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(Reid Council)

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION**

STATE OF CALIFORNIA,

Plaintiff,

v.

PICAYUNE RANCHERIA OF CHUKCHANSI  
INDIANS, a federally recognized Indian tribe,

Defendants.

Case No. 14-cv-01593-LJO-SAB

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
REID COUNCIL'S MOTION FOR  
ORDER TO SHOW CAUSE;  
REQUEST FOR ACCOUNTING;  
AND REQUEST FOR  
RECEIVERSHIP**

Date: February 11, 2015  
Time: 8:30 a.m.  
Ctrm: 4  
Judge: Lawrence J. O'Neill

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**I. Introduction**

The Lewis/Ayala Faction, which sometimes refers to itself as the “Unification Council,” has violated this Court’s October 15, 2014 and October 29, 2014 Orders on at least two occasions by issuing per capita payments to only a select number of Tribal members, rather than to all members as of December 1, 2010, as ordered by the Court. In addition, the Reid Group is informed and believes that the Lewis/Ayala Faction and the McDonald Faction both have violated this Court’s Orders on other occasions, including by making discretionary payments to their own faction membership, by making large payments to individual Tribal members to place into their personal bank accounts, by making payments to any one faction’s attorneys, or by making payments to any “gaming commission” that do not constitute mandatory fees.

For these reasons, the Picayune Rancheria of Chukchansi Indians (Reid Council or Reid Group) hereby moves this Court for the following orders:

- 1) an Order to Show Cause why the Lewis/Ayala Faction should not be held in contempt of this Court for violating the Court’s October 15, 2014 Order and October 29, 2014 Order by issuing per capita payments to only a select number of Tribal members on multiple occasions and by making payments to their own faction members and attorneys.
- (2) an Order compelling the Lewis/Ayala Faction to issue per capita payments to all Tribal members on the 2010 membership list who have not already received per capita payments in an amount equal to the distributions already issued by the Lewis/Ayala Faction, and to return to the originating Tribal bank account any payments, other than per capita payments or payments of mandatory fees to the gaming commission actually supervising gaming operations, made since October 15, 2014, including payments to any individual members of the Lewis/Ayala Faction or the Lewis/Ayala Faction attorneys;
- (3) an Order for a full accounting of all distributions of Tribal monies, by any Tribal Faction, individual Tribal member, bank, or other entity since October 15, 2014; and
- (4) an Order appointing a receiver, pursuant to Federal Rules of Civil Procedure Rule 66 and Local Rule 232, to manage and control the Tribe’s financial matters in conformity with this Court’s October 15, 2014 and October 29, 2014 Orders.

**II. Factual and Procedural Background**

The State of California filed the instant action on October 10, 2014, shortly after weeks of confrontations between the Lewis/Ayala Faction and the McDonald Faction culminated in an armed and violent conflict at the Tribe’s gaming facility, the Chukchansi Gold Casino & Resort (“the

1 Casino”) on October 9, 2014. The armed conflict between the Lewis/Ayala and McDonald Factions  
2 stemmed from a larger intra-Tribal leadership dispute within the Picayune Rancheria of Chukchansi  
3 Indians (“Tribe”), in which control of the Casino provides significant advantage. The intra-Tribal  
4 leadership dispute arose in December 2011 and involves at least three Tribal groups: the Reid Group,  
5 the Lewis/Ayala Faction, and the McDonald Faction.

6 The October 9, 2014 hostilities were the culmination of several months of physical  
7 confrontations between the Lewis/Ayala and McDonald Factions. For example, the Lewis/Ayala  
8 Faction made several attempts to take over the Casino during the month of August before completing  
9 a successful takeover on or about August 29, 2014. However, the McDonald Faction maintained  
10 possession of the Tribe’s governmental compound. During the months of September and October,  
11 the McDonald and Lewis/Ayala Factions engaged in a tug-of-war over the various Tribal and Casino  
12 buildings, which at times resulted in physical confrontations and violence. The Lewis/Ayala Faction  
13 maintained possession of the ultimate target, the Casino, until October 9, 2014, when the McDonald  
14 Faction staged its ill-fated takeover of the Casino. It is unclear who was in control of the Tribe’s  
15 Casino immediately prior to the Madera County Sheriff’s evacuation of the Casino.

16 It is important to note that the Reid Group has never attempted an armed takeover of the  
17 Tribe’s Casino or other buildings, preferring instead to seek legal or negotiated solutions.  
18 Nevertheless, the Reid Group maintains that it is (and at all times has been at least the majority of)  
19 the only legitimate Tribal governing body since December 26, 2011. By virtue of being the only  
20 group that has been elected by the Tribal membership in the only valid election subsequent to  
21 December 2010, the Reid Group maintains that it constitutes the current Tribal government, as well  
22 as at least the majority of the current Tribal Council and each past Tribal Council since the dispute  
23 arose in December 2011.

24 On October 10, 2014, the Court granted the State of California’s request for a temporary  
25 restraining order and set a hearing for October 15, 2014. At the October 15, 2014 hearing, the Court  
26 amended the Temporary Restraining Order to prohibit distributions of Tribal monies to any group  
27 claiming to be the Tribal Council or otherwise claiming control over tribal matters. The Court’s  
28

order provided only two exceptions to the distribution of Tribal monies: (1) mandatory fees to the gaming commission actually supervising the Casino's operations on October 8, 2014; and (2) per capita distributions that are made in an equal amount to every Tribal member on the enrollment list of December 1, 2010.

On October 29, 2014, the Court converted the temporary restraining order, as amended on October 15, 2014, into a preliminary injunction. Accordingly, the Preliminary Injunction also prohibits any distributions of Tribal monies except: (1) mandatory fees to the Gaming Commission actually supervising the Casino's operations on October 8, 2014; and (2) per capita distributions to Tribal members in equal amounts to every Tribal member as of December 1, 2010. ECF No. 48, Preliminary Injunction Order, at 9 (Oct. 29, 2014).

**A. Per Capita distributions to select Tribal members**

On or about October 27, 2014, the Lewis/Ayala Faction held a "Tribal meeting" at the Casino. As a way to coerce Tribal members to attend their meeting, the Lewis/Ayala Faction issued Per capita payments in the amount of \$393.98 each, which could be picked up at the meeting immediately or sent via mail at a later time.<sup>1</sup> See Declaration of Morris Reid, ¶ 6.

However, the Lewis/Ayala Faction only issued such per capita payments to some Tribal members. For example, Morris Reid and others received per capita payments from the Lewis/Ayala Faction on or about October 27, 2014. Declaration of Morris Reid, at ¶ 5; Declaration of Janice Devine, at ¶¶ 3-5.

In contrast, the Lewis/Ayala Faction refused or otherwise failed to issue per capita payments to at least 77 Tribal members, each of whom is on the Tribe's membership list as of December 1, 2010. See Declaration of Morris Reid, at ¶¶ 5, 10; Declaration of Janice Devine, at ¶ 6. For example,

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<sup>1</sup> Offering Per Capita checks is a method used by both the Lewis/Ayala Faction and the McDonald Faction to boost attendance at their meetings and reward support for their political assertions. However, traditionally, the Lewis/Ayala and McDonald Factions only offered Per Capita payments to a limited number of Tribal members, depending on the political purpose at the time. For example, at certain times – usually when the Lewis/Ayala Faction had a tighter grip on political control of Tribal assets – the Lewis/Ayala Faction has limited its Per Capita payments only to its supporters. At other times, the Lewis/Ayala Faction has offered Per Capita payments to more Tribal members in an attempt to curry favor with a broader Tribal membership base and portray that it represented a greater number of Tribal members. However, at all times after the dispute arose in December 2011, the Lewis/Ayala Faction has failed to issue Per Capita payments to the entire Tribal membership as constituted prior to the dispute arose.

1 Frank “Butch” Fernandez, along with members of his family, is a Tribal member on the 2010  
 2 membership list. Declaration of Frank “Butch” Fernandez, at ¶ 3. Mr. Fernandez and his family  
 3 members voted in the December 3, 2010 Tribal election and the December 6, 2011 Tribal election,  
 4 prior to the intra-Tribal leadership dispute. Declaration of Frank “Butch” Fernandez, at ¶ 4. Mr.  
 5 Fernandez and eighteen (18) of his family members – all of whom are Tribal members – were not  
 6 provided with per capita payments, let alone in an equal amount with those that were provided with  
 7 such distribution. Declaration of Frank “Butch” Fernandez, at ¶¶ 6-11. Overall, the Reid Council has  
 8 identified at least 77 Tribal members, all of whom were members as of December 1, 2010, who were  
 9 not provided per capita checks by the Lewis/Ayala Faction, in violation of this Court’s Order.

10 On or about November 24, 2014, the Lewis/Ayala Faction again issued per capita payments to  
 11 certain Tribal members, this time in the amount of \$338.89. Declaration of Morris Reid, at ¶ 8;  
 12 Declaration of Janice Devine, at ¶ 4. On or about December 18, 2014, the Lewis/Ayala Faction  
 13 issued per capita payments to certain Tribal members in the amount of 339.25. Declaration of Morris  
 14 Reid, at ¶ 9; Declaration of Janice Devine, at ¶ 5. Once again, in violation of this Court’s orders, the  
 15 Lewis/Ayala Faction refused or otherwise failed to issue per capita payments to at least 77 Tribal  
 16 members who are on the membership list as of December 1, 2010. *See* Declaration of Morris Reid, at  
 17 ¶ 10; Declaration of Frank “Butch” Fernandez, at ¶ 6-11.

18 The Lewis/Ayala Faction has openly issued these selective “per capita” payments to certain  
 19 Tribal members. *See, e.g.*, Declaration of Morris Reid, at ¶ 5. Further, the Lewis/Ayala Faction’s  
 20 checks contain the name of the Tribe, directly above the Lewis/Ayala Faction’s office address,  
 21 printed on the top left of the check. Declaration of Morris Reid, Exhibits A, B, C. The Lewis/Ayala  
 22 Faction’s office is located at 8080 North Palm Ave., Fresno, CA 93711. Declaration of Morris Reid,  
 23 at ¶ 12.

24 As such, the Lewis/Ayala Faction failed to issue per capita payments in an equal amount to  
 25 the entire Tribal membership on the December 1, 2010 membership list, in violation of this Court’s  
 26 October 15th and October 29th Orders.

**B. Additional distributions of Tribal monies in violation of this Court's Orders**

In addition to the selective per capita distributions described above, the Reid Group is informed and believes that the Lewis/Ayala Faction and the McDonald Faction have made additional distributions of Tribal monies since October 15, 2014 in violation of this Court's Orders. These additional distributions that would violate this Court's Orders, which are described more below, include: (1) payments to individual Lewis/Ayala Faction members; (2) payments to the Lewis/Ayala Faction's attorneys; (3) payments out of Tribal funds to the criminal defense attorneys for Tex McDonald and Vernon King; (4) non-mandatory payments to the Lewis/Ayala Faction's "gaming commission"; and (5) the Lewis/Ayala Faction's distribution of large amounts of Tribal monies to individuals for placement into their personal accounts, in violation of this Court's Orders as well as Tribal, federal, and state law.

**III. Argument**

**A. The Lewis/Ayala Faction should be held in contempt for its violations of this Court's order.**

The Court has the inherent authority to enforce its orders through institution of civil contempt proceedings. *See, e.g., United States v. United Mine Workers of Am.*, 330 U.S. 258, 294 (1947) ("Violations of an order are punishable as criminal contempt . . ."); *Primus Auto. Fin. Servs., Inc. v. Batarse*, 115 F.3d 644, 648 (9th Cir. 1997) ("The most common utilization of inherent powers is a contempt sanction levied to protect the due and orderly administration of justice and maintain the authority and dignity of the court.") (internal quotation marks and citation omitted). Failure to comply with either a Temporary Restraining Order or Preliminary Injunction is a valid basis for finding of contempt. *See United Mine Workers*, 330 U.S. at 294 (affirming contempt as a valid punishment for violation of injunctions); *F.T.C. v. Affordable Media*, 179 F.3d 1228, 1233 (9th Cir. 1999) (affirming civil contempt for violation of temporary restraining order).

"Intent is not an issue in civil contempt proceedings." *Donovan v. Mazzola*, 716 F.2d 1226, 1240 (9th Cir. 1983) (citations omitted). Further, whether the Court should impose civil or criminal contempt depends on the intended effect of such contempt. *United States v. Laurins*, 857 F.2d 529, 534 (9th Cir.1988). "If the intent is remedial, or if the penalty is conditional in that it is meant to



1 compel the defendant to act, the contempt is civil.” *Id.* On the other hand, “[i]f the intent is punitive  
2 and the penalty is unconditional, the contempt is criminal.” *Id.*

3 There is no dispute concerning the existence of this Court’s Orders as of October 15, 2014  
4 and October 29, 2014. Further, the Court’s Temporary Restraining Order was clearly expressed in  
5 the October 15, 2014 hearing, when Judge O’Neill stated “with regard to the disbursements, . . .  
6 Discretionary funds to any of the factions, no. Except for the 2010 list, in equal amounts, yes. Now,  
7 that’s the order.” Transcript of Proceedings, *California v. Picayune Rancheria of Chukchansi*  
8 *Indians*, No. 14-cv-01593-LJO, at 87:8-14 (Oct. 15, 2014)). The Judge’s order was clarified by  
9 counsel, who asked “When you say ‘equal payments,’ . . . [y]ou are talking about per capita payments  
10 to be made to Tribal members?”, to which Judge O’Neill responded, “Yes, that’s correct.” *Id.* at  
11 87:18-88:1.

12 The Lewis/Ayala Faction was aware of the particulars of Judge O’Neill’s October 15, 2014  
13 Temporary Restraining Order. First, the Lewis/Ayala Faction and its counsel were present at the  
14 October 15, 2014 hearing. Moreover, the Lewis/Ayala Faction’s counsel addressed equal per capita  
15 payments to the entire 2010 membership. Judge O’Neill asked the Lewis/Ayala Faction’s counsel,  
16 Robert Rosette, “And are you suggesting that the – if there were to be the 2010 list distribution, that  
17 they would be in equal amounts?” *Id.* at 86:4-6. Mr. Rosette replied, “Absolutely.” *Id.* at 86:7.

18 The Court clarified this requirement once again in its October 29, 2014 Preliminary Injunction  
19 Order. *See* Preliminary Injunction Order, Docket No. 48, at 9:10-14 (Oct. 29, 2014) (“[P]er capita  
20 distributions based upon the Tribe’s membership list as of December 1, 2010, that are made in equal  
21 amounts, are not violative of this Injunction.”).

22 Notwithstanding the unambiguous Orders by the Court, the Lewis/Ayala Faction has made  
23 per capita payments only to a select Tribal members, in violation of this Court’s Orders, on at least  
24 three occasions since October 15, 2014. Such selective per capita distributions are established by the  
25 evidence contained in the Declarations of Morris Reid and Frank Fernandez. Further, the  
26 Lewis/Ayala Faction has openly issued these “per capita” distributions to a select group of Tribal  
27 members in violation of this Court. *See, e.g.*, Declaration of Morris Reid, ¶¶ 5.

Accordingly, an order holding the Lewis/Ayala Faction in contempt of this Court's Orders is appropriate, and the Reid Group respectfully requests that the Court issue an order to show cause why the Lewis/Ayala and the McDonald Faction should not be held in contempt of Court. In addition, the Reid Group respectfully requests that the Court order the Lewis/Ayala Faction to issue per capita payments to all Tribal members on the 2010 membership list who have not already received per capita payments in an amount equal to the distributions already issued by the Lewis/Ayala Faction, and to return to the originating Tribal bank account any payments, other than per capita payments or payments of mandatory fees to the gaming commission actually supervising gaming operations, made since October 15, 2014, including payments to any individual members of the Lewis/Ayala Faction or the Lewis/Ayala Faction attorneys.

**B. The Court should order a full accounting to determine whether the Lewis/Ayala Faction and/or McDonald Faction have conducted additional violations of this Court's Orders.**

As set forth above, the Lewis/Ayala Faction improperly disbursed Tribal monies in violation of this Court's October 15th and October 29th Orders. In addition, however, the Reid Group is informed and believes that the Lewis/Ayala Faction, the McDonald Faction, or both have made several additional discretionary payments to their own faction, faction members, or others in violation of this Court's Orders. Moreover, because such payments have been made "off the record," the identities of all the individuals and entities to whom such Tribal monies have been distributed, and in what amounts, cannot be confirmed without an accounting of all distributions of Tribal monies. This is particularly true of the Lewis/Ayala Faction's disbursements to individual Tribal members to place into personal bank accounts.

For this reason, the Reid Group respectfully requests that this Court order a full accounting of all distributions of Tribal monies since October 15, 2014, in order to determine which, if any, distributions violated this Court's October 15th and October 29th Orders. Such accounting should include all bank accounts held or purportedly held in the Tribe's name, including but not limited to: the Wells Fargo account used by the Lewis/Ayala Faction for per capita payments to select Tribal members; the Tribal accounts of the individual Lewis/Ayala Faction members; the individual

1 accounts of Joseph Ayala and Jane Wyatt; Tribal financial documents; the Bank of the Sierra account  
2 opened by the McDonald Faction and referred to in *Bank of the Sierra v. Picayune Rancheria of*  
3 *Chukchansi Indians*, No. No. 14-cv-01044-AWI-SAB (E.D. Cal.); and any and all cash distributions.

4 The Reid Group is informed and believes that the Lewis/Ayala Faction and McDonald  
5 Faction have made the following distributions of Tribal monies in violation of this Court's Orders:

6 **1. Large payments of Tribal moneys to individual Tribal members**

7 The Reid Group has received reports that the Lewis/Ayala Faction is funneling large amounts  
8 of Tribal funds into the personal bank accounts of its members and its supporters. For example,  
9 within days of the Lewis/Ayala Faction's second issuing of per capita payments in violation of this  
10 Court's orders on November 25, 2014, Joseph Ayala – Nancy Ayala's brother – was observed  
11 depositing two checks issued by the Lewis/Ayala Faction into his own account and the account of  
12 Jane Wyatt – the aunt of Nancy and Joseph Ayala. *See* Declaration of Morris Reid, at ¶¶ 11-15. The  
13 two checks totaled an approximate amount of \$84,000.00 of Tribal monies. *Id.* at ¶ 12.

14 There is no legitimate purpose for such distributions of Tribal monies to individual Tribal  
15 members for placement into their personal bank accounts. Rather, the only purpose such  
16 distributions could serve are to conceal Tribal funds from Tribal, state, and federal authorities,  
17 including this Court. Further, such distributions constitute embezzlement and would violate Tribal  
18 law and federal law, including the Indian Gaming Regulatory Act, in addition to this Court's Orders.

19 **2. Payments of Tribal monies to individual Lewis/Ayala Faction members and**  
20 **supporters**

21 The Reid Group is informed and believes that the Lewis/Ayala Faction has made and is  
22 making discretionary payments to its own members in violation of this Court's October 15th and  
23 October 29th Orders. Such payments have been made from Tribal monies and issued to Nancy  
24 Ayala, Jennifer Stanley, Reggie Lewis, Chance Alberta, Carl "Buzz" Bushman, Karen Wynn, Tracey  
25 Brechbuel (a/k/a Tracey Hopkins), Melvin Espe, Nokomis Hernandez, and David Castillo. *See*  
26 Declaration of Morris Reid, at ¶ 18.

27 **3. Payments of Tribal monies to Lewis/Ayala Faction's attorneys**

28 The Reid Group is informed and believes that the Lewis/Ayala Faction has made payments,

from Tribal monies, to the Lewis/Ayala Faction's attorneys, Rosette LLP, in violation of this Court's October 15th and October 29th Orders. *See* Declaration of Morris Reid, at ¶ 19.

**4. *Payments of Tribal monies to Tex McDonald and Vernon King's criminal defense attorneys***

Several Tribal members reported that, at a McDonald Faction meeting held on November 24, 2014, the McDonald Faction declared that it had used Tribal monies to pay the fees for the criminal defense attorney of Tex McDonald and Vernon King in relation to their defense of the criminal prosecution, in violation of this Court's October 15th and October 29th Orders. *See* Declaration of Morris Reid, at ¶ 16.

**5. *Non-mandatory payments to members of Lewis/Ayala Faction's "gaming commission"***

This Court's October 15th and October 29th Orders allow payments to a gaming commission only to the extent that such payments are: (1) made to the gaming commission actually supervising Casino operations; and (2) to address mandatory fees. The Reid Group is informed and believes that the Lewis/Ayala Faction is making payments to its own "gaming commission" and/or its members in violation of the Court's Orders. Declaration of Morris Reid, at ¶ 19.

Although it is unclear whether the McDonald Faction or the Lewis/Ayala Faction was in control of the Casino immediately prior to the Madera County Sheriff evacuating the Casino, the Sheriff's office allowed the Lewis/Ayala Faction to return to the Casino and assume physical control. As such, the Lewis/Ayala Faction's "gaming commission" has been considered by some as "on-site." However, prior to the shutdown of the Tribe's Casino, the NIGC was working with both the Lewis/Ayala Faction's and the McDonald Faction's "gaming commissions."<sup>2</sup> *See* Declaration of Morris Reid, at ¶ 17. Thus, it is not possible to determine which, if any, "gaming commission" is or can properly actually supervise Casino operations.

<sup>2</sup> The Reid Group disputes the validity of both the Lewis/Ayala Faction's and the McDonald Faction's "gaming commissions."

Moreover, because there are no operations currently occurring at the Casino due to the NIGC's closure order, and thus no Casino operations to supervise, such payments likely may not constitute mandatory fees.

For these reasons, in addition to the purposes expressed above, the Reid Group respectfully requests that this Court order a full accounting of all distributions of Tribal monies to Lewis/Ayala Faction's "gaming commission" to determine whether any such payments violate this Court's Orders.

**C. The Court should appoint a receiver to protect Tribal assets.**

Appointing a receiver is an equitable remedy within the inherent power of the federal district courts. *See Canada Life Assur. Co. v. LaPeter*, 563 F.3d 837, 844-45 (9th Cir. 2009) (citing *SEC v. Hardy*, 803 F.2d 1034, 1041 (9th Cir. 1986) (Reinhardt, J., concurring and dissenting) (observing the "power inherent in the district court to create receivership") and *View Crest Garden Apartments, Inc. v. United States*, 281 F.2d 844, 849 (9th Cir. 1960) (appointing a receiver was well within broad discretionary powers of court)); *see also* Fed. R. Civ. P. 66; Local Rule 232; 12 Charles Alan Wright, Arthur R. Miller & Richard L. Marcus, *Federal Practice and Procedure* § 2983 (2d ed. 1997) [hereinafter "Wright & Miller"]. Any person or entity having an interest in property may seek the appointment of a receiver by a federal court. Wright & Miller, 12 Fed. Prac. & Proc. Civ. § 2983.

Additionally, appointment of a receiver is appropriate in a number of well-established contexts, including cases involving the property and assets of a sovereign government. *See, e.g., Oklahoma v. Texas*, 252 U.S. 372 (1920) [*"Oklahoma I"*]; *Oklahoma v. Texas*, 258 U.S. 574 (1922) [*"Oklahoma II"*]; Wright & Miller, 12 Fed. Prac. & Proc. Civ. § 2983. For example, the United States Supreme Court appointed a receiver to manage the riverbed of the Red River, as well as the revenues generated from the property, of which two states, Oklahoma and Texas, and the United States government claimed ownership. *See Oklahoma I*, 252 U.S. 372. In *Oklahoma*, the Supreme Court ordered that the property and proceeds would be held "in such a way that they could be awarded and paid to whoever ultimately should be found to be the rightful claimants." *Oklahoma II*, 258 U.S. at 580.

1           There is “no precise formula for determining whether to appoint a receiver,” and therefore the  
2 “district court has broad discretion in appointing a receiver.” *Canada Life Assur. Co. v. LaPeter*, 563  
3 F. 3d at 844, 845 (quoting *Aviation Supply Corp. v. RSBI Aerospace, Inc.*, 999 F.2d 314, 316 (8th Cir.  
4 1993)). The district courts may consider a variety of factors, including but not limited to the  
5 following:

- 6           1) whether [the party] seeking the appointment has a valid claim;
- 7           2) whether there is fraudulent conduct or the probability of fraudulent conduct,  
8           by the defendant;
- 9           3) whether the property is in imminent danger of being lost, concealed, injured,  
10           diminished in value, or squandered;
- 11           4) whether legal remedies are inadequate;
- 12           5) whether the harm to plaintiff by denial of the appointment would outweigh  
injury to the party opposing appointment;
- 13           6) the plaintiff's probable success in the action and the possibility of  
irreparable injury to plaintiff's interest in the property; and
- 14           7) whether [the] plaintiff's interests sought to be protected will in fact be well-  
served by receivership.

15           *Canada Life Assur. Co.*, 563 F.3d at 844 (internal quotation marks and citations omitted). However,  
16 because the district court's discretion in appointing a receiver is broad, the Court can consider any  
17 number of factors, and “no one factor is dispositive.” *Canada Life Assur. Co.*, 563 F.3d at 845.

18           In this case, appointment of a receiver is appropriate. First, the Reid Group has established  
19 above that it has a valid claim that the Lewis/Ayala Faction has wrongfully dispersed Tribal monies  
20 in violation of this Court's Orders. The Reid Group has also set out a valid claim that a full  
21 accounting may reveal additional distributions of Tribal monies by both the Lewis/Ayala and  
22 McDonald Factions in violation of this Court's Orders.

23           As this Court is aware, there is a substantial potential for fraudulent conduct by the various  
24 Tribal factions as they jockey for strategic advantage in the Tribal leadership dispute. One stark  
25 example of potential fraudulent conduct is the Lewis/Ayala Faction's concealment of Tribal funds in  
26 individual bank accounts, described above. However, distribution of Tribal funds by any Tribal  
27 faction made since the dispute arose in December 2011 is potentially unlawful and fraudulent  
28 because any, or even all, of the various Tribal factions may be found to have never been legitimate.



1 Since the dispute arose in December 2011, at least three separate and disputing factions have  
 2 expended Tribal funds, at times concurrently. Indeed, both the Lewis/Ayala Faction and the  
 3 McDonald Faction are currently expending Tribal funds to some degree. At least some, if not all, of  
 4 those Tribal funds are necessarily unlawful and potentially fraudulent.

5 Currently, both the Lewis/Ayala Faction have access to and are expending Tribal funds for the  
 6 purposes of their own respective factions, rather than the Tribe as a whole. *See, e.g., Anderson v.*  
 7 *Duran*, 2014 WL 4954647, at \*9 (N.D. Cal. Oct. 2, 2014) (observing Lewis/Ayala Factions  
 8 advancing its own interests rather than the public interests of the Tribe as a whole). For example, the  
 9 Lewis/Ayala Faction has access to Tribal monies, under the Court's current orders, through Casino  
 10 accounts and cash flow from the Casino "cage" itself. The amount of Tribal funds under the  
 11 Lewis/Ayala Faction's control is unknown, particularly due to the fact that a significant amount of  
 12 such Tribal monies may have been secreted away to individual bank accounts.

13 The McDonald Faction, meanwhile, previously transported and stored large amounts of Tribal  
 14 cash, sometimes in amounts over \$1 million, in one or more off-location safes while it was in control  
 15 of the Casino, according to sworn declarations of former McDonald Faction employees. *See*  
 16 *Picayune Rancheria of Chukchansi Indians v. U.S. Dep't of the Interior*, No. 14-cv-04273-RS (N.D.  
 17 Cal.), *Affidavit of Jesus Castillo*, ECF No. 1-7, at 2-9. In addition, the McDonald Faction recently  
 18 gained access to almost \$400,000.00 of Tribal monies located in one or more accounts with Bank of  
 19 the Sierra. *See Bank of the Sierra v. Picayune Rancheria of Chukchansi Indians*, ECF No. 27, *Order*  
 20 *Denying Motion to Vacate Dismissal and Ordering Disbursal of Interpled Funds*, No. 14-cv-01044-  
 21 AWI-SAB (E.D. Cal. Dec. 12, 2014) (ordering disbursement of Tribal monies to McDonald Faction  
 22 account).

23 Tribal monies expended by the Lewis/Ayala Faction or McDonald Faction for improper  
 24 purposes will be nearly if not impossible to recover. Indeed, even monies not yet expended may  
 25 never be recovered if they are hidden in or routed through personal bank accounts.

26 As this and other Courts have observed, there is no adequate legal remedy to protect Tribal  
 27 resources during an intra-Tribal dispute, in the absence of an internal Tribal resolution of the dispute.

1 See ECF No. 49, *Transcript of October 29, 2014 Preliminary Injunction Hearing*, at 19 (Honorable  
 2 Judge O’Neill: “I would like nothing more than to have some authority . . .”). However,  
 3 appointment of a receiver is an equitable remedy within the inherent authority of this Court. Further,  
 4 such a receiver will ensure that all distributions of Tribal monies will comply with this Court’s order  
 5 and be for legitimate Tribal purposes. In this way, appointment of a receiver will adequately protect  
 6 Tribal property and assets.

7 Finally, each of the Tribal factions who have entered an appearance in this action claims to  
 8 represent the Tribe and its entire membership. Thus, if those factions truly are interested in  
 9 protecting the public interest of the Tribe as a whole, rather than the interests of their own faction  
 10 alone, they should have no objection to this Court appointing a receiver to protect the property and  
 11 assets of the Tribe. Accordingly, because the Reid Group only seeks a receiver to oversee Tribal  
 12 assets, and not any faction’s or individual’s assets, appointment of a receiver will not harm the  
 13 interests of any disputing Tribal faction.

14 For the reasons expressed above, as well as reasons indicated in this and the many federal,  
 15 state, and administrative actions over the Tribe’s assets, the Reid Group respectfully requests the  
 16 Court to appoint a receiver to manage all Tribal property and assets “in such a way that they [can] be  
 17 awarded and paid to whoever ultimately should be found to be the rightful claimants.” *Oklahoma II*,  
 18 258 U.S. at 580.

#### 19 **IV. Conclusion**

20 For the foregoing reasons, the Reid Group respectfully requests the Court to issue the  
 21 following orders:

- 22 1) an Order to Show Cause why the Lewis/Ayala Faction should not be held in contempt of this  
 23 Court for violating the Court’s October 15, 2014 Order and October 29, 2014 Order by  
 24 issuing per capita payments to only a select number of Tribal members on multiple occasions  
 and by making payments to their own faction members and attorneys.
- 25 2) an Order compelling the Lewis/Ayala Faction to issue per capita payments to all Tribal  
 26 members on the 2010 membership list who have not already received per capita payments in  
 27 an amount equal to the distributions already issued by the Lewis/Ayala Faction, and to return  
 to the originating Tribal bank account any payments, other than per capita payments or  
 payments of mandatory fees to the gaming commission actually supervising gaming



operations, made since October 15, 2014, including payments to any individual members of the Lewis/Ayala Faction or the Lewis/Ayala Faction attorneys;

- 3) an Order for a full accounting of all distributions of Tribal monies, by any Tribal Faction, individual Tribal member, bank, or other entity since October 15, 2014; and
- 4) an Order appointing a receiver, pursuant to Federal Rules of Civil Procedure Rule 66 and Local Rule 232, to manage and control the Tribe's financial matters in conformity with this Court's October 15, 2014 and October 29, 2014 Orders.

Dated: December 24, 2014

Respectfully Submitted,

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