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tribe (Lewis Faction)

**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF CALIFORNIA**

THE PICAYUNE RANCHERIA OF  
CHUKCHANSI INDIANS,

Plaintiff,

vs.

YOSEMITE BANK, a division of  
PREMIER VALLEY BANK, a domestic  
stock corporation and State-chartered  
banking institution; UNITED SECURITY  
BANK, a wholly owned subsidiary of  
United Security Bancshares; REGGIE  
LEWIS, as Tribal Council Vice  
Chairperson, in his individual capacity;  
CHANCE ALBERTA, as Tribal Council  
Member-at-Large, in his individual  
capacity and CARL BUSHMAN, as Tribal  
Council Member-at-Large, in his  
individual capacity.

Defendants.

Case No.: 1:13-cv-00831-LJO-SKO

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
SPECIALLY-APPEARING PROPOSED  
INTERVENOR DEFENDANT'S MOTION  
TO INTERVENE (FRCP 24)**

Date: July 16, 2013  
Time: 8:30 a.m.  
Courtroom: 4, 7<sup>th</sup> Fl.

Honorable Lawrence J. O'Neill

Case No.: 1:13-cv-00831-LJO-SKO

**TABLE OF CONTENTS**

I.	INTRODUCTION .....	1
II.	FACTS .....	2
A.	Events Leading Up To the Ayala Faction’s February 21, 2013 Attempted Take Over .....	2
1.	The Composition of the Tribe and Its Governance Structure. ....	2
2.	The December 2012 Tribal Council Election and the January Suspensions by the Uncontested Tribal Council’s Unanimous Vote. ....	3
B.	The Ayala Faction’s February 21, 2013 Attempted Take Over and Inconsistent, Illegal, Subsequent Actions. ....	4
1.	The Ayala Faction Attempts To Achieve Via An Illegal Referendum What It Failed to Achieve In Its Prior Federal Lawsuit. ....	4
a.	The U.S. District Court for the Northern District of California Rejects the Notion of a Tribe of 46 Ramirez and Wyatt Family Members.....	4
b.	The Ayala Faction Disregards the Federal Court Ruling And Initiates a Takeover of the Tribal Government. ....	6
2.	The Changing Composition of the Tribal Council Seated by the Ayala Faction. ....	7
3.	The Ayala Faction Creates an Unauthorized and Illegitimate Tribal Court and Sues Rabobank, USB and Premier to Gain Control Over Tribal Funds. ....	8
C.	Rabobank Refuses to Recognize The Ayala Faction. ....	9
D.	The Ayala Faction Begins to Hoard Cash in the Casino Cage. ....	10
E.	Rabobank Flags The Ayala Faction’s Role In Fraudulent Casino Transactions. ....	10
F.	The Tribe’s General Council Affirms the Current Composition of the Tribal Council. ....	11
G.	Following Their Own Independent Review, USB and Premier Refuse to Recognize the Ayala Faction. ....	12

1	III. ARGUMENT .....	13
2		
3	A. The Lewis Faction Satisfies the Requirements for Intervention as a	
4	Matter of Right. ....	14
5	1. The Lewis Faction Has Timely Filed its Motion to Intervene. ....	14
6	2. The Lewis Faction Has a “Significantly Protectable Interest”	
7	Related to the Subject of the Action. ....	15
8	3. Disposition of this Action Could Significantly Impair the	
9	Tribe’s Ability to Protect its Governmental and Financial Interests.....	17
10	4. The Tribe’s Interests Are Not Adequately Represented by the	
11	Existing Parties in this Action.....	18
12	B. In the Alternative, The Lewis Faction Meets The Requirements For	
13	Permissive Intervention.....	19
14	IV. CONCLUSION .....	20

# **TABLE OF AUTHORITIES**

*Arakaki v. Cayetano*, 159 F.3d 405 (9th Cir. 2003) ..... 13,18

*Cal. ex rel. Lockyer v. U.S.*, 450 F.3d 436 (9th Cir. 2006) ..... 15

*Canadian St. Regis Band of Mohawk Indians v. State of NY*, 573 F.Supp.1530  
(N.D.N.Y. 1983) ..... 19

*Ctr. for Biological Diversity v. Berg*, 268 F.3d 810 (9th Cir. 2001)..... 13,15,17

*Forest Conservation Council v. U.S. Forest Service*, 66 F.3d 1489 (9th Cir. 1995) ..... 15

*Greene v. U.S.*, 996 F.2d 973 (9th Cir. 1993) ..... 15

*Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094 (9th Cir. 2002) ..... 20

*Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton*,  
327 F. Supp.2d 995 (W.D. Wisc. 2004)..... 1

*Miami Tribe of Oklahoma v. Walden*, 206 F.R.D. 238 (S.D. Ill 2001)..... 1

*NAACP v. New York*, 413 US 345 (1973) ..... 14

*Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525 (9th Cir. 1983)..... 18

*Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978) ..... 17

*Sierra Club v. EPA*, 995 F.2d 1478 (9th Cir.1993)..... 14,15

*Trbovic v. United Mine Workers of America*, 404 U.S. 528 (1972) ..... 15

*United Airlines, Inc. v. McDonald*, 432 U.S. 385 (1977) ..... 14,15

*U.S. v. Alisal Water Corp.*, 370 F.3d 915 (9th Cir. 2004)..... 15

*U.S. v. State of Wash.*, 86 F.3d 1499 (9th Cir. 1996) ..... 15

*Vann v. Kempthorne*, 467 F.Supp 2d 56 (D.D.C. 2006) ..... 1

*Westlands Water Dist. V. U.S.*, 700 F.2d 561 (9th Cir. 1983) ..... 15

*Wilderness Soc. v. U.S. Forest Service*, 630 F.3d 1173 (9th Cir. 2011) ..... 15

*Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7 (2008)..... 1,2

## **Code**

25 U.S.C. § 2701 et seq..... 3

## **Federal Rules**

Fed. R. Civ. P. Rule 24(a)(2) ..... 14,15,17

Fed. R. Civ. P. Rule 24(b) ..... 19

Fed. R. Civ. P. Rule 24(b)(1)(B)..... 19

Fed. R. Civ. P. Rule 24(b)(3) ..... 19,20

## I. INTRODUCTION

The Picayune Rancheria of the Chukchansi Indians, a federally recognized Indian tribe (the “Tribe” when referring to the Tribe generally and “Lewis Faction” when referring to the Tribal Council led by Chairman Reggie Lewis)<sup>1</sup>, respectfully requests leave from this Court to specially appear and intervene in the above-captioned case as a defendant as a matter of right, or in the alternative, with this Court’s permission.<sup>2</sup> The Complaint – which Plaintiff improperly filed in the Tribe’s name on May 30, 2013 – seeks recognition, comity and enforcement of purported decisions made by an unauthorized, illegally formed tribal court established by a group of individual Tribal members (collectively referred to herein as the “Ayala Faction”) in an attempt to justify actions that violated Tribal law, all as discussed in detail below. In short, because the Ayala Faction has no authority to file suit and seek relief on behalf of the Tribe, the legitimate governing body of the Tribe seeks to intervene in this case in its own name, through the Tribe’s duly elected and installed Tribal Council, the Lewis Faction, to protect the interests of the Tribe and its membership.<sup>3</sup> As demonstrated below, and as this Court recently recognized in the analogous case involving Rabobank (Case No. 1:13-cv-0609-LJO-MJS, Dkt. No. 21), granting intervention is again appropriate so that the Lewis Faction can protect the significant interests that are threatened by this action and that are not adequately represented by the current parties.

Moreover, there is no basis in law or fact supporting the issuance of a preliminary injunction pursuant to the Ayala Faction’s pending request. Quite simply, the Ayala Faction cannot establish any one, let alone all four, of the applicable standards required under *Winter v.*

<sup>1</sup> See Declaration of Geoffrey M. Hash in Support of Specially-Appearing Proposed Intervenor Defendant The Picayune Rancheria of The Chukchansi Indian’s Motion To Intervene (FRCP 24) (“Hash Decl.”), **Exhibit A**.

<sup>2</sup> The Lewis Faction specially appears to seek leave to intervene solely for the limited purpose of filing and prosecuting its motion to dismiss, and does not waive its sovereign immunity from suit or consent to be sued with regard to any issue or claim now or hereafter presented in this case or otherwise, and expressly reserves its sovereign immunity from suit. See *Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 327 F. Supp.2d 995, 1000 (W.D. Wisc. 2004) (explaining that sovereign “entities may intervene for a limited purpose such as moving to dismiss the lawsuit for failure to join an indispensable party without waiving their sovereign immunity.”); see also *Vann v. Kempthorne*, 467 F.Supp 2d 56, 60 (D.D.C. 2006); and, *Miami Tribe of Oklahoma v. Walden*, 206 F.R.D. 238, 240 (S.D. Ill 2001).

<sup>3</sup> As discussed herein, a recent Tribal referendum conclusively demonstrates that the Tribal Council seeking the Tribe’s intervention here is the legitimate governing body of the Tribe.

1 *Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). For example, as demonstrated below, the  
 2 Ayala Faction cannot establish that it is likely to succeed on the merits of its Complaint. Indeed  
 3 the United States District Court for the Northern District of California along with at least three  
 4 financial institutions and the General Council of the Tribe have already refused to recognize the  
 5 Ayala Faction’s authority, the very recognition it now seeks in this Complaint. Similarly, there  
 6 can be no threat of “irreparable harm,” given that the Ayala Faction had no authority to act on  
 7 behalf of the Tribe in the first instance. And, in light of that same lack of authority, there are  
 8 neither any equitable factors that tip in favor of the Ayala Faction nor any public interest at stake  
 9 for this Court to issue such an injunction. Indeed, granting such an injunction would be contrary  
 10 to the public interest and fundamental principles of Tribal sovereignty as set forth below.

## 11 **II. FACTS**

### 12 **A. Events Leading Up To the Ayala Faction’s February 21, 2013 Attempted** 13 **Take Over**

#### 14 1. The Composition of the Tribe and Its Governance Structure.

15 The Tribe’s current enrollment consists of 902 Tribal members. *See* Declaration of Elena  
 16 Sanders, attached as **Exhibit B** to the Hash Decl. The Tribe’s governance system is established  
 17 by and operates under the authority of the Tribe’s Constitution, approved by the United States  
 18 Bureau of Indian Affairs (“BIA”) in 1988. *See* Constitution of the Picayune Reservation  
 19 (“Constitution”), attached as **Exhibit C** to the Hash Decl. The General Council, which consists  
 20 of all Tribal members who are 18 years or older (“General Council”), elects, pursuant to the  
 21 Tribe’s Election Ordinance, the seven members of the Tribal Council. *See id.*, Article IV, Section  
 22 1. Upon election, the Tribal Council is the day-to-day “Governing Body” of the Tribe, and has  
 23 the authority to conduct and oversee all Tribal affairs. *See id.*, Article IV, Section 2 and Article  
 24 V. However, the Tribal Council may take action as the Tribe’s Governing Body only when at  
 25 least a quorum of four (4) members is present at a properly-convened meeting. *See id.*, Section 2.  
 26  
 27

2. The December 2012 Tribal Council Election and the January Suspensions by the Uncontested Tribal Council's Unanimous Vote.

In December 2012, the three open Tribal Council seats were filled by vote of the General Council. The Tribe submitted the certified results to the BIA, listing the following duly-elected Tribal Council Members: Nancy Ayala, Reggie Lewis, Chance Alberta, Carl Bushman, Charles Sargosa, Tracy Brechbuehl, and Karen Wynn. *See* the Tribe's letter to Troy Burdick of the BIA dated January 7, 2013, attached to the Hash Decl. as **Exhibit D**.

At the January 24, 2013 duly-noticed Tribal Council meeting, the uncontested Tribal Council as it existed on that date unanimously voted to suspend Tribal Council Members Tracy Brechbuehl and Karen Wynn for alleged financial improprieties in violation of the Tribe's Amended Ethics Ordinance.<sup>4</sup> *See* Hash Decl., **Exhibits E, F and G**; *See also* Hash Decl. **Exhibit H** for a true and correct copy of the Tribe's Amended Ethics Ordinance. Accordingly, as of January 24, 2013, and based on the unanimous vote by the eligible and uncontested Tribal Council members (including Ayala and Sargosa), the duly-elected Tribal Council consisted of the following members: Nancy Ayala (Active); Reggie Lewis (Active); Chance Alberta (Active); Carl Bushman (Active); Charles Sargosa (Active); Tracy Brechbuehl (Suspended by unanimous Tribal Council Resolution on January 24, 2013); and Karen Wynn (Suspended by unanimous Tribal Council Resolution on January 24, 2013). Following these suspensions, the Tribal Council continued to conduct business as usual with its quorum of five members (Chairwoman Ayala, Vice-Chairman Lewis, and Members-at-Large Alberta, Bushman, and Sargosa).

...

...

...

<sup>4</sup> In summary, on January 24, 2013, Chairwoman Ayala received a report of suspected violations of the Tribe's Ethics Ordinance committed by Tribal Council Secretary Tracey Brechbuehl and Tribal Council Treasurer Karen Wynn in connection with their involvement in the purchase of furniture for the Casino from a vendor who was not authorized as required under the Tribe's Gaming Ordinance, Tribal-State Compact, and federal Minimum Internal Control Standards ("MICS") adopted pursuant to the Indian Gaming Regulatory Act. *See* 25 U.S.C. § 2701 et seq. The five remaining members of the Tribal Council unanimously voted to immediately suspend Brechbuehl and Wynn pending further investigation. Independent investigators were hired shortly thereafter.

**B. The Ayala Faction’s February 21, 2013 Attempted Take Over and Inconsistent, Illegal, Subsequent Actions.**

1. The Ayala Faction Attempts To Achieve Via An Illegal Referendum What It Failed to Achieve In Its Prior Federal Lawsuit.

- a. The U.S. District Court for the Northern District of California Rejects the Notion of a Tribe of 46 Ramirez and Wyatt Family Members.

On June 7, 2012, the same individuals who now seek to illegally oust the duly-elected governing body of the Tribe brought a motion in federal court attempting to enforce their interpretation of a judgment that had been entered in the *Tillie Hardwick* action some 30 years before (the “Motion to Enforce Judgment”). *See Tillie Hardwick, et al., v. U.S.*, Case No. 5:79-cv-1710-JFT.<sup>5</sup> In brief, the members of the Ayala Faction sought to persuade the federal district court that the Tribe was comprised of only 46 members, all from the Ramirez and Wyatt families, and that the Ramirez and Wyatt family members were the only individuals with authority to formally organize the Picayune Rancheria. *See Memorandum of Points and Authorities in Support of Plaintiffs’ Motion for Enforcement of Judgment* filed in *Tillie Hardwick, et al., v. U.S.*, Case No. 5:79-cv-1710-JFT, Dkt. No. 341. Nancy Ayala is a member of the Wyatt family.

Both the Tribe and the United States opposed the Ayala Faction’s Motion to Enforce Judgment. In its opposition brief, the United States explained that the Ayala Faction’s delay in pursuing such an outcome prejudiced the United States because the federal government had “worked with the [fully-constituted] Tribe as a federally-recognized Indian entity and had a government-to-government relationship with the Tribe since the Tribe’s organization in 1988.” *See Federal Defendant’s Opposition to Plaintiffs’ Motion for Enforcement of Judgment*, at p.11, attached to the Hash Decl. as **Exhibit I**. The United States explained that it had “a uniquely important interest in dealing on a government-to-government basis with the properly constituted tribal government, and had a wide range of governmental interaction with the tribe over the years,

<sup>5</sup> By way of background, the initial *Tillie Hardwick* action was filed in 1979 by individuals from a number of terminated tribes, including the Tribe, seeking restoration of their status as Indians and entitlement to federal benefits, as well as the right to reestablish their tribes as formal government entities. The litigation resulted in a stipulated judgment (the “Stipulation”) between the United States and seventeen tribes, including the Tribe.

1 including the conferral and disbursement of federal services and benefits.” *Id.*, at 11-12. The  
 2 United States also made clear that, in its view, the Ayala Faction did not constitute the entire  
 3 Tribe and they were not the sole individuals authorized to serve as the Tribe’s leadership. *See Id.*,  
 4 at 17.

5 On December 13, 2012, after oral argument, the United States District Court for the  
 6 Northern District of California entered its order denying the Motion to Enforce Judgment  
 7 (“Order” or “Federal Court Order”). In the Order, the Court recognized that the Ayala Faction  
 8 sought “to unwind more than twenty years of tribal governance by asserting that [ . . . ] the terms of  
 9 the [Stipulation], restored recognition to only” those individuals in possession of Indian lands at  
 10 the time of the Stipulation. *See Tillie Hardwick, et al., v. U.S.*, Case No. 5:79-cv-1710-JFT  
 11 (Order, dated December 13, 2012), attached to the Hash Decl. as **Exhibit J**. In rejecting the  
 12 Motion to Enforce Judgment, the Court also expressly rejected its claim that only the Ramirez  
 13 and Wyatt families comprised the entire Tribe and that the entire Tribal membership consisted of  
 14 a mere 46 individuals. Instead, the Court acknowledged that “the BIA has recognized and dealt  
 15 with the Tribe’s governing body since 1989,” which demonstrated decades of government-to-  
 16 government dealings between the fully-constituted Tribe and the United States. The Court also  
 17 recognized that the governing body of the Tribe and the federal government had through the years  
 18 entered into numerous contracts and undertaken other official governmental activities.<sup>6</sup>

19 At no time after the District Court denied the Motion to Enforce Judgment did the Ayala  
 20 Faction seek a stay of the Order. Nor did the Ayala Faction appeal the Order to the Ninth Circuit  
 21 Court of Appeal. Thus, the Order is a final and nonappealable Federal Court Order ruling on the  
 22 Ayala Faction’s unfounded contentions regarding limitations on Tribal membership and  
 23 limitations on the composition of the governing body of the Tribe.

24 ...

25 ...

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26 <sup>6</sup> The most recent Tribal resolutions authorizing such federal contract submissions occurred on January 3, 2013 and  
 27 February 7, 2013, and were executed by (then) Tribal Council Chairperson Nancy Ayala (just days prior to the hostile  
 28 takeover events of February 21, 2013, discussed below). *See* Resolutions #2013-04 and #2013-15, attached to the  
 Hash Decl., collectively, as **Exhibit K**.

b. The Ayala Faction Disregards the Federal Court Ruling And Initiates a Takeover of the Tribal Government.

Having lost in Federal Court, the Ayala Faction attempted to overthrow the Tribe's legitimate governing body at the duly-called Tribal Council Business Meeting on February 21, 2013. At the beginning of the meeting, then-Chairperson Ayala approved a last minute addition to the agenda, adding an unverified petition and referendum to "new business." Thereafter, the Ayala Faction introduced the referendum containing a mere 14 signatures that purported to remove all members of the Tribal Council who were not members of the Wyatt or Ramirez families – or all Tribal Council members save and except Ayala. *See* Hash Decl., **Exhibit L**. In short, the referendum would remove all Tribal Council members except Ayala, a member of the Wyatt family. Based on their bald assertion that the Tribe's membership consists of only the 46 members of the Wyatt and Ramirez families, the Ayala Faction took the position that the 14 signatures appearing on the referendum were sufficient to meet the Constitutional requirement that a referendum be approved by at least 30% of the Tribal membership.<sup>7</sup>

Ayala, in violation of her oath of office and the Tribal Council bylaws, unilaterally accepted the petition, seconded a motion to call the referendum for a vote, and then determined that the referendum had passed with sufficient votes, even though three of the five active Tribal Council members voted "no" – in other words, the referendum was "passed" without a quorum of the Tribal Council voting in favor of the same. *See* Affidavit of Reggie Lewis, attached to the Hash Decl. as **Exhibit M**. Fearing for their safety among the meeting heavily attended by members of the Ayala Faction, Tribal Council members Lewis, Alberta, Bushman and Sargosa – the three members who voted "no" on the referendum – left the Tribal Council meeting room and the building, and attempted to reconvene outside.

While Tribal Council members Lewis, Bushman, and Alberta were prohibited from entering the Tribal government complex following their exit from the meeting, Ayala and

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<sup>7</sup> As shown above, the Ayala Faction's contention is directly contrary to the Federal Court Order, which held that the Tribe's membership was not comprised of 46 individuals, but rather, was comprised of over 900 Tribal members (adult and minor).

members of the Ayala Faction met late into the night of February 21 and into February 22. The Ayala Faction purported to pass numerous “resolutions” and take various actions in the name of the Tribal Council, including (1) “appointing” six new Tribal Council members – all of whom were members of the Ramirez and Wyatt families (including Ayala’s mother and sister); (2) sending notification to the BIA regarding the new council members;<sup>8</sup> (3) passing countless invalid resolutions purporting to recognize the Ayala Faction and its supporters in various capacities in Tribal government and at the Chukchansi Gold Resort & Casino (“Casino”) an entity wholly owned and operated by the Tribe, lift a disenrollment freeze, terminate agreements, fire legal counsel and retain new legal counsel (who, incidentally, is not a member of any state or federal bar in the United States); and (4) attempt to take control over the Tribe’s various bank accounts, including those held by Defendants United Securities Bank (“USB”) and Premier Valley Bank (“Premier), now at issue in this case. *See, e.g.,* Hash Decl. **Exhibit P** thereto; *see also* **Exhibit Q** attached to the Hash Decl. for a true and correct copy of the March 1, 2013 Second Affidavit of Leland McGee, detailing the events of the Ayala Faction’s council meeting on February 21, 2013. On February 22, 2013, an attorney for the Tribe met with the BIA Regional Superintendent Troy Burdick to discuss the Ayala Faction’s hostile takeover attempt. *See* February 24, 2013 Declaration of Nicole St. Germain, attached to the Hash Decl. **Exhibit R**. At the meeting, Mr. Burdick stated that the actions of the Ayala Faction appeared to be exactly what the Ayala Faction attempted to do through the prior District Court action – namely, erase thirty years of Tribal governance to give complete control of the Tribe to two families. *See id.*, at 6. Mr. Burdick also stated that, in light of her suspension by the other Tribal Council members following her actions on February 21, 2013, he understood that Nancy Ayala no longer had governing authority as a member of the Tribal Council. *See Id.* at 9.

## 2. The Changing Composition of the Tribal Council Seated by the Ayala Faction.

As described above, and basing its actions on the 14 signatures presented on the referendum at the February 21, 2013 Business Meeting, the Ayala Faction illegally purportedly

<sup>8</sup> *See* Hash Decl., **Exhibits N and O**.

1 removed from the Tribal Council Vice Chairman Reggie Lewis, Secretary Tracey Brechbuehl,  
 2 Treasurer Karen Wynn, and Members-at-Large Chance Alberta, Carl “Buzz” Bushman, and  
 3 Charles Sargosa. It then proceeded to “self-appoint” a new, never-elected governing body – in  
 4 direct contravention of the Tribe’s Constitution and Election Ordinance. The tribal council  
 5 created by the Ayala Faction was comprised of Nancy Ayala, Mona Bragdon, Amanda Ramirez,  
 6 Antone Ramirez, Mike Ramirez, Holly Wyatt, and Jane Wyatt (all members of either the Ramirez  
 7 or Wyatt families) (the “Faction Council #1”).

8 Shortly thereafter, and in a patently remedial effort to regain a quorum of the legitimate  
 9 Tribal Council, the composition of Faction Council #1 changed again. Specifically, according to  
 10 a resolution generated by the Faction, new council members were seated on February 23, 2013.  
 11 By Sunday, February 24, 2013, through unexplained maneuvering, Tracey Brechbuehl, Karen  
 12 Wynn, and Charles Sargosa had been “re-seated” as members of the Ayala Faction’s Tribal  
 13 Council. *See Exhibit S* to the Hash Declaration. Thus, as of February 24, 2013, the Ayala  
 14 Faction’s Tribal Council consisted of: Nancy Ayala, Jane Wyatt, Tracey Brechbuehl, Karen  
 15 Wynn, Charles Sargosa, Mona Bragdon and Amanda Ramirez (the “Faction Council #2”).

16 Following the Ayala Faction’s retention of new/additional legal counsel, the Ayala  
 17 Faction’s Council #2 inexplicably morphed again, back to the original seven members of the  
 18 Tribal Council, as it was before the February 21 Business Meeting, but with Brechbuehl and  
 19 Wynn active, and Lewis, Alberta, and Bushman suspended (“Faction Council #3”).<sup>9</sup> *See Exhibit*  
 20 *T* to the Hash Decl.

21 3. The Ayala Faction Creates an Unauthorized and Illegitimate Tribal Court and Sues  
 22 Rabobank, USB and Premier to Gain Control Over Tribal Funds.

23 Following the actions described above, and following Rabobank’s<sup>10</sup> refusal to recognize  
 24 the Ayala Faction as described below, the Ayala Faction introduced its “Law and Order Code,”

25 <sup>9</sup> Ayala and Sargosa were the other two council members.

26 <sup>10</sup> As described below and as described in the Tribe’s Memorandum of Points and Authorities in Support of Motion  
 27 to Intervene (FRCP 24) in Case No. 1:13-CV-00609 (docket No. 9, page 2 lines 18-26 and Exhibits D and E  
 28 referenced therein), Rabobank is the “Depository Bank,” or the bank into which all Tribal Casino revenues are to be  
 deposited and from which all Casino bills are to be paid. Thus, it plays a significant role in the handling and  
 processing of Tribal assets.

1 purportedly Tribal law passed by the Ayala Faction establishing a tribal court. *See* March 26,  
 2 2013 email from Les Marston, counsel for the Ayala Faction, attached as **Exhibit U** to Hash Decl.  
 3 (without attachments). The Ayala Faction then initiated a series of complaints before its newly-  
 4 created court. In one such action, the Ayala Faction sued Rabobank for refusing to grant the  
 5 Ayala Faction access to Tribal bank accounts holding Casino funds. In doing so, the Ayala  
 6 Faction disregarded the terms of the contracts governing the re-financing of Casino, the already-  
 7 enacted Tribal Court Ordinance establishing the legitimate Chukchansi Tribal Court, and Tribal  
 8 law that categorically exempted such disputes from the jurisdiction of the Chukchansi Tribal  
 9 Court. *See* Hash Decl, **Exhibit V**.<sup>11</sup>

10 As already recognized by this Court in its Findings and Recommendations Granting  
 11 Motion to Intervene in Case No. 1:13-cv-00609-LJO-MJS, Dkt. No. 26 at page 7:17-21, there are  
 12 “substantial questions about the validity of tactics used by the Ayala Faction to assert control of  
 13 the Tribe, justify its actions, and even initiate this litigation.” The very same tactics are at issue in  
 14 this case.

15 Specifically, in another action initiated by the Ayala Faction in its hastily created and  
 16 illegitimate tribal court, the Ayala Faction sued USB because, like Rabobank, USB refused to  
 17 grant the Ayala Faction access to Tribal bank accounts. As demonstrated in the Complaint here,  
 18 the Ayala Faction’s court issued a preliminary injunction that, in essence, purportedly (1) required  
 19 USB to recognize the Ayala Faction’s authority; and (2) prohibited USB from recognizing the  
 20 legitimate Tribal Council vis-à-vis USB accounts holding Tribal assets.

### 21 **C. Rabobank Refuses to Recognize The Ayala Faction.**

22 On February 28, 2013, following its review of legal memoranda submitted by the Lewis  
 23 Faction and the Ayala Faction, Rabobank issued a letter to both. *See* Hash Decl., **Exhibit W**. In  
 24 the letter, Rabobank stated its understanding that, pursuant to Tribal law and the materials

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25  
 26 <sup>11</sup> The Ayala Faction then sought this Court’s recognition of the decision issued by the illegitimate tribal court in the  
 27 action against Rabobank in the United States District Court for the Eastern District of California, via Case No. 1:13-  
 CV-00609-LJO-MJS (“Rabobank Matter”). The Tribe has sought intervention in the Rabobank Matter for many of  
 the same reasons articulated in this present Motion.

presented by both the Lewis and Ayala Factions, the Tribal Council consisted of the following individuals: Chance Alberta, Charles Sargosa, Carl Buzz Bushman, Reggie Lewis, Nancy Ayala, Tracey Brechbuehl and Karen Wynn. *See id.* Rabobank further recognized that both Ms. Brechbuehl and Ms. Wynn were on suspension in light of events prior to February 21, 2013, and, therefore, lacked authority to access the Tribe's accounts held at Rabobank. *See id.*

The Lewis and Ayala Factions continued to submit legal memoranda to, and meet with, Rabobank in early March 2013. Following the same, Rabobank issued further correspondence to both on March 7, 2013, stating the bank's recognition of the aforementioned seven Tribal Council members, as well as the suspended status of Nancy Ayala, Tracey Brechbuehl and Karen Wynn. In its letter, Rabobank recognized that:

Ms. Ayala's position keeps changing- thereby undermining her own arguments. In light of her changing position, the bank finds Ms. Ayala's arguments as unpersuasive. Therefore, Bank finds in support of Mr. Lewis and thus recognizes the Council's suspension of Ms. Ayala.

*See Hash Decl., Exhibit T.*

**D. The Ayala Faction Begins to Hoard Cash in the Casino Cage.**

Presumably anticipating that it would not be recognized by Rabobank, the Ayala Faction began hoarding cash in the Casino cage, and refusing to deposit any funds in Rabobank, as early as February 28, 2013. *See* February 28, 2013 email from T. Attard to Giffen Tan, attached to the Hash Decl. as **Exhibit X**. This action was a clear violation of the Tribe's Gaming Commission regulations and various contracts relating to the Casino's refinancing. On March 14, 2013, Rabobank sent correspondence to the Tribe and the Ayala Faction confirming the fact that the Casino "management" had been instructed by the Ayala Faction "to not deposit cash at Rabobank, but rather, to hold the funds in the cage." *See Hash Decl., Exhibit Y.*

**E. Rabobank Flags The Ayala Faction's Role In Fraudulent Casino Transactions.**

On April 3, 2013, Rabobank sent correspondence to the both the Lewis and Ayala Factions, directly accusing the Ayala Faction of criminal behavior. *See Hash Decl., Exhibit Z.*

1 Rabobank supported these allegations with detailed documentation, informing both the Lewis and  
 2 Ayala Factions of the applicable chronology and reasoning that led the bank to believe that the  
 3 Ayala Faction had knowingly engaged in fraudulent activity by writing checks against an account  
 4 for which it knew it had no signatory authority.<sup>12</sup> *See id.* Rabobank confirmed that such  
 5 fraudulent activity had resulted in “well over \$100,000.00 worth of bad checks being deposited  
 6 into the Rabobank account.” Rabobank further stated that “[n]ot only are both banks being  
 7 harmed by this activity, but the Casino is also being defrauded out of thousands of dollars by  
 8 forcing Casino employees to cash bad checks which the owners know will not be honored.” *Id.*

9 **F. The Tribe’s General Council Affirms the Current Composition of the Tribal**  
 10 **Council.**

11 Pursuant to Article XI of the Tribe’s Constitution, “[u]pon presentation to the Tribal  
 12 Council of a petition signed by 30% of the qualified voters, the Tribal Council shall either (1)  
 13 adopt the provisions of the petition . . . or (2) call an election at which the issue presented by the  
 14 petition may be voted on . . .” Hash Decl., **Exhibit C** at page 5. On or about April 2, 2013, Tribal  
 15 members circulated a referendum aimed at restoring order to the Tribe and all of its operations,  
 16 including the Casino, entitled “Referendum of the General Council to Affirm By Resolution The  
 17 Composition of the Tribe’s Current Governing Body and Recent Efforts to Restore An Effective  
 18 Tribal Government” (“Referendum”). *See* Hash Decl., **Exhibit AA**. At the recommendation of  
 19 the BIA, the Tribe retained a respected third party entity, Indian Dispute Resolution Services, Inc.  
 20 (“IDRS”), to coordinate issuance and collection of signatures on the Referendum, as well as  
 21 verification and tabulation of the signatures.

22 As of April 18, 2013, IDRS confirmed receipt of 334 petitions signed by qualified voters  
 23 of the Tribe, far exceeding the 225 qualified voter signatures required for a referendum to be  
 24 effective.<sup>13</sup> *See* Hash Decl., **Exhibit BB**. Upon receipt of confirmation that at least the 30%  
 25 threshold was satisfied, and pursuant to the Tribe’s Constitution, the Lewis Faction’s Tribal

26 <sup>12</sup> Indeed, the payees were specifically instructed by the Faction to cash these checks at the Casino cage because the  
 27 same would not be honored by Rabobank.

28 <sup>13</sup> There are currently approximately 750 qualified voters in the Tribe. Thus at least 225 qualified voter signatures  
 were required in order to reach the 30% threshold required for a referendum.

1 Council approved Resolution 2013-63, formally adopting this Referendum. *See* Hash Decl,  
 2 **Exhibit CC**. More recently, on April 29, 2013, IDRS formally certified the results of the  
 3 Referendum, stating that it had received the required number of signed petitions from qualified  
 4 Tribal voters in support of the Referendum, and further stating that additional Tribal members had  
 5 signed and it had now actually received signed petitions representing approval of the Referendum  
 6 from 53% of the qualified voters of the Tribe. *See* Hash Decl, **Exhibit DD**.

7 Thus, pursuant to the Referendum and as a matter of Tribal Law, the General Council had  
 8 confirmed as of April 18, 2013 that (1) Charles Sargosa had forfeited all rights as a Tribal  
 9 Council member for having “absented himself from three successive meetings without being  
 10 excused for cause”; (2) Irene Waltz, as the next highest vote-receiver in the December 1, 2012  
 11 Tribal Council Election, was to fill the Tribal Council position forfeited by Mr. Sargosa; and (3)  
 12 the current composition of the Tribal Council is: (i) Reggie Lewis, Acting Chairman (active  
 13 member); (ii) Chance Alberta, Acting Secretary/Treasurer (active member); (iii) Carl “Buzz”  
 14 Bushman, Member-at-Large (active member); (iv) Irene Waltz, Member-at-Large (active  
 15 member); (v) Karen Wynn (suspended member); (vi) Tracey Brechbuehl (suspended member);  
 16 (vii) Nancy Ayala (suspended member). *See* Hash Decl. **Exhibits CC and DD**.

17 **G. Following Their Own Independent Review, USB and Premier Refuse to**  
 18 **Recognize the Ayala Faction.**

19 Like Rabobank, USB and Premier both undertook independent reviews with the guidance  
 20 of legal counsel to determine who is, and is not, authorized to act on behalf of the Tribe. In fact,  
 21 USB’s review of materials, including legal memoranda and related documentation, began on or  
 22 about February 22, 2013, the very first day following the Ayala Faction’s attempted takeover.  
 23 *See* Hash Decl., ¶ 34. Premier’s review of such materials began just days later, on or about  
 24 February 25, 2013. *See* Hash Decl., ¶ 36. After literally several months’ review and conferring  
 25 with both the Ayala Faction’s and the Lewis Faction’s legal counsel, both institutions reached a  
 26 definitive conclusion on this key issue. Specifically, Timothy Jones<sup>14</sup> stated on behalf of both

27 <sup>14</sup> Mr. Jones is an attorney with Wanger, Jones Helsley PC, legal counsel to both USB and Premier. *See* Hash Decl.,  
 28 ¶ 35.

1 USB and Premier as follows:

2 Faced with demands from competing sides in this dispute, the Bank  
 3 has asked each side to submit the arguments in favor of their  
 4 position. Having reviewed those arguments, and the supporting  
 5 documents with which we have been provided, we are ready to  
 6 advise that the Bank has concluded that **the Lewis/Alberta faction**  
 7 **remains in control of the Tribal Council at the present time** and,  
 therefore, has the right under the Constitution of the Tribe and the  
 Bylaws of the Tribal Council to control the Tribe's accounts at the  
 Bank.

8 See Hash Decl., **Exhibits EE and FF** (emphasis added). In other words, both USB and Premier  
 9 refused to recognize the Ayala Faction, and instead recognized the Lewis Faction Tribal Council  
 10 already recognized by Rabobank and, more importantly, affirmed by the General Council of the  
 11 Tribe as discussed above. In denial of the fact that no entity (other than its own sham tribal court)  
 12 has recognized the Ayala Faction, and in denial of the facts that (1) the United States District  
 13 Court for the Northern District of California, (2) at least three financial institutions, and (3) the  
 14 General Council of the Tribe have all already rejected the Ayala Faction's authority, the Ayala  
 15 Faction now looks to this Court in a desperate plea for recognition. As set forth below, there is no  
 16 factual or legal basis to recognize the Ayala Faction as having any authority to act on behalf of  
 17 the Tribe.

### 18 **III ARGUMENT**

19 Under controlling law, the intervention of the Tribe, as represented by the Lewis Faction,  
 20 as a Defendant in this action may occur as a matter of right or by permission of the Court. The  
 21 standard for intervention under Federal Rules of Civil Procedure, Rule 24 is construed liberally in  
 22 favor of intervenors for practical and equitable considerations. *Ctr. for Biological Diversity v.*  
 23 *Berg*, 268 F.3d 810, 818 (9th Cir. 2001); *Arakaki v. Cayetano*, 159 F.3d 405, 409 (9th Cir. 2003).  
 24 The Lewis Faction meets the standards for both permissive intervention and intervention as a  
 25 matter of right. The Lewis Faction's interest in the bank accounts at issue in this action and its  
 26 continuing business relationship with both USB and Premier could be seriously impaired by the  
 27

disposition of this action. Moreover, the Ayala Faction lacks the authority to adequately represent the Tribe's interests in the matter; in point of fact, the Ayala Faction is instead directly threatening the Tribe's interests. The Tribe's claims, via the Lewis Faction, against the legitimacy of Plaintiff and the judgment of the tribal court it created presents a common question of law and fact. Given the early stage of this proceeding, allowing intervention will not unduly delay or prejudice the adjudication of the parties' rights.

**A. The Lewis Faction Satisfies the Requirements for Intervention as a Matter of Right.**

Rule 24(a)(2) of the Federal Rules of Civil Procedure states in pertinent part: "on timely motion, the court must permit anyone to intervene who: claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." As a result, there are four basic requirements for intervention as a matter of right:

(1) the motion must be timely; (2) the claim of applicant must claim a "significantly protectable" interest relating to the property or transaction which is the subject of the action; (3) the applicant must be so situated that the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and (4) the applicant's interest must be inadequately represented by the parties to the action.

*Sierra Club v. EPA*, 995 F.2d 1478, 1481 (9th Cir.1993). The Lewis Faction meets each of the requirements for intervention of right.

1. The Lewis Faction Has Timely Filed its Motion to Intervene.

An intervenor's timeliness is "to be determined by the court in the exercise of its sound discretion" upon consideration of all the circumstances of the case including "the amount of time elapsed since the suit was filed." *NAACP v. New York*, 413 US 345, 365-366 (1973). The Court can examine when the intervenor became aware that its interests could be adversely affected and its subsequent actions to intervene. *United Airlines, Inc. v. McDonald*, 432 U.S. 385,

394 (1977) (holding that a motion to intervene *after* judgment and before the time period allotted for appeal of the judgment was timely). Additionally, “timeliness” is entitled to liberal interpretation of relevant facts including an examination of the state of the proceedings, any prejudice to the existing parties caused by intervention and any reason for a length of delay. *Westlands Water Dist. V. U.S.*, 700 F.2d 561, 563 (9th Cir. 1983); *U.S. v. State of Wash.*, 86 F.3d 1499, 1502 (9th Cir. 1996).

Here, the Lewis Faction seeks to intervene in this action just within eight (8) days following the Ayala Faction’s filing of its case. The instant motion precedes any responsive filings from any of the named defendants. There is no risk of prejudice to the existing parties because the case is just beginning. Given these facts, the Tribe meets the timeliness requirement.

2. The Lewis Faction Has a “Significantly Protectable Interest” Related to the Subject of the Action.

To fulfill the second requirement of Rule 24(a)(2), “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 intervenor’s claimed interest “must be related to the underlying subject matter of the litigation.” *U.S. v. Alisal Water Corp.*, 370 F.3d 915, 920 (9th Cir. 2004). A significantly protectable interest can be shown when the remedies sought in the action would have a “direct, immediate, and harmful effect...on tangible, concrete rights protected by...law.” *Forest Conservation Council v. U.S. Forest Service*, 66 F.3d 1489, 1494 (9th Cir. 1995) (abrogated on other grounds related to intervention on NEPA claims by *Wilderness Soc. v. U.S. Forest Service*, 630 F.3d 1173 (9th Cir. 2011). Contract rights are traditionally protectable interests. *Sierra Club v. EPA*, *supra.*, 995 F.2d at 1482. “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.” *Ctr. for Biological Diversity v. Berg*, *supra.*, 268 F.3d at 818, citing *Greene v. U.S.*, 996 F.2d 973, 976 (9th Cir. 1993).

Most immediately, the Tribe, via the Lewis Faction, has a significantly protectable interest in its financial stability through continued operations of various Tribal programs and entities, including Chukchansi, Inc., and its continued relationship with its qualified banks, including USB and Premier, each of which has a contractual obligation to oversee millions of dollars in Tribal assets. Plaintiff's request for comity and recognition of an order issued by its self-created "tribal court" could severely impact the rights of the legitimate Tribal government to assert control over the funds of its governmental, social services, and commercial activities benefiting the more than 900 Tribal members. The relief that Plaintiff seeks is the legitimization of an invalid court order issued out of an illegally created "tribal court." Should this Court grant such relief, it would provide Plaintiff with the ability to divert all funds generated by the Tribe. Such relief would also provide Plaintiff with the ability to divert all funds received by the Tribe from various federal sources pursuant grants awarded to the Tribe, not the Ayala Faction. Without this income from both Tribal enterprises and federal funding, the Tribe would be unable to fund the basic human services it provides for its membership, including elder care, health insurance, college scholarship programs, language revitalization efforts, and children's programs. Plaintiff's actions also threaten the continued operation of the Tribal government.

What is more, the Ayala Faction's actions and request for relief in the Complaint threaten the very sovereignty of the Tribe. At its essence, Tribal sovereignty means the right to create its own rule of law and be governed by it. The Ayala Faction's attempt to take over the government and Casino to impose a regime of self-dealing, fraud and mob rule threatens the Tribe's nearly 30 year history of legitimate self governance following restoration by the Stipulation that derived from the *Tillie Hardwick* settlement. Plaintiff seeks recognition by this Court to legitimize the illegal actions the Ayala Faction has taken since February 21, 2013. In short, Plaintiff seeks to use this Court in Plaintiff's scheme to obtain recognition of an illegitimate "tribal court," recognition of an invalid order issued by that illegitimate court, and recognition of itself as the legitimate governing body of the Tribe, all of which is contrary to Tribal law and the very will of the Tribe's membership – those that the Faction purports to represent – as demonstrated in the

1 certified Referendum, described above. The Lewis Faction must intervene in this action to  
 2 protect its sovereignty and the legitimate authority bestowed upon the Tribe's governing body by  
 3 the Tribe's Constitution.

4 The Lewis Faction has a cognizable, significant interest that has been put at stake by the  
 5 claims Plaintiff is pursuing. The Lewis Faction has a significantly protectable interest that  
 6 justifies its intervention in this case.

7 3. Disposition of this Action Could Significantly Impair the Tribe's Ability to Protect  
 8 its Governmental and Financial Interests.

9 A party seeking intervention as a matter of right must demonstrate that disposition of the  
 10 pending action without that party would have a potential adverse impact on its interests which  
 11 could impair or impede its ability to protect its interests. Fed. R. Civ. P. Rule 24(a)(2). The  
 12 Ninth Circuit has followed the Fed. R. Civ. P. Rule 24 advisory committee in its position that "if  
 13 an absentee would be substantially affected in a practical sense by a determination made in an  
 14 action, he should as a general rule, be entitled to intervene." *Southwest Center for Biological*  
 15 *Diversity, supra.*, 268 F.3d at 822. "Indian tribes are distinct, independent political communities,  
 16 retaining their original natural rights" in matters of local self-government ... they remain a  
 17 separate people, with the power of regulating their internal and social relations." *Santa Clara*  
 18 *Pueblo v. Martinez*, 436 U.S. 49, 55 (1978) (citations omitted).

19 In addition to Plaintiff's impairment of the Tribe's contractual relationships with both  
 20 USB and Premier and the threat against continued government funding through Tribal  
 21 distributions, disposition of Plaintiff's claims threatens to significantly impair and impede the  
 22 Tribe's ability to maintain its government and exercise its right to self-determination pursuant to  
 23 its Constitution and Tribal law. The Tribe's very existence has been challenged by Plaintiff's  
 24 allegations, and no other entity is more appropriate to defend and protect the Tribe than the  
 25 recognized Tribe acting through its legitimate, duly elected Tribal Council and pursuant to the  
 26 Referendum described herein. With the Ayala Faction's efforts to seize control of the  
 27 government and the Casino, the Lewis Faction is forced to protect the interests of its 900+

1 citizens from a group attempting to disregard Tribal law for its own personal gain. As discussed  
 2 above, the Ayala Faction's actions have severely threatened the Tribe's ability to fund its  
 3 government, and have the potential to strip the Tribe's recognized membership of its right to  
 4 actively participate in its government.

5 As such, the Lewis Faction can demonstrate not only a possible, but an actual significant  
 6 impairment of its Tribal rights that support its request to intervene as a matter of right.

7 4. The Tribe's Interests Are Not Adequately Represented by the Existing Parties in  
 8 this Action.

9 An intervenor need only show that representation of his interest "may be" inadequate and  
 10 the burden of showing possible inadequate interest should be treated as minimal. *Trbovic v.*  
 11 *United Mine Workers of America*, 404 U.S. 528, 538, fn. 10 (1972); *Arakaki v. Cayetano, supra.*,  
 12 324 F.3d at 1086. This minimal burden is met by showing the existing parties have interests  
 13 adverse to the intervenor's. *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 527 (9th Cir. 1983).

14 The Ayala Faction has fraudulently filed suit in the name of the Tribe without  
 15 Constitutional authority to do so, and seeks recognition of a purported court order from an  
 16 illegitimate "tribal court" it created. Moreover, the Ayala Faction seeks control of the Tribe's  
 17 funds held at USB and Premier by asking this Court to enforce an order to interplead funds in an  
 18 account controlled by the Ayala Faction's illegally-established "tribal court." Such an order  
 19 would drain the Tribe of its resources, violate the Tribe's sovereignty, and give the Ayala Faction  
 20 unfettered access to millions of dollars without oversight. In short, the relief requested by the  
 21 Ayala Faction in this case is squarely against the interests of the Tribe.

22 While USB and Premier likely have an interest in maintaining the Tribal funds they hold,  
 23 they simply do not have the same interest in protecting the sovereignty of the Tribe, nor in  
 24 ensuring the continued legitimate self governance and regulation of the Tribe's membership  
 25 pursuant to the Tribe's Constitution. Even though USB and Premier may have an interest in  
 26 continuing the contractual relationship between the parties, they cannot adequately represent the

27 ...

1 Tribe's interests related to Tribal governance issues and the illegal establishment of a purported  
2 tribal court forum.

3 Nor are Defendants Lewis, Alberta or Bushman able to assert or protect the interest of the  
4 Tribe. To begin, none of these individual defendants have been served with copies of the  
5 Complaint, Summons, or any other papers in this matter. Thus, they are not proper parties and  
6 have no ability to protect the interests of the Tribe. But, even assuming, *arguendo*, that Plaintiff  
7 had served them, these individual defendants are not sufficiently able to protect the interests of  
8 either the entire Tribal Council or the General Council. *See Canadian St. Regis Band of Mohawk*  
9 *Indians v. State of NY*, 573 F.Supp.1530, 1537 (N.D.N.Y. 1983) (individual tribal members lack  
10 standing to assert claims on behalf of the Tribe).

11 Because the Ayala Faction clearly has interests that diverge and are in direct conflict with  
12 those of the Tribe, the Ayala Faction cannot adequately represent the Tribe's interests in this  
13 action. Similarly, USB and Premier are not in a position to adequately assert Tribal governance  
14 concerns. And, the individual defendants are not in any position, practically or legally, to  
15 adequately address the Tribe's interests. The Lewis Faction, as an intervenor, is best equipped to  
16 provide this Court with the facts that are central to the underlying claims made by Plaintiff, and  
17 the Tribal law and policy that it seeks to protect and uphold. On this basis, the parties cannot  
18 adequately represent the Tribe's interests, and the Lewis Faction should be entitled to intervention  
19 as a matter of right.

20 **B. In the Alternative, The Lewis Faction Meets The Requirements For**  
21 **Permissive Intervention.**

22 If, in the event intervention as right is disfavored by this Court, the Lewis Faction  
23 respectfully petitions the Court to exercise its discretion to allow the Lewis Faction's permissive  
24 intervention in this action pursuant to Fed. R. Civ. P. Rule 24(b). "On timely motion, the court  
25 may permit anyone to intervene who: has a claim or defense that shares with the main action a  
26 common question of law or fact." Fed. R. Civ. P. Rule 24(b)(1)(B). Such intervention requires  
27 consideration of undue delay or prejudice of the original parties' rights. Fed. R. Civ. P. Rule

24(b)(3). Permissive intervention thus requires a showing of both timeliness and a common interest in law or fact, and the absence of undue delay or prejudice. The existence of a “common question” is liberally construed. *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1108-109 (9th Cir. 2002).

For the reasons discussed more fully above, the Lewis Faction meets each requirement. The request to seek leave to intervene is properly before this Court within just a few days after Plaintiff filed the Complaint and before any responsive pleading has been filed by the named defendants. Additionally, the Lewis Faction has a common interest in law and fact related to this action, as Plaintiff attempts to use this Court to legitimize its actions taken in contravention of Tribal law and the mandate of more than 50% of the Tribal membership. Central to continued operation of the Tribal government is access to the Tribal distribution and other monies administered through USB and Premier. Plaintiff’s efforts to get this Court to enforce an illegitimate tribal court order to interplead all the Tribe and Casino funds held at USB and Premier with an entity wholly controlled by the Ayala Faction puts the entire Tribe at risk – both in relation to continued government operations, including programs and services for its membership, as well as in relation to its contractual relationship with USB and Premier.

The Lewis Faction respectfully requests the Court exercise its discretion in light of these facts to allow the Lewis Faction on behalf of the Tribe, as defendant intervenor, to assert the Tribe’s rights to protect its continuing government operations for the benefit of its more than 900 members.

#### **IV CONCLUSION**

As set forth fully above, the Lewis Faction on behalf of the Picayune Rancheria of the Chukchansi Indians respectfully move to intervene as of right pursuant to Fed. R. Civ. P. Rule 24(a)(2) because it has timely moved to intervene, has a significantly protectable interest, disposition of the case could significantly impair the Tribe’s ability to protect its interests and because the Lewis Faction’s interests are not adequately represented by the existing parties. In the alternative, the Lewis Faction asks that this Court allow its permissive intervention in this

1 action pursuant to Fed. R. Civ. P. Rule 24(b) because it has timely moved to intervene and  
2 because it clearly shares with the main action a common question of law or fact.

3 RESPECTFULLY SUBMITTED this 12th day of June, 2013.

4  
5 ROSETTE, LLP

6 By: /s/ Geoffrey M. Hash

7 Geoffrey M. Hash

8 Attorneys for Specially-Appearing  
9 Proposed Intervenor Defendant, the  
10 Picayune Rancheria of the Chukchansi  
11 Indians  
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