

EXHIBIT E

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK-----
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.

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**THE LEWIS PARTIES' SUPPLEMENTAL SUBMISSION IN FURTHER
SUPPORT OF THEIR MOTION TO MODIFY, AND IN OPPOSITION TO THE AYALA
FACTION'S OBJECTIONS TO, THE COURT'S JULY 2, 2013 PRELIMINARY
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The Tribal Council Of The Tribe Of Picayune Rancheria Of The Chukchansi Indians,
Reggie Lewis, Chance Alberta, and Carl Bushman*

¹ The substance of this corrected version of The Lewis Parties' Supplemental Submission In Further Support Of Their Motion To Modify, And In Opposition To The Ayala Faction's Objections To, The Court's July 2, 2013 Preliminary Injunction Order is the same as that originally filed (Docket No. 275); only the section numbering and one heading has been changed here to correct technical errors.

TABLE OF CONTENTS

INTRODUCTION	1
SUMMARY OF ARGUMENT	3
I. The BIA Has Not Resolved The Current Tribal Leadership Dispute	3
II. The Communications Requested By The Court Are Being Submitted Herewith	4
III. The Ayala Faction's Objections To Complying With This Court's Order Should Be Rejected	4
IV. The Tribal General Council Has Resolved The Leadership Dispute.....	6
ARGUMENT	6
I. No Federal Agency Has Recognized Either The Ayala Faction Or The Lewis Parties In The Present Leadership Dispute	6
A. The BIA Has Not Recognized The Ayala Faction.....	7
1. Superintendent Burdick's May 16, 2013 Letter Neither Addressed Nor Resolved The Present Leadership Dispute Between The Ayala Faction And The Lewis Parties.....	7
2. Superintendent Burdick Subsequently Affirmatively Represented That The BIA Had Not Recognized The Ayala Faction's Purported Government	8
3. The BIA Has Recently Rejected The Ayala Faction's Claim For Current Authority As The Tribal Council	9
B. The NIGC Has Repeatedly, Including Through Its Most Recent September 27, 2013 Enforcement Action, Affirmed The Lack Of A BIA-Recognized Tribal Leadership.....	9
C. Multiple Other Federal Agencies Have Followed The BIA's Lead And Refused To Recognize The Ayala Faction.....	10
D. The Present Tribal Leadership Vacuum, As Confirmed By The BIA, The NIGC, IMLS, HUD, The EPA, And DHHS, Poses A Significant Threat To The Casino Under IGRA	12

II.	There Is No Factual Or Legal Basis For The Ayala Faction’s Ongoing Refusal To Fully And Immediately Comply With This Court’s Orders Requiring Disclosure Of Casino Information To The Lewis Parties.....	13
A.	The Ayala Faction’s Objection Necessarily Assumes That The Underlying Leadership Dispute Has Been Resolved In Its Favor, When There Has Been No Such Resolution To Date	13
B.	Tribal Law Does Not Require Licensure Of Council Members And Other Advisors	14
C.	The Gaming Commission Currently Chaired By Shannon Williams Comports With Tribal Law And Predates The Present Dispute	15
D.	The Williams-Led PRTGC Is Actively Working To Regulate The Casino	15
E.	The Ayala Faction’s Illegal Tribal Gaming Commission, Led By Dyann Eckstein, Is Jeopardizing Continued Operation By Failing To Effectively Regulate The Casino.....	16
III.	The General Council Resolved The Present Leadership Dispute On September 14, 2013 Using Constitutional Methods Recently Relied Upon By The BIA, The NIGC, Private Parties, And This Court.....	17
A.	The BIA-Approved Constitution Provides A Clear Basis For The General Council’s Actions Of September 14, 2013.....	17
B.	Established Precedent Allows This Court, The BIA, The NIGC, And Others To Recognize The Validity And Legal Effect Of 2013 General Council Resolutions	19
C.	The 2013 General Council Meeting Followed, <i>Without Exception</i> , The Procedures Of The Precedential 2012 General Council Meeting.....	21
	CONCLUSION.....	24

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” or “Lewis Council”), Reggie Lewis, Chance Alberta, and Carl Bushman (collectively, the “Lewis Parties”), by and through their attorneys, Schindler Cohen & Hochman LLP and Rosette LLP, respectfully make this supplemental submission, at the Court’s direction: (i) in further support of their motion to modify the Court’s July 2, 2013 preliminary injunction order (the “PI Order”) pursuant to N.Y. C.P.L.R. Rules 2221 and 6311; and (ii) in opposition to the Ayala Faction’s objection to complying with the PI Order. Specifically, as per the Court’s direction, the Lewis Parties: (i) demonstrate that the Bureau of Indian Affairs’ (“BIA”) does not currently recognize a Tribal Council for the Tribe; (ii) provide all correspondence between the BIA and Tribal entities (including CEDA), the Tribe’s General Council, Tribal Council, the Picayune Tribal Gaming Commission (“PRTGC”), or between the BIA and individual Tribal members, from April 1, 2013 to the present; (iii) oppose the Ayala Faction’s objections to compliance with this Court’s orders requiring the sharing of Casino-related information with the Lewis Parties (the “Objections”); and (iv) provide the Court with critical information concerning recent actions taken by the Tribe’s General Council that resolve the current governance dispute in favor of the Lewis Parties.

INTRODUCTION

There is exactly one way for this Court to avoid becoming further enmeshed in the Tribal leadership dispute: by granting the Lewis Parties’ motion to modify the PI Order (the “Motion”), which will force the rival Tribal parties to resolve these issues themselves. As set forth herein, the BIA has, thus far, expressly refused to determine which faction constitutes the legitimate

leadership of the Tribe and, instead, has repeatedly urged the factions to mediate or otherwise find a negotiated solution¹ to their dispute.²

Granting the Lewis Parties' Motion will accomplish precisely that. To allow either party unilateral control of "Excluded Assets" is unavoidably to decide which party is the legitimate CEDA Board.³ Assuming the Court may be unwilling to make such a decision (at least until resolving the jurisdictional issue), the Motion seeks to require Excluded Assets be agreed upon by both parties, or not disbursed. Such an order would keep the Court from inadvertently deciding tribal issues, while at the same time forcing⁴ the parties to resolve those issues themselves – just as the BIA has requested.

Of course, requiring transparency by rejecting the Ayala Faction's Objections and non-compliance with the PI Order is the necessary corollary of requiring the factions to work out their issues. The Ayala Faction has already demonstrated its willingness simply to abscond with huge amounts of cash from the Casino and thus both sides need equal access to financial information.

¹ As Superintendent Troy Burdick of the BIA wrote to parties' counsel just this Monday: "Clearly, the best solution to this on-going problem can only come from the Tribe itself. The likelihood of success to ending this dispute is higher when its genesis comes from the Tribe. Moreover, since this is an internal dispute, the solution to this problem does not require my participation at this juncture. Finally, in the interests of not appearing to take sides in this dispute, I will not participate in any meetings (nor would I be able to if the shutdown is on-going), unless all sides agree to meet together that includes an agreed upon agenda, although my participation is not a requirement for all sides to agree to a compromise." (September 30, 2013 e-mail exchange between Superintendent Burdick, Les Marston, and Robert Rosette, Ex. AAA.) Unless otherwise noted, the Exhibits referenced are those submitted with this supplemental statement.

² The Lewis Parties have been and remain in favor of such negotiations.

³ See Lewis Parties' Reply Memorandum of Law in Support of Motion to Modify the Court's July 2, 2013 Order at 14.

⁴ Neither faction can continue its activities indefinitely without further funding from the Casino and would thus be compelled to negotiate.

SUMMARY OF ARGUMENT

I. The BIA Has Not Resolved The Current Tribal Leadership Dispute

The BIA has *not* resolved the present leadership dispute between the Ayala Faction and the Lewis Parties. Despite strained and disingenuous efforts by the Ayala Faction to establish otherwise, the letter issued by the BIA on May 16, 2013 provided no such resolution. Dispositively, Troy Burdick, the Superintendent of the BIA's Central California Agency ("Superintendent Burdick") and author of the May 16 letter ("the May 16 BIA Letter"), expressly indicated to Lewis Parties' Counsel, Robert Rosette, that the May 16 letter was not intended to address or resolve the current Tribal dispute. Mr. Rosette has submitted a sworn affidavit herewith so stating. (Affidavit of Robert A. Rosette In Support Of The Lewis Parties' Supplemental Submission In Further Support Of Their Motion To Modify, And In Opposition To The Ayala Faction's Objections To, The Court's July 2, 2013 Preliminary Injunction Order, sworn to October 3, 2012 ("Rosette Aff.")). Moreover, the BIA's September 4, 2013 rejection of applications for federal grant funding submitted by both the Lewis Parties and the Ayala Faction confirms its ongoing lack of recognition of either faction.⁵

In addition, recent communications from, and actions by, numerous other federal agencies, including the National Indian Gaming Commission ("NIGC"), the U.S. Environmental Protection Agency ("EPA"), the U.S. Department of Housing and Urban Development ("HUD"), the U.S. Department of Health and Human Services ("DHHS"), and the U.S. Institute of Museum and Library Services ("IMLS"), all further confirm the ongoing lack of BIA recognition. For example:

- Upon making direct contact with the BIA, **HUD learned directly from the BIA that "there is no BIA decision regarding the recognition of the Tribal**

⁵ Had the BIA recognized either faction, the recognized faction's contract would have been accepted.

government that is currently in effect. Thus, until a final determination is made by the BIA, the make-up of the Tribal government of the [Tribe] remains uncertain.” (Ex. QQ (emphasis added).)

- Just a few days ago, on September 27, 2013, the NIGC sent a letter expressly addressed to both “Chairwoman” Nancy Ayala and “Chairman” Reggie Lewis.” (Ex. ZZ.)

That the BIA has not yet recognized either party in the current dispute is demonstrated in full in § I, *infra*.

II. The Communications Requested By The Court Are Being Submitted Herewith

Pursuant to the Court’s second request, the Lewis Parties are separately providing a library of all known correspondence that is directly responsive to this request, as well as limited additional correspondence that is also relevant to resolution of the pending motions. Given the volume of these materials, and to assist the Court in navigating them, we are also submitting herewith a detailed Table of Contents with brief descriptions of each document and indication as to which communications the Lewis Parties believe to be the most significant with respect to the pending Motion and Objections.

III. The Ayala Faction’s Objections To Complying With This Court’s Order Should Be Rejected

The Ayala Faction’s objections and refusal to comply with this Court’s orders requiring the sharing of Casino information with the Lewis Parties rest entirely on its false assumption that the Ayala Faction’s tribal gaming commission is legitimate. Mr. Dilweg’s letter, which sets forth the Ayala Faction’s Objections makes clear that they are premised on: (i) the assumption that Dyann Eckstein is the legitimate Chairperson of the legitimate tribal gaming commission; and (ii) the claim that “Messrs. Lewis, Alberta and Bushman were [validly] removed from the

Tribal Council by action of a quorum of the Tribal Council [*i.e.*, the Ayala Faction].” (August 2, 2013 Letter from Dilweg to Eckstein at 1, n. 1 (Ex. F. to the Marston Affidavit, sworn to September 18, 2013).)

Thus, these Objections once again squarely present the Court with the issue of which faction constitutes the legitimate Tribal leadership. Similar to the Excluded Assets issue, the Court cannot permit the Casino to share information only with one faction’s tribal gaming commission without deciding implicitly or explicitly which tribal gaming commission is legitimate. Further, shorn of this false claim that the Lewis Council members were properly removed from the Tribal Council, the Tribal regulations cited by the Ayala Faction are simply inapplicable.

Rather, as demonstrated below, the PRTGC currently led by Shannon Williams is the only lawful PRTGC that is actively engaged in regulation of the Casino in accordance with Federal and Tribal law and regulation. The documents submitted herewith, including the extensive correspondence with the NIGC, illustrate the PRTGC’s ongoing efforts to regulate the Casino.

By contrast, the Ayala Faction’s gaming commission, under the leadership of Dyann Eckstein, is failing to effectively regulate the Casino and taking other actions that threaten continued operation of the Tribe’s Casino and violate fundamental civil rights of Tribal members who work at the Casino. Further, the Ayala Faction’s exclusive access to the Casino and important Casino information is directly enabling it to take these destructive actions that threaten the Tribe, and increasingly pose a threat to all Casino employees and the general public. Due to the Ayala Faction’s conduct, the NIGC initiated investigatory actions on September 27, 2013. That the Ayala Faction’s Objections should be rejected is demonstrated in full in § II, *infra*.

IV. The Tribal General Council Has Resolved The Leadership Dispute

Despite the BIA's lack of recognition, the Tribe has, through the exercise of self determination pursuant to the BIA-approved Tribal Constitution, placed itself on a solid path toward final resolution of the present leadership dispute. Indeed, on September 14, 2013, the Tribe's membership assembled a quorum of eligible voters and, pursuant to Tribal law, passed resolutions that affirm the Lewis Parties authority as the Tribal Council while rejecting the Ayala Faction's authority.

As set forth below, the process that led to these resolutions is identical to the process that permitted the refinancing of the Casino's debt, which is the subject of this action. Indeed, the prior decisions of the BIA, the NIGC, and even this Court, thus inherently rely on the legitimacy of past Tribal membership resolutions and their utility in resolving internal Tribal leadership disputes. Not surprisingly, the General Council's resolutions, recognizing the Lewis Council, mirror the findings of each and every independent entity that the Ayala Faction has involved in its desperate quest for recognition (*e.g.*, Rabobank N.A., United Securities Bank, Premier Valley Bank, and Arcapex), which have all squarely rejected the Ayala Faction's purported authority and instead recognized the authority of the Lewis Parties. That the Tribe had itself resolved the leadership dispute in the same manner used to permit the Casino refinancing that is the subject of this action is demonstrated in full in § III, *infra*.

ARGUMENT

I. No Federal Agency Has Recognized Either The Ayala Faction Or The Lewis Parties In The Present Leadership Dispute

As set forth below and in the referenced materials, the BIA has not, as of this time, recognized either the Ayala Faction or the Lewis Parties as the Tribe's governing body. Instead, the actions of the BIA and various other federal entities, including the NIGC, the EPA, HUD,

IMLS, and DHHS, have repeatedly affirmed there is no presently-recognized Tribal Council. This unambiguous refusal to recognize a Tribal government is most recently demonstrated in a September 27, 2013 letter from the NIGC expressly addressed to “Chairwoman” Nancy Ayala and “Chairman” Reggie Lewis and a September 30, 2013 e-mail from Superintendent Burdick to Lester Marston, legal counsel to the Ayala Faction. Several of the key items of correspondence are described in detail below.

A. The BIA Has Not Recognized The Ayala Faction

1. Superintendent Burdick’s May 16, 2013 Letter Neither Addressed Nor Resolved The Present Leadership Dispute Between The Ayala Faction And The Lewis Parties

The Ayala Faction has repeatedly cited the May 16, 2013 BIA Letter as the basis for its legitimacy. This letter is unequivocally not what the Ayala Faction claims.

On or about April 5, 2013, Morris Reid, purportedly on behalf of the Tribe, submitted to Superintendent Burdick a request to renew the Tribe’s Public Law 638 contract⁶ for a three-year term. (“Reid Request”). (*See* Rosette Aff., ¶ 3.) On May 16, 2013, Superintendent Burdick denied the Reid Request via written letter. (*See* Ex. Z; *see also* Rosette Aff., ¶ 4.) Through this May 16 BIA Letter, Superintendent Burdick explained that prior to even considering such a request, the BIA had to determine whether Reid was in fact authorized to represent the Tribe for government-to-government purposes. (*See* Ex. Z; *see also* Rosette Aff., ¶ 4.) The May 16 BIA Letter explained that, for that purpose, the BIA would look to the most recent, undisputed Tribal election, which took place on December 1, 2012 (“2012 Election”). (*See id.*)⁷ The May 16 BIA

⁶ This refers to the contracts with the Tribe pursuant to the Indian Self Determination and Education Assistance Act. This Act permits Indian tribes and tribal organizations to exercise control over the management of federal programs that impact their members, resources and governments – and is thus awarded to the recognized tribal government.

⁷ The 2012 election, the Tribe’s last valid election, resulted in a Tribal Council consisting of: Nancy Ayala (Chairperson); Reggie Lewis (Vice-Chairperson); Tracey Brechbuehl (Secretary); Karen Wynn (Treasurer); Chance

Letter was narrowly tailored to address the sole issue of whether Morris Reid was authorized to act on behalf of the Tribe in government-to-government relations. (*See* Ex. Z; *see also* Rosette Aff., ¶ 6.) As of December 2012, the BIA concluded that it did not recognize Reid for such purposes, and through the May 16 BIA Letter, informed him that it could not grant the Reid Request. (*See* Ex. Z; *see also* Rosette Aff., ¶ 5.)

The May 16 BIA Letter was not intended to address, let alone resolve, the events of February 21, 2013 and the resulting leadership dispute between the Ayala Faction and the Lewis Parties. (*See* Rosette Aff., ¶¶ 5-8.) Similarly, this letter was not intended to identify which Tribal members were recognized by the BIA as constituting the legitimate Tribal Council as of May 16, 2013 or as of now – questions that Superintendent Burdick has subsequently made crystal clear have not been resolved by the BIA. (*See id.*)

2. Superintendent Burdick Subsequently Affirmatively Represented That The BIA Had Not Recognized The Ayala Faction’s Purported Government

Shortly after issuance of the May 16 BIA Letter, the Lewis Parties became aware that the Ayala Faction was misrepresenting Superintendent Burdick’s letter to have recognized Ayala as the current Chairperson and, therefore, to have resolved the current leadership dispute between the Lewis Parties and the Ayala Faction. (*See id.*, ¶ 6.) Superintendent Burdick personally told the Lewis Parties’ Counsel, Robert A. Rosette, that his May 16 BIA Letter did not recognize Ayala as the Chairperson as of May 16, 2013. (*See id.*, ¶ 7.) Rather, he confirmed that his intent in issuing the May 16 BIA Letter was only to address the issue of whether Morris Reid was an elected leader of the Tribe, authorized to act on its behalf. (*See id.*) He further confirmed that he

Alberta (Member-at-Large); Charles Sargosa (Member-at-Large); and Carl “Buzz” Bushman (Member-at-Large). (*See* Ex. Z.)

did not intend for the May 16 BIA Letter to address, let alone resolve, the current leadership dispute between the Ayala Faction and the Lewis Parties. (*See id.*)

3. The BIA Has Recently Rejected The Ayala Faction's Claim For Current Authority As The Tribal Council

On September 4, 2013, the BIA laid to rest any possible remaining question regarding the import of the May 16 BIA Letter and the fact that it does not currently recognize the Ayala Faction for purposes of government-to-government relations. On that day, Superintendent Burdick informed Ayala that the BIA lacked jurisdiction to take any action on the Ayala Faction's Public Law 93-638 application for a new three-year Fiscal Year 2013-2015 contract. (*See Ex. RR.*)

In addition, through his September 30, 2013 e-mail exchange with legal counsel for both the Ayala Faction and the Lewis Parties, Superintendent Burdick again affirmed that the BIA does not presently recognize either Faction and will not be able to recognize any group until the currently pending appeals before the Interior Board of Indian Appeals (the "IBIA") and the Regional Director are resolved. (*See Ex. AAA.*)

B. The NIGC Has Repeatedly, Including Through Its Most Recent September 27, 2013 Enforcement Action, Affirmed The Lack Of A BIA-Recognized Tribal Leadership

In meetings on August 14, 2013, NIGC⁸ Regional Director Eric Schalansky acknowledged that the NIGC "**currently has no governing body to recognize,**" and as such, it continues to communicate with both the Ayala Faction and its gaming commission as well as the Lewis Parties and the PRTGC led by Shannon Williams. (*See Ex. TT.*) More recently, on September 27, 2013, the NIGC issued a letter informing the parties of its intent to conduct an

⁸ The NIGC is a separate agency from the BIA within the U.S. Department of the Interior. The NIGC's primary mission is to work within the framework created by the Indian Gaming Regulatory Act ("IGRA") for the regulation of gaming activities conducted by tribes on Indian lands to fully realize the IGRA's goals

audit. (*See* Ex. ZZ.) This letter is telling insofar as the issue of BIA recognition is concerned given that the NIGC addressed it to “**Nancy Ayala, Chairwoman**” and “**Reggie Lewis, Chairman,**” and then further addresses them as “**Dear Chairpersons.**” (*See id.*) Clearly, and consistent with its admission of the same on August 14, the NIGC does not presently recognize one leadership group over the other. The NIGC’s letter goes on to request participation in the audit process by representatives from both groups at their respective on- and off-reservation locations, and treats the two groups as equals in all respects. (*See id.*) The NIGC’s equal treatment is especially significant in light of the Ayala Faction’s recent objections to sharing information with the Lewis Parties, discussed in detail below.⁹

C. Multiple Other Federal Agencies Have Followed The BIA’s Lead And Refused To Recognize The Ayala Faction

Presently, at least four (4) additional federal agencies have independently halted government-to-government relations with the Tribe, including the related federal grant programs. For example:

- On September 18, 2013, the U.S. IMLS, issued a letter addressed to “**Ms. Nancy Ayala,**” “**Mr. Reggie Lewis,**” and “**Mr. Morris Reid.**” (*See* Ex. VV (emphasis added).) In its letter, the IMLS states: “**As of today’s date, it appears that this matter is still unresolved.** IMLS is therefore putting a hold on all current awards with, and the review of applications from, the Tribe. Accordingly . . . we ask that you immediately suspend work and incur no further obligations in IMLS grant-related activities.” (*Id.*)

⁹ The NIGC’s treatment of the two groups as equals is also significant in light of this Court’s prior decision to fund only the Ayala Faction’s gaming commission. (*See* Court’s Amended Decision and Order dated September 4, 2013, Docket No. 172.) The Court’s decision to do so caused great prejudice to the legitimate PRTGC headed by Shannon Williams and, inadvertently, assisted the Ayala Faction in projecting an air of legitimacy. Nevertheless, the Williams-led PRTGC has doggedly engaged the NIGC in its regulation efforts, and was likely the impetus behind the NIGC’s upcoming audit. **Indeed, each of the four (4) specific dates identified by the NIGC for purposes of the audit are dates that the Lewis Parties first flagged because of the Ayala Faction’s suspect removal of millions of dollars in cash from the Casino Cage under the claim of “Excluded Assets,” a clear departure from established Casino practices and/or violations of this Court’s orders.** The Ayala Faction and its illegal gaming commission do not appear to be effectively regulating the Casino, which will likely be exposed through the upcoming NIGC audit, as detailed below and in Exhibit TT, and specifically Exhibit I attached thereto.

- On September 12, 2013, the DHHS, Administration for Children & Families, issued a letter addressed to **“Mr. Reggie Lewis,” with a courtesy copy addressed to “Nancy Ayala,”** Amy Dutschke (Regional Director of the BIA), and others. (*See* Ex. UU (emphasis added).) As DHHS stated in this letter, **“Because of the uncertainty over which faction is the legal governing body of the Picayune Rancheria of the Chukchansi Indians,** we are not able to process either of the two separate FY2014-2015 Tribal Plan applications or award CCDF [Child Care and Development Fund] funding for FY 2014.” (*Id.*)
- On August 22, 2013, HUD issued a letter to Don Citbor, an Ayala Faction appointee. (*See* Ex. QQ.) After receiving and reviewing materials provided by the Lewis Parties regarding the true nature of the May 16 BIA Letter, HUD contacted the BIA regarding the same. (*See id.*) **Upon making that direct contact with the BIA, HUD learned directly from the BIA that “there is no BIA decision regarding the recognition of the Tribal government that is currently in effect. Thus, until a final determination is made by the BIA, the make-up of the Tribal government of the [Tribe] remains uncertain.”** (*Id.* (emphasis added).) HUD then expressly stated it was “revoking access to the Line of Credit Control System (LOCCS), of all individuals who were previously authorized to access the Chukchansi Indian Housing Authority’s (CIHA) Indian Housing Block Grant (IHBG) funds. **These individuals include Nancy Ayala, Helen Flores, Michal Wynn, any other member of CIHA’s Board of Commissioners or staff, and you.**” (*Id.* (emphasis added).)
- On August 13, 2013, the EPA informed the Lewis Parties, via letter addressed to “Reggie Lewis,” that the EPA was withholding payments on all open grants awarded to the Tribe and was suspending review of three grant applications “until the EPA receives confirmation from the U.S. Department of Interior that it recognizes a governing body of the Tribe.” (*See* Ex. OO.) At that time, the EPA also provided the Lewis Parties with a letter dated July 25, 2013, addressed to “Nancy Ayala,” whereby the EPA further confirmed that it was taking these actions in light the fact that the BIA has not recognized a Tribal government for purposes of government-to-government relations. (*See id.*)¹⁰

¹⁰ Notwithstanding these communications from federal agencies, the Ayala Faction has continued to falsely claim that the May 16 BIA Letter affirms the legitimacy of the “Ayala Quorum,” the “On-Reservation Quorum” the “Tribal Quorum” or whatever name the group of Ayala, Brechbuehl, Sargosa and Wynn declares itself to be on any given day before any given agency. For example, it has continued to make such misstatements of material fact to:

- The United States District Court for the Eastern District of California (*see e.g., The Picayune Rancheria of Chukchansi Indians (Ayala Faction) v. Rabobank, et al.*, Case No. 1:13-cv-00609-LJO-MJS, Dkt. No. 27 at 3:22 – 4:5 (E.D. Ca. June 26, 2013); (*see also The Picayune Rancheria of Chukchansi Indians (Ayala Faction) v. Yosemite Bank, et al.* Case No. 1:13-cv-00831-LJO-MJS, Dkt No. 15, at 20:22 – 21: 20 (E.D. Ca. June 12, 2013.));
- The Superior Court for the State of California, County of Madera (*see Olin v. Chukchansi Econ. Dev. Auth.*, Case No. MCV062912, Ayala Faction’s Memorandum of Points and Authorities in Support of Motion to Vacate Stipulated Judgment, or in the Alternative, Motion to Quash Summons, or In the Alternative, Motion to Dismiss, filed July 2, 2013, at 3:23 – 26 and 5:21 – 6:1);
- Various federal agencies, including the EPA, HUD, DHHS, the National Parks Service, and IMLS;

D. The Present Tribal Leadership Vacuum, As Confirmed By The BIA, The NIGC, IMLS, HUD, The EPA, And DHHS, Poses A Significant Threat To The Casino Under IGRA

The fact that the NIGC currently has no governing body to recognize for purposes of the Tribe's Casino is also troubling because it indicates a violation of the Indian Gaming Regulatory Act ("IGRA"). In summary, the IGRA fundamentally requires that Indian gaming must be operated: (1) by a federally recognized Indian tribe; and (2) by the tribal leadership recognized by the Secretary of the United States Department of Interior, and not any other entity, including specifically a dissident faction unrecognized by the DOI. (*See e.g., In the Matter of Sac and Fox Tribe of the Mississippi in Iowa*, NOV/TCO CO-03-02, Dkt. No. NIGC 2003-1, Decision and Order issued September 10, 2003 ("Sac and Fox Decision and Order").) Further, and as the NIGC has recognized in its own decisions, "for the NIGC to ensure that the 'governing body of the Indian tribe' is responsible for the gaming activity, the NIGC necessarily must know what entity to recognize as the governing body of the Tribe." (*Id.* at 10.) Quite simply, "[w]hen the federally recognized leadership is not in control of the gaming operation, the activity being conducted is not Indian gaming under the IGRA." (*Id.* (internal quotations and citations omitted).) Stated inversely, where the group in control of the gaming operation is not federally recognized, the activity being conducted is not Indian gaming under the IGRA.

In light of overwhelming volume of different authorities establishing that the BIA has not recognized the Ayala Faction as the present Tribal governing body, including the NIGC's own repeated admissions that it currently has no governing body to recognize, the Ayala Faction's continued operation of the Casino is a clear violation of federal law. Since neither the NIGC, nor

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- This Court, through express representations of the same made by Lester Marston during off the record conversations before this Court and its staff;
 - Media outlets that are too numerous to list here; and
 - The Tribe's General Council (*see e.g.,* Ex. FF, a tellingly modified self-serving version of the May 16 BIA Letter).

the BIA, nor any other independent agency has recognized the Ayala Faction as the Tribe's present governing body, this Court should immediately eliminate the Ayala Faction's unilateral operation of the Casino. Indeed, any deference by this Court to the Ayala Faction jeopardizes the continued operation of the Casino.¹¹

II. There Is No Factual Or Legal Basis For The Ayala Faction's Ongoing Refusal To Fully And Immediately Comply With This Court's Orders Requiring Disclosure Of Casino Information To The Lewis Parties

A. The Ayala Faction's Objection Necessarily Assumes That The Underlying Leadership Dispute Has Been Resolved In Its Favor, When There Has Been Resolved In Its Favor, When There Has Been No Such Resolution To Date

The Ayala Faction's objection to sharing Casino-related information necessarily assumes that the Lewis Parties are not members of the Tribal Council, and that the Ayala Faction is instead the authorized governing body. Indeed, Mr. Dilweg affirms the same in footnote 1 of his August 2, 2013 letter, attached as Exhibit F to the September 18, 2013 Affirmation of Lester Marston. Specifically, he writes:

Messrs. Lewis, Alberta and Bushman were removed from the Tribal Council by action of a quorum of the Tribal Council. This means that they have also been removed from the CEDA Board and no longer act as the owners and overseers of the Casino. For the purposes of this letter, the members of the Dissident Faction are treated as Tribal members with no special authority over operations of the Casino.

(Ex. F to the Marston Aff. (emphasis added).)

This Court cannot sustain the Ayala Faction's present objection, or permit its ongoing violation of this Court's orders, unless it accepts Mr. Dilweg's assumptions as stated in this footnote. And, if it accepts those assumptions, this Court is resolving the very internal Tribal dispute that The Ayala Faction has so ardently claimed is beyond this Court's jurisdiction, all

¹¹ Moreover, if it allows the Ayala Faction to continue operation of the Casino in this context, this Court will directly undermine important public policies as articulated by the NIGC: it will encourage the unlawful takeover of Indian gaming establishments and continue to foster a regulatory environment that is inimical to stable tribal governments and gaming operations.

without the benefit of having first ordered discovery, considered the actual evidence or conducted any evidentiary hearing related to this most fundamental issue.

Ultimately, under the Ayala Faction's own logic, it has no right to the information unless the BIA determines that it, and not the Lewis Parties, is the Tribe's rightful leadership. As set forth above, the BIA has afforded it no such recognition to date. Moreover, as set forth below, such recognition is not likely to be forthcoming.¹²

**B. Tribal Law Does Not Require Licensure Of Council Members
And Other Advisors**

The Tribal Gaming Ordinance ("TGO") is the Tribal law that regulates all aspects of the Tribe's gaming operations. It establishes, in relevant part, as follows:

- "The Tribal Gaming Commission **shall not require members of the Tribal Council to obtain a License from the Tribal Gaming Commission.**" (TGO § 4.19.1 (emphasis added).)
- "The Tribal Gaming Commission **shall not regulate the Net Revenues of Gaming once Net Revenues have been distributed to the Tribe** or to an entity of the Tribe utilizing funds for non-Gaming activities." (TGO § 4.19.3. (emphasis added).)
- "Based on the general nature and characteristics [of their duties], the following specified Non-Gaming vendors shall be **exempt from licensing by the Commission . . . 5) certified public accountants; 6) attorneys and paralegals**" (TGO § 5.7.4(k) (emphasis added).)¹³

¹² Further, the Ayala Faction's objections are entirely disingenuous in the face of the facts surrounding the backgrounds of various persons licensed by the Ayala Faction's gaming commission and otherwise hired by the Ayala Faction. Those facts, summarized below, beg some basic questions, including: (1) what exactly is the standard that the Ayala Faction has set in its regulation of the Casino?; and (2) what is the Ayala Faction regulating if individuals of that caliber are "qualified" to be working in a multi-million dollar heavily-regulated business.

¹³ Mr. Dilweg's letter also suggests that "the chief financial officer for the Dissident Faction was found to be ineligible for a gaming license before the Tribe's leadership dispute arose." (Ex. F to the Marston Aff. at 3.) We believe this may be a reference to Richard Williams. First, Mr. Williams is a financial consultant – not a CFO – to the Lewis Council and is a certified public accountant. (License No. CPA 17872, as issued by the Department of Consumer Affairs, California Board of Accountancy.) As a certified public accountant, he too is expressly exempt from licensure requirements under the Tribal Gaming Ordinance. (See TGO 5.7.4(k)(5).)

Here, the Court has ordered the Ayala Faction to share Casino-related information with the Lewis Parties and its legal counsel. Unless the Court is willing to both address the internal leadership dispute and ultimately resolve it by finding that the Lewis Parties are not members of the legitimate Tribal Council, the Lewis Parties and their legal counsel are plainly exempt from TGO licensure requirements. If the Court is inclined to even entertain such an issue, the Lewis Parties respectfully submit that it must first conduct a full evidentiary hearing on this matter so that it is actually equipped with the evidence required to resolve who is, and who is not, part of the Tribe's governing body.

C. The Gaming Commission Currently Chaired By Shannon Williams Comports With Tribal Law And Predates The Present Dispute

The Lewis Parties, in a Memorandum to the NIGC dated March 21, 2013, set forth both the facts and law regarding the identity of the legitimate PRTGC. For a full analysis, we refer the Court to that Memorandum, which we have included as Exhibit TT, and specifically Exhibit E attached thereto. In summary, however, it is important to understand that the Williams-led PRTGC was, in large part, appointed, screened, and ready to be formally seated before the Ayala Faction's hostilities began on February 21, 2013. All of the Williams PRTGC's commissioners have passed background checks and been sworn into office.

D. The Williams-Led PRTGC Is Actively Working To Regulate The Casino

As is demonstrated by Exhibit TT and as affirmed by the resulting audit just announced through the NIGC's September 27, 2013 letter, the Williams-led PRTGC continues to regulate the Casino despite the Ayala Faction and its gaming commission's illegal occupation and on-reservation activities. The documents contained within Exhibit TT demonstrate the numerous meetings requested by the Williams PRTGC as part of its efforts to shed light on the many ongoing regulatory violations perpetrated by the Ayala Faction and its illegal gaming

commission. Those documents also demonstrate that: (i) within days of the Ayala Faction's hostilities, the Lewis Parties informed NIGC Chairwoman Tracie Stevens of the composition of the Tribe's lawful gaming commission (*see* Ex. TT, and specifically Ex. B attached thereto); (ii) the Lewis Parties provided the NIGC with detailed briefing addressing the factual and legal basis for the composition of the Tribe's lawful gaming commission (*see* Ex. TT, and specifically Ex. E attached thereto); and (iii) the Lewis Parties provided specific lists and supporting documentation demonstrating the Ayala Faction's violations of Minimum Internal Control Standards, as well as Tribal, State, and Federal civil and criminal laws (*see* Ex. TT, and specifically Exs. D, H, and I attached thereto).

**E. The Ayala Faction's Illegal Tribal Gaming Commission, Led By
Dyann Eckstein, Is Jeopardizing Continued Operation By
Failing To Effectively Regulate The Casino**

Since its armed and hostile takeover of the Tribal Government Compound and Casino in late February 2013, the Ayala Faction and its purported gaming commission led by Dyann Eckstein have amassed a disturbingly long list of regulatory violations at the Casino. The following is just a sampling of such regulatory irregularities under the watch of Ayala and her purported gaming commission:

- Ayala and her first cousin, Ted Atkins (head of Casino security), have attempted to cover up acts of violence and assault by Ramirez family members on Casino employees. (*See, e.g.*, Ex. N.)
- Ayala, under the watch of her gaming commission, directed the Casino to stop making deposits that were required to be made by the Casino pursuant to the Indenture and Deposit Account Control Agreement. (*See* Ex. P.)
- Ayala, with the cooperation of Casino management and her gaming commission, hoarded still to be determined amounts of cash in the Casino cash cage and then forced employees, vendors and patrons to cash "pay vouchers" at the Casino, which in turn created a public safety threat for Casino employees, vendors, and patrons alike. This also allowed the Ayala Faction to remove untold amounts of

cash for untold purposes, all in violation of the Casino's Minimum Internal Control Standards. (*See* Ex. G.)

- Ayala and another member of the purported "Ayala Quorum," Charles Sargosa, knowingly engaged in check fraud involving Casino employees, vendors, banking partners, and others, resulting in the loss of hundreds of thousands of dollars, all to the harm of such persons and the Tribe. (*See* Ex. T.)
- Ayala and her purported gaming commission have recently interrogated, suspended, and terminated Casino and Gaming Commission employees who are also General Council members for their attendance and participation at the 2013 General Council Meeting. (*See* Ex. YY, and specifically the Affidavit of Reggie Lewis ("Lewis Aff."), ¶ 10, attached thereto as Ex. I; *see also* Affidavit of Stephanie R. Desilagua, attached thereto as Ex. J; *see also* the Affidavits of Christina Chenot, Gina Bushman, and Melbourne Webb, attached thereto as Ex. K.)
- The Ayala Faction has hired, and its gaming commission has approved, various persons that are wholly unfit for work in a gaming environment, including: (i) a Casino host charged with unlawful use of force and violence against another person; (ii) a Casino groundskeeper convicted of domestic violence, resisting arrest, and driving under the influence; (iii) a Casino engineer convicted of entering an elementary school with the intent to commit larceny; (iv) a Casino locksmith and a Casino surveillance employee, both convicted of driving under the influence; and (v) various security members who are known gang members and who have been convicted of vehicular manslaughter, sexual battery, possession with intent to sell a dangerous weapon, many drug offenses (*e.g.*, possession of methamphetamine), manufacturing/selling/possession of a dangerous weapon, domestic violence, driving under the influence, and burglary. (*See* Ex. TT, and specifically Ex. I (Ex. 5) attached thereto.)

III. The General Council Resolved The Present Leadership Dispute On September 14, 2013 Using Constitutional Methods Recently Relied Upon By The BIA, The NIGC, Private Parties, And This Court

In considering the Lewis Parties' motion to modify the Court's July 2 Order, the Court must be aware of the recent Tribal General Council resolutions confirming the legitimacy of the Lewis-led Tribal Council and the illegitimacy of the Ayala Faction.

A. The BIA-Approved Constitution Provides A Clear Basis For The General Council's Actions Of September 14, 2013

Pursuant to Article VI of the Tribe's Constitution, when a meeting of the General

Council¹⁴ obtains a quorum (or 35% of the General Council), all those present at such a meeting may conduct all business for the Tribe. Because the General Council of the Tribe had become concerned about the current leadership dispute between the Lewis Parties and the Ayala Faction and because the dispute has resulted in the disruption of Tribal government programs as described above and has threatened and continues to threaten the long-term viability of the Casino, the General Council, **for only the second time in its twenty-five year history**, established a quorum and passed Tribal law, through six General Council Resolutions, on September 14, 2013 (“2013 General Council Resolutions”). These 2013 General Council Resolutions are included as Exhibit YY, and specifically Exhibit A, attached thereto. Together, these resolutions affirm and express the General Council’s will that it is the Lewis Council alone that is the legitimate governing body of the Tribe. Through these resolutions, the General Council also granted this Court the jurisdiction to enforce the 2013 General Council Resolutions, specifically as such Resolutions relate to the Tribe’s compliance with the Tribe’s \$250,406,000 9¾ Secured Notes due 2020 pursuant to that certain Indenture, dated May 30, 2012 (“Indenture”).

In other words, the General Council has taken specific action to provide various agencies, specifically including the BIA, the NIGC, and this Court, with the identities of those individuals comprising the duly-recognized and lawful governing body of the Tribe authorized to conduct business, or otherwise act on behalf of, the Tribe and its members.¹⁵

¹⁴ The Tribe’s General Council consists of all eligible voters – currently, approximately 600 Tribe members.

¹⁵ Additionally, while such findings are obviously not binding on this Court, it is worth noting that at least four (4) independent entities – Rabobank, United Securities Bank, Premier Valley Bank, and Arcapex – have each reviewed the facts and law related to the present leadership dispute. It is also significant to note that each of these entities had a significant financial interest in “getting it right” as each handles Tribal assets valued in the tens of millions of dollars. Upon conclusion of those careful reviews, each entity uniformly rejected the Ayala Faction’s purported authority while affirming the Lewis Parties as the body authorized under applicable law to act on behalf of the Tribe. (See Exs. O, Y, AA, and BB.)

**B. Established Precedent Allows This Court, The BIA, The NIGC,
And Others To Recognize The Validity And Legal Effect Of
2013 General Council Resolutions**

There is precedent to recognize the legitimacy and legal effect of the 2013 General Council Resolutions. **Indeed, the refinancing of the Casino and the Indenture at the heart of this action are derived from the same process recently engaged in by the General Council.** Further, this precedent *predates* the present leadership dispute. And, perhaps most importantly, federal government agencies (including the NIGC, the DOI and the BIA), along with courts and other third parties (*e.g.*, banking institutions and investors) have all recognized and/or relied upon the legitimacy of using the General Council resolution process in resolving disputes like this Tribal Dispute.

As a matter of background, the Chukchansi Economic Development Authority (“CEDA” or the “Authority”)¹⁶ issued bonds in the principal amount of \$310,000,000 to build the Casino, which bonds were due in 2012 (“Old Notes”). In early 2012, the Authority was in payment default under the Old Notes with a looming maturity date. Making matters worse for the Authority was the fact that a Tribal government dispute arose, much like the current dispute, with two rival Tribal council factions, one being the Reid Faction, claiming power over the Tribe and CEDA. The Tribe and CEDA, in effect, became paralyzed from curing any such defaults and negotiating a restructure of the Old Notes. This Tribal Council dispute caused consternation amongst the General Council because the long term viability of the Casino became threatened, and a disruption of Tribal Government benefits became imminent.

With the assistance of Wells Fargo (*i.e.*, the Plaintiff in this action), as the trustee for the bond holders, and Latham & Watkins as its legal counsel, the General Council took action for its

¹⁶ CEDA is a wholly owned Tribal entity established to manage the Casino. Under Tribal law, CEDA’s composition mirrors that of the Tribal Council.

own benefit by establishing a quorum of the General Council on March 10, 2012 – which was the first time in the Tribe’s twenty-five year history that a General Council Meeting quorum had been established (“2012 General Council Meeting”). Once a quorum was established, the General Council enacted several General Council Resolutions. **This is precisely the same process undertaken by the General Council in on September 14, 2013.** Most notably, the General Council voted to: (i) recognize one Tribal council faction (led by Reggie Lewis) over the Reid Faction; (ii) authorize the recognized Tribal Council (led by Lewis) to negotiate and enter into the Indenture with the Trustee; and (iii) to authorize the recognized Tribal Council to appropriately **waive the Tribe and the Authority’s sovereign immunity from suit to grant specific courts’ jurisdiction over the Indenture, and specifically the case now pending before this very Court** (“2012 General Council Resolutions”). (*See* Ex. YY, and specifically the General Council Resolutions 2012-005 and 2012-001 attached thereto as Ex. C.)

With hundreds of millions of dollars at stake, by entering into the Indenture, the Trustee recognized the absolute legitimacy of the Tribe’s constitutional authority to make laws through the General Council Resolution process, even though one faction – the Reid Faction – maintained that the General Council meeting was invalid because it was not called by the legitimate Tribal Council – **exactly as the Ayala Faction now contends here.** Indeed, after enactment of the 2012 General Council Resolutions, and because of those actions, the Trustee entered into the Indenture with CEDA and the Tribe to refinance the Old Notes. The Trustee’s attorneys, Latham & Watkins, also recognized the legitimacy of the General Council Resolution process because they assisted in drafting the 2012 General Council Resolutions, and relied upon subsequent legal opinions regarding the 2012 General Council Resolutions’ validity.

Further, the NIGC has also effectively recognized the resolution process when making decisions regarding the regulation of the Casino. For example, the NIGC reviewed the 2012 General Council Resolutions, which enabled the Tribe to execute the Indenture. Following its review, the NIGC issued a “Declination of Jurisdiction” letter and noted no legal issues or concerns regarding those resolutions. (*See* Ex. YY, and specifically the May 10, 2012 Declination of Jurisdiction letter attached thereto as Ex. D.) Surely, if the NIGC had any concern about whether the Tribe was operating the Casino under proper leadership as designated in those General Council Resolutions that resulted from the 2012 General Council Meeting, it would not have issued the Declination of Jurisdiction on May 10, 2012, but instead would have questioned the validity of the Tribe entering into the Indenture in the first instance.

Finally, the BIA has affirmed the General Council resolution process as it recognized the Tribe’s 2012 election, which was conducted under the leadership of the Tribal Council that only existed because of the 2012 General Council Resolutions (“2012 BIA-Recognized Election”). (*See e.g.*, Exs. B and Z.)

C. The 2013 General Council Meeting Followed, *Without Exception*, The Procedures of the Precedential 2012 General Council Meeting

As this Court is well aware, since entering into the Indenture, and since the 2012 BIA-Recognized Election, another Tribal government dispute has developed with two identifiable Tribal Council factions, *i.e.*, the Lewis Council and the Ayala Faction. Similar to 2012, the General Council had become extremely concerned because the leadership dispute is causing disruption of Tribal government benefits and threatening the long term viability of the Casino. The General Council has also been concerned that Casino management, as presently controlled by the Ayala Faction, has allowed millions of dollars to leave the Casino for the exclusive benefit of the Ayala Faction without first depositing such cash at Rabobank as required under the

Tribal law and further, had permitted other regulatory violations that are too voluminous to recite here. As described above, and again, for only the second time in the Tribe's twenty-five year history, the General Council took matters into its own hands on Saturday, September 14, 2013, established a quorum of the General Council pursuant to Article VI, Section 4 of the Constitution, and held the 2013 General Council Meeting. (*See* Ex. YY, and specifically the Affidavit of Elena Sanders ("Sanders Aff."), ¶ 8, attached thereto as Ex. F; *see also* Affidavit of Dominique Carrillo ("Carrillo Aff."), ¶ 15, attached thereto as Ex. G.)

The 2013 General Council Meeting followed the same procedures, and has similar characteristics, as the 2012 General Council Meeting pursuant to which this Court has exercised its jurisdiction:

- The 2012 General Council Meeting was called by one a Tribal Council over the objections of the Reid Faction and threats by the Reid Faction that any resulting actions would be null and void. Similarly, the 2013 General Council Meeting was called by the Lewis Parties over the objections and threats of the Ayala Faction.¹⁷
- Despite the objections of the Reid Faction, the 2012 General Council Meeting achieved a quorum of having at least 35% of the General Council present. Similarly, despite the objections of the Ayala Faction, the 2013 General Council Meeting also achieved a quorum of having at least 35% of the General Council to "conduct all business" in accordance with Articles IV and VI of the Constitution. (*See* Ex. YY, and specifically Ex. F, ¶ 8 and Ex. G, ¶ 15, attached thereto.)
- The procedures and voter qualification criteria used at the 2012 General Council Meeting and the 2013 General Council meeting were identical. (*See*, Ex. YY, and specifically Ex. G, ¶ 17 and Ex. F, ¶ 12 attached thereto.)
- The procedures for signing in and verifying enrollment and voter qualifications were the same for both the 2012 General Council Meeting and the 2013 General Council Meeting. (*See* Ex. YY, and specifically Ex. G, ¶ 11 attached thereto.)

¹⁷ The Ayala Faction attempted to call a General Council Meeting on September 7, 2013, but that effort fell far short of a quorum with only approximately 25 of Ayala's friends and family showing up. The Ayala Faction then sent out notices threatening prosecution if Tribal members attended the 2013 General Council Meeting. (*See* Ex. YY, and specifically the Notice attached thereto as Ex. J.)

- The General Council in both the 2012 General Council Meeting and in the 2013 General Council Meeting passed General Council Resolutions clearly identifying their Tribal Council and Authority Board, and clearly providing direction regarding the decision-making related to the Indenture and the Casino operations.¹⁸

Substantively, the actions of the General Council in enacting the 2012 and 2013 General Council Resolutions are also nearly identical. Those 2012 General Council Resolutions paved the way for the Indenture, over which this Court has exercised jurisdiction. In light of these facts, there is no factual, legal, or equitable basis to disregard the will of the Tribal Membership as expressed through the 2013 General Council Resolutions.¹⁹ As evidenced by the affidavits attached to Ex. YY (specifically those attached thereto as Ex. L), there was absolutely no guarantee of what resolutions would be passed, if any, when gathering a quorum of the General Council given the diverse and often divergent views among Tribal members. However, the outcome and directives, as stated in the resulting 2013 General Council Resolutions, are clear.

¹⁸ In addition, the 2012 and 2013 General Council Meeting attendees were each provided with a \$1,000 travel/work stipend for attendance at the meeting. (See Exhibit YY, and specifically Exhibit I, ¶ 10 and Exhibit F, ¶ 12 attached thereto.) Notably, the stipend did not influence votes at either meeting because they received the stipend regardless of how they voted. (See Exhibit YY, and specifically the Affidavits of Suzanna Kate Bushman, Mary Motola, Jonathon Morris, Melissa Chenot, Larry Rogers, Shannon Williams, Kelly L. Fleck and Connie Bushman, collectively attached thereto as Exhibit L.) Furthermore, every General Council Member had an equal opportunity to submit proposed resolutions and have them voted on by the General Council. Indeed, half of the Reid Faction attended and participated in the 2013 General Council meeting.

¹⁹ The BIA has engaged the parties in discussions regarding the 2013 General Council resolutions. Indeed, the General Council resolutions are an attempt to address Burdick's conviction that "the best solution to this **on-going problem can only come from the Tribe itself.**" (Ex. AAA (emphasis added).) As evidenced by the September 30, 2013 e-mail exchange with Burdick (Ex. AAA), the BIA was scheduled to meet with the Lewis Parties and other interested persons to address the legal and practical significance of the 2013 General Council Resolutions. However, the exchange also clearly demonstrates the Ayala Faction's obstruction of all efforts aimed at true resolution of the leadership dispute, and it's persistent refusal to allow the members of the Tribe to have a voice in their own government and self determination.

The Lewis Parties have, at every juncture, expressly stated their willingness to engage in mediation to resolve this leadership dispute. (See *id.*) Unfortunately, the Ayala Faction has rejected Burdick's suggestion of mediation each and every time he made it.

CONCLUSION

Unless and until the Court accepts jurisdiction to decide which faction's CEDA Board is legitimate, it should not inadvertently decide Tribal leadership issues. In order not to do so and in order to incentivize the Tribe to resolve these issues internally, the Court should grant the Motion and reject the Objections.

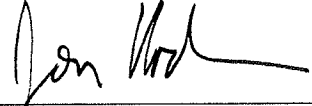
The motion should be granted because, neither the BIA nor this Court has determined which faction is legitimate and, under the Indenture, Excluded Assets can only be directed by CEDA. Without having decided which faction properly constitutes CEDA, there is no rationale for funding one faction but not the other. Worse, failing to amend the PI Order to require the sides to work together to disburse Excluded Assets is tantamount to deciding the Tribal leadership dispute in the Ayala Faction's favor – a decision with drastic consequences, and one that should not be made unless and until the Court, (i) finds that it has jurisdiction, (ii) orders full discovery, and (iii) holds a trial on the merits.

For the same reasons, the Court should reject the Ayala Faction's Objections to sharing information with the Lewis Parties. To do otherwise would be to accept the proposition that the Lewis Parties are not legitimate Tribal Council members. That is a risky proposition because: (1) the BIA has made no such finding; (2) the 2013 General Council Resolutions establish otherwise and reject the Ayala Faction's authority; and (3) there is a strong likelihood that the BIA will uphold and recognize the 2013 General Council Resolutions in light of its past conduct and the procedural and substantive similarity between the 2012 and 2013 General Council Resolutions.

Dated: New York, New York
October 3, 2013

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