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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
(FRESNO DIVISION)

STATE OF CALIFORNIA,

Plaintiff,

v.

**PICAYUNE RANCHERIA OF
CHUKCHANSI INDIANS OF
CALIFORNIA, A FEDERALLY
RECOGNIZED INDIAN TRIBE,**

Defendant.

Case No. 1:14-CV-01593 LJO SAB

**PLAINTIFF'S REPLY IN SUPPORT OF
REQUEST FOR PRELIMINARY
INJUNCTION**

Date: October 29, 2014

Time: 9:00 a.m.

Courtroom Four – 7th Floor

**Before the Honorable Lawrence J. O'Neill
Judge of the United States District Court**

INTRODUCTION

Plaintiff State of California (State) replies to the Ayala/Lewis Group's¹ response and the McDonald Group's opposition to the State's request for a preliminary injunction. Those pleadings purport to be filed on behalf of the Picayune Rancheria of Chukchansi Indians of California (Tribe). But the Reid Group, another group in an intra-tribal dispute, has appeared in

¹ In this reply, the groups are referred to as follows: the Ayala/Lewis Group, which is represented by Rosette LLP; the McDonald Group, which is represented by Rapport and Marston; and the Reid Group, which is represented by Fredericks Peebles & Morgan LLP.

1 this case and also purports to act on the Tribe's behalf.² The State defers to the Tribe's sovereign
2 authority to resolve the intra-tribal dispute.

3 But, as is clear from the evidence, escalating provocations and an armed invasion of the
4 Chukchansi Gold Resort & Casino (Casino) endangers the safety of its patrons, employees, the
5 general public, tribal members, and law enforcement personnel. The events and danger led to this
6 Court issuing a temporary restraining order (TRO), which was modified after an extended
7 hearing. The State requests that the Court enter a preliminary injunction substantively in the form
8 of the modified TRO.

9 **REPLY TO THE AYALA/LEWIS GROUP RESPONSE**

10 The premise underlying the Ayala/Lewis Group's response is that the group is comprised
11 of the Tribe's duly elected governing bodies and, therefore, should control the Casino and monies
12 derived from its operations. The Ayala/Lewis Group agrees with the State's requested
13 preliminary injunction except for (1) any restrictions on the group's powers to conduct business
14 and (2) the Casino's continued closure.

15 With respect to restrictions on controlling the Casino and its monies, the Ayala/Lewis
16 Group in effect asks this Court to pick sides in the intra-tribal dispute. As each competing group
17 stated repeatedly, and emphatically, in oral argument, that is not the Court's role. Consequently,
18 the Ayala/Lewis Group's reply does not provide any convincing rationale for relaxing the
19 modified TRO's terms to turn the Tribe's purse over to the Ayala/Lewis Group.

20 With respect to Casino closure, the group barely mentions the National Indian Gaming
21 Commission's (NIGC) Notice of Violation and Temporary Closure Order (NIGC Order),³ which
22 this Court's modified TRO, as well as the State's proposed preliminary injunction, takes into
23 account. The NIGC ordered the Tribe to cease and desist from all gaming activity in the Casino.

24 ² The Court ordered that all oppositions to the State's request for a preliminary injunction
25 be filed by 4:00 on October 23, 2014. Only the Ayala/Lewis Group filed a timely pleading. The
26 McDonald Group filed its opposition at midnight on October 23rd – eight hours after the filing
deadline. The Reid Group did not file an opposition.

27 ³ The sole mention is the following in the Ayala/Lewis response: "But for the McDonald
28 Faction's violent take-over attempt of October 9, 2014, there would be no present closure orders
due to public safety concerns at either the state or federal levels." (ECF No. 30, 10.)

1 (See ECF No. 9-1, 5.) The Court's modified TRO enjoins the Tribe from operating the Casino
2 until the Court is satisfied that the public safety of Casino patrons, employees, and tribal members
3 can be adequately protected. Under the modified TRO and the State's proposed preliminary
4 injunction, if the NIGC Order is lifted, the Casino may open unless the State objects within one-
5 half court day. The NIGC Order and the modified TRO are nearly coterminous.

6 Moreover, the State has an interest in, and the Tribe has the duty of, protecting the public
7 health and safety, and maintaining gaming that does not endanger the general public. The
8 Ayala/Lewis Group does not dispute that interest. Nor does it dispute that invasions of the Casino
9 by armed security forces are threats to public health and safety. Importantly, the Ayala/Lewis
10 Group offers nothing to show that the public safety of Casino patrons, employees, and tribal
11 members can be adequately protected. The group thus does not offer any compelling reason to
12 reopen the Casino to the public.

13 Instead, conceding that violence occurred on October 9, 2014, the Ayala/Lewis Group
14 disagrees with the State's characterization of who participated and who did what. The fact that
15 violence took place, however, is more important than the perpetrator's identity. In any event,
16 declarations submitted by the Ayala/Lewis Group contradict the assertion that its security force
17 did not have firearms, did not brandish weapons, or was not part of the violence. (See, e.g., ECF
18 No. 10-6, 16 ("I pulled my C2 taser and pointed it at the subject's stomach and advised him, 'Try
19 it, I will taze you!'); ECF No. 10-9, 5 ("pulled my C2 Taser and pointed it at his chest"); ECF
20 No. 10-11, 5 (a "violent struggle for the door continued"), 6 ("we begin to start pushing and
21 shoving again"); ECF No. 10-12, 6 ("I was still armed and these police officers still had not
22 removed my firearm which was holstered in my duty belt.").)

23 The Ayala/Lewis Group also appears to challenge the State's statement that "[d]espite the
24 TRO's apparent success, the groups in the intra-tribal dispute have not resolved their dispute and
25 remain poised to take actions which could threaten public safety." (ECF No. 30, 3.) The
26 undisputed facts show that two groups contest – oftentimes, vociferously – the Ayala/Lewis
27 Group's legitimacy. One contestant – the Reid Group – has declared in a verified complaint that
28 the Casino was being operated in a way that threatens public health, safety, and welfare and

1 breaches the tribal-state class III compact between the Tribe and the State. (ECF No. 25, 10 n.9.)
2 Another contestant – the McDonald Group – staged the Casino’s armed invasion and engaged in
3 violence. (ECF No. 30, 10-12.) In all, the intra-tribal dispute continues, and each competing
4 group asserts its power to protect itself from the others.

5 In sum, the Ayala/Lewis Group offers no substantial reason to enter a preliminary
6 injunction that differs from that proposed by the State.

7 **REPLY TO THE McDONALD GROUP OPPOSITION**

8 As a threshold matter, the Court should address whether to consider the McDonald
9 Group’s late filing at all. The State agreed to a twenty-four-hour reply based upon its desire to
10 facilitate a speedy process. The McDonald Group’s opposition was not a few minutes, or hours
11 late; it was eight hours late. No excuse was offered. No request for an extension was requested.
12 The Court should not accept, or consider, the opposition.

13 If the Court chooses to consider the opposition, the Court should reject its arguments.
14 Like the Ayala/Lewis Group, the McDonald Group asserts that it is the Tribe’s duly elected
15 governing body and, therefore, could invade the Casino with armed “tribal police.” Despite the
16 intra-tribal dispute and its non-recognition by the other competing groups, the McDonald Group
17 asserts that its “tribal police” can maintain public safety. As demonstrated by the events of
18 October 9, 2014, this kind of activity and such assertions present a risk to the public health and
19 safety and endanger the Casino’s patron, employees, tribal members, and law enforcement
20 personnel.

21 Additionally, the McDonald Group’s assertion of authority flies in the face of its
22 repetitive, and vociferous, claim that the Court not pick sides in the intra-tribal dispute. The
23 McDonald Group now asks the Court to pick a side and thus countenance an armed invasion, the
24 resulting violence, and a clear threat to public safety. Consequently, the McDonald Group’s
25 opposition does not provide any convincing rationale for relaxing the modified TRO’s, and
26 proposed preliminary injunction’s, terms to turn the Casino and security over to the McDonald
27 Group’s armed “tribal police.”
28

1 The McDonald Group repeats its challenge to the Court's jurisdiction. The State
2 addressed the Court's jurisdiction in its request. *Cabazon Band of Mission Indians v. Wilson*, 124
3 F.3d 1050 (9th Cir. 1997), is controlling: an action to enforce a tribal-state gaming compact
4 confers jurisdiction pursuant to 28 U.S.C. § 1331.

5 Contrary to the McDonald Group's assertions, this Court has jurisdiction. Moreover, the
6 group's assertions of control, the legitimacy of its "tribal police," and that force's power to
7 maintain public health and safety is a recipe for further violence. The Court should reject the
8 McDonald Group's opposition.

9 **THE REID GROUP DID NOT FILE AN OPPOSITIOS**

10 The Reid Group did not file an opposition. By its failure to file an opposition to the State's
11 request, the Court can infer that the Reid Group does not oppose the State's proposed preliminary
12 injunction.

13 **CONCLUSION**

14 In view of the foregoing, the State respectfully requests that the Court issue a preliminary
15 injunction to protect the public, and that is substantively the same as the TRO as modified by this
16 Court on October 15, 2014.

17 Dated: October 24, 2014

Respectfully submitted,

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19 Attorney General of California
20 SARA J. DRAKE
21 Senior Assistant Attorney General
22 WILLIAM L. WILLIAMS, JR.
23 Deputy Attorney General

24 /s/ WILLIAM P. TORNGREN

25 WILLIAM P. TORNGREN
26 Deputy Attorney General
27 *Attorneys for Plaintiff*
28 *State of California*

CERTIFICATE OF SERVICE

Case No. **1:14-cv-01593-LJO-SAB**
Name: **State of California v. Picayune Rancheria, et al.**

I hereby certify that on **October 24, 2014**, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

PLAINTIFF'S REPLY IN SUPPORT OF REQUEST FOR PRELIMINARY INJUNCTION

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **October 24, 2014**, at Sacramento, California.

William P. Torngren
Declarant

/s William P. Torngren
Signature