As discussed in the Motion and herein, “a party has a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation.” *Cal. ex rel. Lockyer v. U.S.*, 450 F.3d 436, 441 (9th Cir. 2006). The standard for establishing interest sufficient for intervention is low: “Whether an applicant for intervention demonstrates sufficient interest in an action is a practical, threshold inquiry. No specific legal or equitable interest need be established.” *Southwest Center for Biological Diversity v. Berg, supra.*, 268 F.3d at 818, citing *Greene v. U.S.*, 996 F.2d 973, 976 (9th Cir. 1993).

As described in detail in its Motion, the Lewis Faction has a significantly protectable interest in its ability to govern the Tribe and in the Tribe’s financial stability through continued operations of the Casino, including its contractual relationship with its banks, including Rabobank, United Securities Bank, and Premier Valley Bank. The Ayala Faction’s request for comity and recognition of an order issued by its self-created tribal court directly threatens that financial stability, which in turn threatens continued operation of the Tribal government and vital social service programs.

The Ayala Faction’s request for relief in the Complaint threaten the Tribal sovereignty, which fundamentally involves the right to create its own rule of law and be governed by it. The Ayala Faction now seeks recognition of an illegitimate “tribal court,” recognition of an invalid order issued by that court, and recognition of itself as the legitimate governing body of the Tribe, all of which is (1) contrary to Tribal law and the will of the Tribe’s membership; (2) contrary to a legitimate Tribal Court order (*see e.g.*, Exhibit A to the Hash Supp. Decl.); and (3) beyond the jurisdiction of this Court.

The Ayala Faction has, again, done nothing to address these authorities and facts, and has instead chosen to rest its entire argument on the (mistaken) premise that the “Proposed Intervenor can only intervene to protect the interests it claims to represent, those of the Tribe, if the Court determines that the Proposed Intervenor is the majority of the current Tribal Council of the Tribe.” Like this

1 Court in the Rabobank Action, both the *CVMT* and *Alturas Indian Rancheria* Courts were able to
2 grant intervention to an opposing leadership group without determining the underling and internal
3 leadership dispute.

4 2. Defendants Lewis, Alberta, and Bushman Are Not Able To Adequately
5 Protect The Interest of the Tribe.

6 Just as in the Rabobank Action, the Ayala Faction has never served Defendants Lewis,
7 Alberta or Bushman with copies of the Complaint, Summons, or any other papers in this matter.
8 Thus, they are not proper parties and have no ability to protect the interests of the Tribe.

9 But, even assuming, *arguendo*, that the Ayala Faction had served them, these individual
10 defendants are not sufficiently able to protect the interests of either the entire Tribal Council or the
11 General Council. *See Canadian St. Regis Band of Mohawk Indians v. State of NY*, 573 F.Supp.1530,
12 1537 (N.D.N.Y. 1983) (individual tribal members lack standing to assert claims on behalf of the
13 Tribe). This Court has recognized the same. F&Rs, Dkt. No. 26, 9:7-13.

14 **E. The Ayala Faction Has Failed to Rebut The Facts Establishing That Intervenor**
15 **Defendant Qualifies for Permissive Intervention.**

16 As stated above, the Ayala Faction rests its argument against permissive intervention on its mistaken
17 claim that the Court must resolve the internal Tribal leadership issue in ruling on intervention.
18 Permissive intervention may be granted where there is a common question of law or fact, the
19 existence of which is liberally construed. *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1108-
20 1109 (9th Cir. 2002). Again, the Tribe has a common interest in law and fact in this action given that
21 the Ayala Faction attempts to use this court to legitimize its actions taken in direct contravention of
22 Tribal law and the mandate, via Referendum, of more than half of the Tribal membership, as well as
23 in disregard of the order of the valid Tribal Court. *See* Exhibit A to the Hash Supp. Decl. Access to
24 the Tribal monies is central to continued Tribal operations.

25 **F. The Ayala Faction's Attack on the Declaration of Geoffrey M. Hash is Without**
26 **Merit.**

27 As this Court recognized in the F&Rs, in evaluating a motion to intervene, the Court is to
28 accept as true all non-conclusory allegations in the motion and proposed pleading. *Southwest Center*

1 *for Biological Diversity v. Berg*, 268 F.3d 810, 819 (9th Cir. 2001); F&Rs, Dkt. No. 26, fn. 1. Despite
 2 this Court's recent rejection of the Ayala Faction's arguments otherwise, the Ayala Faction persists in
 3 raising, nearly verbatim, the very same objections.

4 **G. The Ayala Faction's Alleged Procedural Defects Are Without Merit.**

5 The Ayala Faction's argument that the Motion fails to meet the requirements of Rule 24 is
 6 faulty for any of at least – independent basis. First, representatives of this Court, in the analogous
 7 context of the Rabobank action, encouraged the Lewis Faction's counsel to refrain from filing a
 8 responsive pleading until after the Court ruled on the motion to intervene. Hash Supp. Decl. –
 9 USB/Premier, filed herewith, at ¶ 5. Second, to the extent there any defect, the Ninth Circuit has, as
 10 acknowledge by the Ayala Faction, adopted a liberal approach whereby such a defect is not
 11 dispositive. *See Shores v. Hendy Realization Co.*, 133 F.2d 738, 742 (9th Cir. 1992); *Westchester*
 12 *Fire Ins. Co. v. Mendez*, 585 F.3d 1183, 1188 (9th Cir. 2009). Finally, the Ayala Faction provides
 13 absolutely no authority for its curious claim that a motion to dismiss is not a "pleading." As this court
 14 is aware, the Lewis Faction has not hidden its intention to file a pleading, specifically a motion to
 15 dismiss, immediately upon receiving permission to intervene in this action.

16 **III. CONCLUSION**

17 For the reasons fully set forth herein and in the Motion, the Lewis Faction, on behalf of the
 18 more than 900 Tribal members, respectfully requests that this Court grant its intervention pursuant to
 19 Fed. R. Civ. P. 24(a) and/or Fed. R. Civ. P. 24(b).

20 RESPECTFULLY SUBMITTED this 19th day of July, 2013.

21 ROSETTE, LLP

22
 23 By: /s/ Geoffrey M. Hash
 24 Attorneys for Specially-Appearing Proposed
 25 Intervenor Defendant, the Picayune Rancheria of
 26 the Chukchansi Indians (Lewis Faction)
 27