

## **EXHIBIT B**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK----- X  
WELLS FARGO BANK, N.A., AS TRUSTEE,

Plaintiff,

- against -

CHUKCHANSI ECONOMIC DEVELOPMENT  
AUTHORITY, THE BOARD OF THE CHUKCHANSI  
ECONOMIC DEVELOPMENT AUTHORITY, THE  
TRIBE OF PICAYUNE RANCHERIA OF THE  
CHUKCHANSI INDIANS, THE TRIBAL COUNCIL  
OF THE TRIBE OF PICAYUNE RANCHERIA OF  
THE CHUKCHANSI INDIANS, THE PICAYUNE  
RANCHERIA TRIBAL GAMING COMMISSION,  
RABOBANK, N.A., GLOBAL CASH ACCESS, INC.,  
NANCY AYALA, TRACEY BRECHBUEHL, KAREN  
WYNN, CHARLES SARGOSA, REGGIE LEWIS,  
CHANCE ALBERTA, CARL BUSHMAN, and BANK  
OF AMERICA, N.A.,Defendants.  
----- X

Index No.: 652140/2013

**AFFIRMATION OF JONATHAN L. HOCHMAN IN SUPPORT OF MOTION TO  
MODIFY THE COURT'S JULY 2, 2013 ORDER**

I, Jonathan L. Hochman, an attorney admitted to the practice of law before the courts of the State of New York, and not a party to the above-encaptioned action, affirm the following to be true under the penalties of perjury pursuant to CPLR § 2106:

1. I am a partner in the firm Schindler Cohen & Hochman LLP, located at 100 Wall Street, 15<sup>th</sup> Floor, New York, New York 10005, which, along with Rosette, LLP, is counsel to Defendants/Cross- and Counter-Claimants Chukchansi Economic Development Authority ("CEDA"), The Board Of The Chukchansi Economic Development Authority (the "Board"), The Tribe Of Picayune Rancheria Of The Chukchansi Indians (the "Tribe"), The Tribal Council Of The Tribe Of Picayune Rancheria Of The Chukchansi Indians (the "Tribal Council"), Reggie

Lewis (“Lewis”), Chance Alberta (“Alberta”), and Carl Bushman (“Bushman,” and collectively the “Lewis Parties”).

2. I submit this affirmation on behalf of the Lewis Parties in support of their Motion to Modify the Court’s July 2, 2013 Order in which it granted the motion of Plaintiff Wells Fargo, N.A. (“Wells Fargo” or the “Trustee”) for a Preliminary Injunction.

**A. Introduction: The Preliminary Injunction Must Be Modified Because The Casino Manager Has Given The Ayala Faction \$1.8 Million To Spend With No Oversight**

3. The Court should modify its July 2, 2013 Order (the “PI Order”) to prevent Defendants Nancy Ayala, Tracey Brechbuehl, Karen Wynn, Charles Sargosa (the “Ayala Faction”) from further absconding with Casino revenues. Indeed, since the Court issued its PI Order, the Lewis Parties have learned that the Casino Manager, Giffen Tan – who the Court believed would function as an independent fiduciary – has allowed the Ayala Faction to remove \$1.8 million dollars in cash from the Casino cage without depositing it in the Rabobank Operating Account<sup>1</sup>, and without informing or receiving the approval of the Lewis Parties.

4. As described below, the Ayala Faction’s counsel expressly told this Court at the July 2 preliminary injunction hearing that this would not happen. But the Ayala Faction has brazenly taken this money anyway.

5. Unless it were to be determined that the Ayala Faction is the rightful government of the Tribe (which it is not), the taking of this money is in breach of the Indenture. However, because the Court made clear that it was not determining the tribal dispute at this point, the Ayala Faction has no more right to remove assets from the Casino than does the Lewis Parties.

6. Accordingly, this Court’s preliminary injunction must be modified to achieve its

---

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Indenture, entered into among CEDA, the Tribe and the Trustee, and Security Agreement, entered into between CEDA and the Trustee, both dated May 30, 2012, as applicable.

intended purpose and to prevent an ongoing breach of the Indenture in amounts that will soon exceed tens of millions of dollars.

**B. \$1.8 Million Dollars Has Been Paid By The Casino To The Ayala Faction Without Depositing Those Funds Into The Rabobank Operating Account**

---

7. On July 19, 2013 the Lewis Parties learned of a \$1 million cash payment to “CEDA” from the Casino cage. This payment was not distributed from the Rabobank Operating Account, and was not made to any agreed-upon entity listed in Exhibit A to the Court’s PI Order.

8. Later, on July 23, 2013, the Lewis Parties learned of an \$800,000 cash payout from the Casino cage, which was, likewise, not distributed from the Rabobank Operating Account and not made to any agreed-upon entity listed in Exhibit A to the Court’s PI Order.

9. This money was taken from the Tribe without any oversight and the Lewis Parties had no prior opportunity to object.

10. Importantly, counsel for the Ayala Faction does not dispute that his clients took this money.

**C. Removal of These Funds By The Ayala Faction Violates The Indenture**

11. In a letter to the Court dated July 22, 2013, counsel for the Ayala Faction represented that the Ayala Faction was permitted to do so because the cash constitutes “Monthly Tribal Distributions” permitted to be removed as “Excluded Assets” under the Indenture (see Indenture (Ex. A to the Affidavit of Michael Slade dated June 17, 2013, Docket No. 4) at 14, 56) and the Court’s PI Order. (7/22/13 Letter, Docket No. 73.)

12. However, pursuant to the Indenture, cash payments to the Ayala Faction cannot be Excluded Assets because, pursuant to the portion of the definition of Excluded Assets that the Ayala Faction is relying on, Excluded Assets are certain assets “transferred by the Authority,” which is defined in the Indenture as CEDA (Indenture at 14).

13. But it is vigorously disputed – and the Court has very clearly not decided – whether the Ayala Faction or the Lewis Parties are the proper Tribal Government and CEDA Board.

14. If the Ayala Faction is not the proper the CEDA Board, they are not the Authority under the Indenture and the money they have taken does not constitute Excluded Assets under the Indenture. Rather, it is a defalcation by unauthorized parties in derogation of the rights of the legitimate CEDA and the Tribe.

15. Moreover, as a practical matter, and even though the tribal dispute has not been determined, the Ayala Faction is taking these funds and disbursing them with no oversight and with no checks or balances. The Lewis Parties are informed that some or all of this money is being used to secure loyalty for the Ayala Faction by, for example, providing food cards to Ayala supporters but not to others.

16. On or about July 17, the Lewis Parties informed counsel for the Trustee of the unauthorized \$1 million payment and, the next day counsel responded, surprisingly – and without explanation – that the Trustee had “no comment” about the payment and was “unaware” of any authority permitting the Trustee to investigate the payment.

**D. In Supporting The Trustee’s PI Motion, The Lewis Parties Raised Concerns That “Excluded Assets” Would Be Abused**

---

17. In the aftermath of the Ayala Faction’s illegal coup, the Lewis Parties supported Wells Fargo’s request for the issuance of a preliminary injunction to insure that the Ayala Faction would be required to adhere to the terms of the Indenture and that the Tribe and its Casino operations would be run in a responsible, businesslike, and reasonable fashion.

18. However, the Lewis Parties were concerned that, by virtue of its physical (albeit illegitimate) control of the Casino and Tribal government facilities, the Ayala Faction would

abuse the concept of “Excluded Assets” under the Indenture.

19. “Excluded Assets” is a defined term in the Indenture, referring to certain Casino or CEDA assets and/or revenues that are excluded from Casino Revenues. By way of example, this term includes (a) amounts in payroll accounts held for the benefit of third parties; (b) an application for a trademark registration; (c) leases, permits, and licenses on which a lien would be prohibited by law or require third party permission; and (d) personal property of the Tribal Gaming Commission and CEDA. In addition, and at issue here, is the provision in the Excluded Assets definition that permits CEDA to make Monthly Tribal Distributions (provided that certain preconditions are met), each of which are permitted to be \$1 million.

20. However, without any oversight by the Lewis Parties, it seemed likely that the Ayala Faction could use the Excluded Assets concept to siphon off Casino revenues prior to depositing money into the Rabobank Operating Account. The Lewis Parties, therefore, requested a modification of the proposed preliminary injunction order submitted by the Trustee.

21. Specifically, the Lewis parties requested a modification of Paragraph 1 of the PI Order, which provides:

CEDA and the Tribe shall maintain the Gross Revenues and Revenues and Cash of CEDA, other than Operating Cash and Gross Revenues that constitute Excluded Assets, in CEDA’s operating account at Rabobank, account number XXXXXX5114 (the “Rabobank Operating Account”). (7/2/13 Order, Docket No. 57, ¶ 1.)

22. In particular, at the July 2, 2013 hearing on the Trustee’s PI Motion, I requested that, after the term “Excluded Assets”, a parenthetical be added stating **“to the extent that both factions agree that those are properly [E]xcluded [A]ssets . . . .”** (Transcript of Preliminary Injunction Hearing on July 2, 2013 (“PI Transcript”) at 14:2-6, Docket No. 65 (emphasis added).) As I explained at the hearing, inclusion of this parenthetical was necessary to preserve

the status quo and to ensure that the Lewis Parties had an opportunity to object to any payments “to the extent that the Ayala Faction wants to designate money for itself . . . .” (*Id.* at 14:6-7.)

**E. The Ayala Faction’s Counsel Assured The Court That The Tribe (*i.e.*, The Ayala Faction) Would Not Take Money before It Went Into The Rabobank Operating Account**

---

23. In response to the concerns I raised at the July 2 Hearing on the Trustee’s Motion, counsel for the Ayala Faction, Lester Marston, unambiguously stated that I was misreading the definition of the Indenture and that the Court need not include such a parenthetical because the terms of the Indenture bar the Ayala Faction from skimming off Casino revenues prior to depositing money in the Rabobank Operating Account. Specifically, Mr. Marston stated that:

**The tribe doesn’t get any money under the indenture.** If there’s not sufficient revenue to first pay the bond, deposit into the operating account the amount of money necessary to make the biannual payment or annual payment to the bondholders, and then, second of all, pay the operating expenses of the casino. **So opposing Counsel’s statement that the tribe is going to somehow take the money first, you know, before making – for itself before it deposits in the operating account, is just wrong. And obviously, if the Ayala Faction or Lewis Faction, or anybody else tried to do that, it would be a violation of the indenture to the DACA [sic.], and Wells Fargo will immediately be coming, running into the Court and saying, your Honor, they are not putting all the money in the account that they are supposed to be putting in the accounts.**

(PI Transcript at 16:9–17:9 (emphasis added).)

24. The Trustee’s counsel was almost equally insistent that its proposed PI Order would not permit the Ayala Faction to secrete money:

There’s no issue with respect to whether the personal property of the Tribal Gaming Commission is going to be deposited into the Rabobank account. That’s not an issue here. So we think that this is much adieu [sic.] about nothing and that the terms of the indenture speak for themselves here. And it’s absolutely true, your Honor, if there are disputes that arise, just as if there are disputes that arise with respect to payments that are going out, those can be raised with a meet and confer, and if there are issues between the

factions with respect to those, or with respect to the – or with the trustee, which, again, has no dog in the fight other than to want to ensure that the indenture is complied with, that that can be brought to the Court’s attention.

(PI Transcript at 15:26–16:14.)

25. The Court was clearly satisfied that, so long as the Lewis Parties received cash flow reports of all casino revenues, it need not include the parenthetical I requested. (PI Transcript at 16:15–19:2.) Moreover, the Court specifically removed two entities (“PRCI and TGC”) from Exhibit A to the PI Order setting forth permitted payees (*id.* at 3:26–4:3), as the Lewis Parties identified those entities as Ayala Faction affiliates.

26. But, notwithstanding the assurances of the Ayala Faction and the Trustee, the Lewis Parties’ fears have been borne out.

27. In its letter to the Court dated July 22, 2013, counsel for the Ayala Faction claimed that the \$1 million payment was permitted because it constituted the monthly Tribal Distribution and was, therefore, an Excluded Asset under the Indenture.

28. Later, Mr. Marston represented in an e-mail to counsel for the Lewis Parties that the \$800,000 payment was also used for a monthly Tribal Distribution permitted under the Excluded Asset provision of the Indenture.

29. These improper payments also demonstrate that the Court was misled into believing that Giffen Tan, the Casino’s acting General Manager installed by the Ayala Faction, would act as a professional, independent fiduciary rather than a proxy for the Ayala Faction. Not only has the Ayala Faction unabashedly barred Mr. Tan from meeting with the lawfully appointed CEDA and Tribal Gaming Commission representatives, but now it is clear that he permitted \$1.8 million in cash to escape from the Casino without any proper oversight or accounting.



**F. Previously, Even “Excluded Assets” Had Been Deposited Into The Rabobank Operating Account**

30. Notably, I understand that prior to the Ayala Faction’s illegal coup, the procedure utilized by the Ayala Faction – *i.e.*, skimming off cash prior to depositing money in the Rabobank Operating Account – was never the procedure for making Monthly Tribal Distributions. Instead, all money was deposited first with Rabobank and then distributed to CEDA from that account.

31. Thus, it is clear that the Ayala Faction is exploiting a loophole in the Court’s PI Order to take money for itself and its own illicit purposes without any scrutiny by the Court or the Lewis Parties.

**G. Results Of July 26, 2013 Meet-And-Confer**

32. On the afternoon of July 26, counsel for several of the parties to this action met to discuss various issues raised by the Lewis Parties, including the \$1.8 million dollar payments from the Casino revenues.

33. At this meeting, I understand Lester Marston, counsel for the Ayala Faction, confirmed that the \$1.8 million had been paid from Casino revenues as Excluded Assets. Further, I understand that he declined to agree to a procedure permitting the Lewis Parties to consent to any future distributions made under the guise of Excluded Assets.

**H. Requested Relief**

34. As described above, the Ayala Faction’s money grab is entirely inconsistent with the terms of the Indenture.

35. The Indenture only contemplates the existence of one CEDA with the sole authority to make the Monthly Tribal Distributions. The Ayala Faction is not CEDA (*i.e.*, the “Authority”) and the Court has explicitly ruled that it has not yet determined, and was making no

determination, whether the Ayala Faction was properly acting as CEDA. (*See* PI Transcript at 52:3–15.) Accordingly, the money the Ayala Faction unilaterally grabbed from the Casino cannot constitute Excluded Assets under the Indenture.

36. The only way to ensure that no further money is siphoned from the Tribe is to require both sides purporting to be CEDA to agree on what payments constitute Excluded Assets.

37. Accordingly, Paragraph 1 of the Court’s July 2, 2013 PI Order should be modified to add a parenthetical as follows (modification in bold):

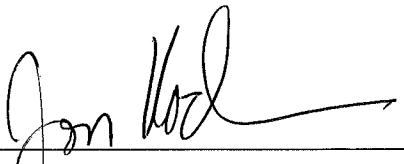
CEDA and the Tribe shall maintain the Gross Revenues and Revenues and Cash of CEDA, other than Operating Cash and Gross Revenues that constitute Excluded Assets **(to the extent that both factions agree that those are properly Excluded Assets)**, in CEDA’s operating account at Rabobank, account number XXXXXX5114 (the “Rabobank Operating Account”).

38. In addition, the Court should order a full accounting of the \$1.8 million payments from the Casino cage and any and all monies taken from Casino revenues and not deposited in the Rabobank Operating Account.

39. Finally, the Ayala Faction’s abuse of its control of the Casino demonstrates that additional abuses and disputes are likely. The Lewis Parties, therefore, respectfully request the appointment of a Special Master to oversee compliance with the Court’s PI Order and any discovery disputes that may occur.

40. No prior request for the relief requested herein has been previously made.

Dated: New York, New York  
July 29, 2013

  
\_\_\_\_\_  
Jonathan L. Hochman