

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PICAYUNE RANCHERIA OF THE
CHUKCHANSI INDIANS,

Plaintiff,

v.

YOSEMITE BANK, et al.,
Defendants.

Case No. 1:13-cv-0831-LJO-MJS

**FINDINGS AND
RECOMMENDATIONS DENYING
THE REID COUNCIL'S
MOTION TO INTERVENE**

ECF No. 10

**OBJECTIONS DUE WITHIN
FIFTEEN DAYS**

I. INTRODUCTION

This action was initiated in the name of the Picayune Rancheria of Chukchansi Indians (the "Tribe"), a federally recognized Indian Tribe. The Tribe, through its business arm, the Chukchansi Economic Development Authority ("CEDA") operates a casino and resort. The Tribe and CEDA have contractual arrangements with Defendants Yosemite Bank, a division of Premier Valley Bank, and United Security Bank, a wholly owned subsidiary of United Security Bancshares, (collectively "Defendant Banks") under which the former entities deposit revenues generated by the casino and resort and in return Defendant Banks disburse those revenues in accordance with the parties' agreements (the specific terms of which are not relevant to

1 resolution of this motion).

2 There is a history of dispute between various groups, or factions, within the Tribe
3 as to which legitimately controls the tribal government and its related entities, activities,
4 and revenues. Reportedly, a “Lewis/Ayala Faction”, made up of a then-existing
5 association of members of two other tribal factions, served as the properly elected
6 majority of the governing body of the Tribe (its “Tribal Council”) up until December 3,
7 2011. Proposed interveners, the “Picayune Rancheria of the Chukchansi Indians (Reid
8 Council)” (hereinafter referred to as the “Reid Faction”) claim that on that date, they
9 were properly elected to the majority of the governing body in what remains the most
10 recent valid tribal election held in accordance with tribal law.

11 However, according to the Reid Faction, the Lewis/Ayala Faction refused to
12 recognize the election results or cede power to the Reid Faction and, instead, through
13 the use of force, sham elections, and a variety of criminal acts, prevented the Reid
14 Faction from assuming its seats on the Tribal Council and from taking control of tribal
15 government and business. The Reid Faction filings do not reflect how it responded to
16 this alleged usurpation beyond unsuccessfully challenging recognition of the
17 Lewis/Ayala Faction by the Bureau of Indian Affairs and by private entities doing
18 business with the tribe. It acknowledges that the Lewis/Ayala Faction maintained
19 control of the Tribal Council, tribal government, and tribal business throughout the 2012
20 calendar year and into 2013. There is nothing before the Court to suggest that the Reid
21 Faction has participated in tribal government, participated in tribal business, or been
22 recognized by anyone as representing the Tribe or its Tribal Council at any time
23 subsequent to December 3, 2011.

24 The next major event in this tribal feud reportedly occurred on or about February
25 21, 2013, when the Ayala Faction, acting without and in opposition to its previous
26 partner, the Lewis Faction, asserted exclusive control of the Tribal Council. The Lewis
27 Faction (led by the individually named Defendants in this case) asserts that the actions
28 taken on February 21, 2013, were unauthorized under tribal law and designed to reduce

1 the members of the Tribe from some 900 Lewis Faction associates to 46 blood relatives
2 of Ayala Faction members. The competing factions have made conflicting
3 representations to Defendant Banks as to who is authorized to represent the Tribe and
4 CEDA in dealing with the bank and who is authorized to withdraw and use funds from
5 the bank.

6 In the course of these disputes, the Ayala Faction's new Tribal Council undertook
7 to convene a Picayune Rancheria Tribal Court and there obtain injunctive relief directing
8 Defendant Banks to comply with the Ayala Faction's Tribal Court orders regarding
9 management, control, and disbursement of the deposited funds. Defendant Banks
10 reportedly have refused to recognize the authority of the Ayala Faction Tribal Council or
11 comply with the Ayala Faction's demands or Tribal Court's orders. Apparently, they
12 have continued to recognize the validity and authority of the Lewis Faction.

13 Thus, on the surface, the primary objectives of this action are to obtain this
14 Court's order compelling Defendant Banks to comply with Ayala Faction Tribal Court
15 orders. However, the Lewis Faction and now the Reid Faction have moved to intervene
16 as a matter of right or permissively on the grounds that significant, protectable interests
17 central to the Tribe, its government, and its business are at issue in this case and none
18 of the existing parties can adequately represent the interests of the Tribe. The moving
19 papers allege that the Ayala Faction improperly and without authority filed the Complaint
20 in the Tribe's name seeking to compel recognition, comity, and enforcement of
21 purported decisions made by an unauthorized, illegally formed Tribal Court established
22 by the Ayala Faction to justify actions violating tribal law. The proposed interveners
23 purport to act to protect the interests of the Tribe and its membership.

24 This action is a virtual mirror image of an earlier suit Plaintiff initiated against
25 Rabobank and others in this Court in case number 1:13-cv-00609-LJO-MJS entitled
26 Picayune Rancheria of Chukchansi Indians v. Rabobank, et al. (Hereinafter, the
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28

1 “Rabobank Case”.) Records therein¹ show that the Lewis Faction moved to intervene
2 there on the same grounds on which they rely in their motion to intervene in this case.
3 The Reid Faction essentially parrots those grounds while adding pre-2012 facts to
4 reflect its role in the history of the Tribe and this dispute.

5 **II. PROCEDURAL STATUS**

6 As noted, the Complaint was filed in this action on May 30, 2013. The instant
7 motion to intervene was filed within three weeks thereafter. Plaintiff filed an opposition
8 and the moving party filed a reply. The motion to intervene has been referred to the
9 undersigned Magistrate Judge for hearing, if appropriate, and for submission of a
10 Findings and Recommendations to the District Judge pursuant to 28 U.S.C. § 636. On
11 review the undersigned found the motion suitable for decision on the papers submitted
12 and without oral argument (Local Rule 230(g)), and so vacated the hearing and deemed
13 the matter submitted.

14 **III. APPLICABLE LAW**

15 Intervention is governed by Federal Rule of Civil Procedure 24. The Rule is
16 broadly construed in favor of intervention to prevent or simplify future litigation on
17 related matters. United States v. City of Los Angeles, 288 F.3d 391, 397-398 (9th Cir.
18 2002) (citations omitted). It is determined primarily on “practical and equitable
19 considerations.” Id. (citing Donnelly v. Glickman, 159 F.3d 405, 409 (9th Cir. 1998)).

20 As applicable here, a party is entitled to intervene as a matter of right under
21 Federal Rule of Civil Procedure 24(a) if it “claims an interest relating to the property or
22 transaction that is the subject of the action, and is so situated that disposing of the
23 action may as a practical matter impair or impede the movant’s ability to protect its
24 interest, unless the existing parties adequately represent that interest.” Id. The Court
25 shall permit intervention if four elements are met. First, the application must be timely.
26 League of United Latin Am. Citizens v. Wilson, 131 F.3d 1297, 1302 (9th Cir. 1997).

27 ¹ The Court may take judicial notice of court records. Fed. R. Evid. 201(b); United States v. Bernal–
28 Obeso, 989 F.2d 331, 333 (9th Cir. 1993); Valerio v. Boise Cascade Corp., 80 F.R.D. 626, 635 n. 1
(N.D.Cal. 1978), aff’d, 645 F.2d 699 (9th Cir. 1981).

Second, the movant must have a significant protectable interest regarding the transaction that is the subject of the suit. Id. Next the movant must be situated so that, from a practical standpoint, disposition of the action might impair or impede his ability to protect that interest. Id. Fourth and last, the moving party's interest must be inadequately represented by the parties before the Court. Id.

Even if a party does not have a *right* to intervene, the Court may in its discretion allow permissive intervention when the party "has a claim or defense that shares with the main action a common question of law or fact" and intervention will not "unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b); see City of Los Angeles, 288 F.3d at 403.

IV. ANALYSIS

For the reasons discussed below, the Court finds that moving party, the Reid Faction does not meet the criteria justifying intervention as of right or permissive intervention.

A. Intervention as of Right

1. Timeliness

The timeliness issue is to be resolved by consideration of the stage of the proceedings at which intervention is sought, the reason for delay, if any, in moving to intervene, and the prejudice, if any, to other parties in allowing intervention. League of Latin Am. Citizens, 131 F.3d at 1302.

The Reid Faction's motion to intervene was filed within three weeks of the Complaint having been filed. There was no delay. No one has been prejudiced by the timing of the motion.

2. Significant Protectable Interest

A party is considered to have a sufficient interest for intervention purposes if it will suffer a practical impairment of its interests as a result of the pending litigation. California ex rel. Lockyer v. United States, 450 F.3d 436, 441 (9th Cir. 2006).

On virtually identical facts and argument, this Court found that the Lewis Faction

1 had a significant protectable interest justifying its intervention in the Rabobank Case. In
2 a separate Order to be issued forthwith, this Court finds likewise as to the Lewis
3 Faction's right to intervene in this case. Nevertheless, the Court concludes that the
4 Reid Faction does not have a similar, or any, significant protectable interest in the
5 subject matter of this suit.

6 Plaintiff, the Ayala Faction, has invoked this Court's jurisdiction to gain
7 enforcement of its purported Tribal Court orders as against Defendant Banks. The
8 Lewis and Reid Factions both object to that effort as one designed to take control of the
9 Tribe's funds and apply them contrary to tribal obligations to and agreements with
10 others. The objecting proposed interveners raise substantial questions about the
11 validity of tactics used by the Ayala Faction to wrest control of the Tribe, justify its
12 actions, and even initiate this litigation. Defendant Banks reportedly have determined
13 for their purposes that the Ayala Faction has no right, power, or authority to so act. The
14 Defendant Banks instead continue to deal with the Lewis Faction as the proper tribal
15 government and representative.

16 Other than the Reid Faction, no one in this case claims that the Reid Faction has
17 any direct stake in the outcome of the case as the case is defined by the Complaint and
18 responses. No one claims that the outcome of this litigation as it now exists will be
19 impacted by anything that occurred before December 3, 2011. No one claims that the
20 Reid Faction has played any role in tribal governance at any time since December 3,
21 2011. No one credibly claims that the outcome of this case will have any direct impact
22 whatsoever on the Reid Faction.

23 As it exists now the case involves a dispute between the Ayala Faction, on the
24 one hand, and the Lewis Faction and the Defendant Banks, on the other. The Ayala
25 Faction wants the Defendant Banks to recognize its authority; the Lewis Faction and the
26 Defendant Banks maintain that the Ayala Faction has no such authority because that
27 authority remains with the Lewis Faction. If the Lewis Faction succeeds it may confirm,
28 from a practical standpoint, the Lewis Faction's access to and control of tribal revenues

1 and secure for approximately 900 Lewis Faction-affiliated tribal members the benefits of
2 tribal revenue. Regardless of which side prevails here, the Reid Faction apparently will
3 remain disenfranchised. Judicial refutation of the Ayala Faction in this case will, at
4 most, return affairs to the conditions that existed in 2012; it will not restore the Reid
5 Faction to any level of control or authority over tribal affairs. Neither will resolution of
6 the case in favor of the Ayala Faction. The Reid Faction's claim to any share of tribal
7 authority is not before the Court in this case.

8 This analysis and the result here might be different if this Court had the power
9 and authority here to determine which, if any, of the three factions should be recognized
10 by the federal government as the "Tribe". The parties seem to agree that the Court
11 does not have that power and it expressly does not undertake to assert it here.

12 3. Interest Potentially Impaired

13 The case must be such that its resolution will have an actual effect on the
14 intervener. Arakaki v. Cayetano, 324 F.3d 1078, 1084 (9th Cir. 2003). For the reasons
15 discussed in the immediately preceding section, the Court concludes that the outcome
16 of this case will be of no consequence one way or another to the Reid Faction or to its
17 claims it was improperly divested of control in December 2011. To the extent those
18 claims have any remaining viability their pursuit is not foreclosed by the Court's ruling
19 here, but they may not be pursued in this case.

20 4. Inadequate Representation by Existing Parties

21 The fourth and final qualifying criterion for intervention as of right is a finding that
22 existing parties may not adequately represent the substantial interests of the proposed
23 intervenor. The showing required is minimal; it is sufficient if the moving party shows
24 that its interests "may be" inadequately represented. Trbovich v. United Mine Workers
25 of Am., 404 U.S. 528, 538, fn. 10 (1972) (citations omitted); Arakaki, 324 F.3d at 1086.

26 The Reid Faction does not meet this criterion. Defining the limits of this case as
27 above and as limited by the pleadings, the most that can be said is that the Reid Faction
28 shares the Lewis Faction's belief that the Ayala Faction does not represent the Tribe.

1 To that extent, the Reid Faction's objection to the Ayala Faction will be pursued by the
2 Lewis Faction. While obviously the Lewis Faction is not going to represent the Reid
3 Faction's interest in restoring Reid Faction control of the Tribe, that interest and the
4 conflicts related thereto are not before the Court in this case.

5 **B. Permissive Joinder**

6 Permissive joinder is available in the Court's discretion to anyone who timely
7 seeks it and presents a claim or defense that shares a common question of law or fact
8 with the main action. Fed. R. Civ. P. 24(b). The "common question" issue is to be
9 liberally construed. Stallworth v. Monsanto Co., 558 F.2d 257, 269 (5th Cir. 1977).

10 As discussed above, the unique issues raised by the Reid Faction's timely
11 motion to intervene are not to be addressed in this case. Interjecting the Reid's
12 Faction's much older and apparently long-dormant claim to tribal control in this case will
13 only complicate the much more limited issues raised by the pleadings. Given the
14 Court's apparent lack of authority to determine which of the three factions is "the Tribe",
15 no useful purpose would be served by allowing the Reid Faction to join and assert that
16 claim here.

17 **V. CONCLUSION**

18 For the reasons set forth above, the undersigned finds that the proposed
19 intervener, the Reid Faction of the Picayune Rancheria of Chukchansi Indians, fails to
20 meet the criteria for intervention as a matter of right or for permissive intervention under
21 Federal Rule of Civil Procedure 24(a) and (b), respectively, and therefor recommends
22 that the motion to intervene as a Defendant in this action should be denied.

23 These Findings and Recommendations are submitted to the District Judge
24 assigned to this action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court's Local Rule
25 304. Within fifteen (15) days of service of this recommendation, any party may file
26 written objections to these findings and recommendations with the Court and serve a
27 copy on all parties. Such a document should be captioned "Objections to Magistrate
28 Judge's Findings and Recommendations." The District Judge will review the Magistrate

1 Judge's Findings and Recommendations pursuant to 28 U.S.C. § 636(b)(1)(C). The
2 parties are advised that failure to file objections within the specified time may waive the
3 right to appeal the District Judge's order. Martinez v. Ylst, 951 F.2d 1153, 1156 (9th Cir.
4 1991).

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8 IT IS SO ORDERED.

9 Dated: September 11, 2013

/s/ Michael J. Leng
10 UNITED STATES MAGISTRATE JUDGE
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