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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

TILLIE HARDWICK, *et al.*,

Plaintiffs,

v.

UNITED STATES OF AMERICA, *et al.*,

Defendants.

Case No.: 3:79-cv-1710-EMC

**PLAINTIFF PICAYUNE RANCHERIA
OF THE CHUKCHANSI INDIANS'
OBJECTIONS TO REPLY EVIDENCE**

Pursuant to Local Rule 7-3(d)(1), Plaintiff Picayune Rancheria of Chukchansi Indians ("Tribe") objects to the evidence submitted in support of Movants' Reply Brief in Support of Motion for Enforcement of Judgment ("Reply") and the new arguments and claims set forth in the Reply.

The courts of the Ninth Circuit have consistently held that it is improper to submit new evidence for the first time in support of a reply brief.

"New evidence submitted as part of a reply is improper" because it does not allow the defendant an adequate opportunity to respond. *Morris v. Guetta*, 2013 U.S. Dist. LEXIS 15556, 2013 WL 440127, *8 (C.D. Cal. Feb. 4, 2013). For this reason, the district court may decline to consider new evidence or arguments raised in reply,

1 and generally “should not consider the new evidence without giving the non-
2 movant an opportunity to respond.” *Provenz v. Miller*, 102 F.3d 1478, 1483 (9th
Cir. 1996)

3 *Townsend v. Monster Bev. Corp.*, 303 F. Supp. 3d 1010, 1027 (C.D. Cal. 2018).

4 The courts of the Ninth Circuit have also consistently prohibited parties from raising new
5 arguments in a reply brief.

6 Moving parties typically get the last written word on motions, through a reply brief.
7 To make things fair then, moving parties can’t save arguments or requests to spring
8 on an opponent for the first time in a reply brief, where the opponent has no chance
to reply in writing (and given the frequency with which courts allow oral argument
these days, often no chance period).

9 *Hsu v. Puma Biotechnology, Inc.*, 213 F. Supp. 3d 1275, 1284 (C.D. Cal. 2016) *See Provenz v.*
10 *Miller*, 102 F.3d 1478, 1483 (9th Cir. 1996); *Tovar v. U.S. Postal Serv.*, 3 F.3d 1271, 1273 n. 3
11 (9th Cir. 1993); *Schwartz v. Upper Deck Co.*, 183 F.R.D. 672, 682 (S.D. Cal. 1999).

12 In support of their Reply, Movants submitted over 600 pages of declarations and exhibits.
13 All of those documents were available to the Movants at the time that the original Motion (ECF
14 No. 407) was filed, and Movants offer no justification for their failure to submit those documents
15 as part of the original motion. “[G]enerally, a party is not entitled to submit new evidence with
16 their reply brief, especially when such evidence could have been collected and submitted earlier.
17 *Andrade v. Am. First Fin., Inc.*, 2022 U.S. Dist. LEXIS 178670, at *6 (N.D. Cal. Sep. 29, 2022).
18 Because they were filed in support of the Reply, the Tribe will not have an opportunity to address
19 the relevance or significance of the declarations and exhibits, or rebut any arguments based on
20 those documents. The Tribe, therefore, respectfully requests that the Court not consider any of the
21 declarations or exhibits filed in support of the Reply.

22 In the Reply, Movants also introduced new claims and revised the relief requested. *See*
23 *Movants’ Reply Brief in Supp. of Mot. for Enforcement of J.*, at 6, 23, April 3, 2025, ECF No.
24 431. Specifically, Movants appear to now request separate recognition of a Chukchansi Tribe. *Id.*
25 at 6 (“Although the BIA’s recognition of the Picayune Tribe was unauthorized, Movants do not
26 seek to nullify the actions taken by the Picayune Tribe over the past four decades. Movants also
27 do not seek to gain or confirm membership in, or control of, the Picayune Tribe. They wish to
28 secure the long-overdue restoration and recognition of the Chukchansi Tribe.”). Additionally,

Movants appear to abandon their claims for injunctive relief against the Picayune Tribe as a real party in interest. *Id.* at 23 (“Although the Picayune Tribal government took the disenrollment actions, their essential foundation was the Defendants’ failure to restore and recognize the Chukchansi Tribe and the recognition of the distributee-centered Picayune Tribe as a substitute.”).

“[R]eply briefs are limited in scope to matters either raised by the opposition or unforeseen at the time of the original motion.” *Stiner v. Brookdale Senior Living, Inc.*, 665 F. Supp. 3d 1150, 1179 (N.D. Cal. 2023), (citing *Burnham v. City of Rohnert Park*, 1992 U.S. Dist. LEXIS 8540, 1992 WL 672965, at *1 n. 2 (N.D. Cal. May 18, 1992)). “It is inappropriate to consider arguments raised for the first time in a reply brief.” *Dragu v. Motion Picture Indus. Health Plan for Active Participants*, 144 F. Supp. 3d 1097, 1113 (N.D. Cal. 2015). “Issues raised for the first time in the reply brief are waived.” *Ass’n of Irrigated Residents v. C & R Vanderham Dairy*, 435 F.Supp.2d 1078, 1089 (E.D. Cal. 2006). The Tribe, therefore, respectfully requests that the Court not consider the new claims and new requested relief presented in Movants’ Reply and restrict its ruling to the claims and relief requested in the Motion as originally filed.

DATED: April 10, 2025

Respectfully Submitted,
THE LAW OFFICES OF RAPPORT AND MARSTON

By: /s/ Lester J. Marston
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CERTIFICATE OF SERVICE

I am employed in the County of Mendocino, State of California. I am over the age of 18 years and not a party to the within action; my business address is that of the Law Offices of Rapport & Marston, Sole Practitioners, 405 West Perkins Street, Ukiah, CA 95482.

I hereby certify that I electronically filed with the Clerk of the United States District Court for the Northern District of California by using the CM/ECF system on April 10, 2025, which generated and transmitted a notice of electronic filing to the CM/ECF registrants in this matter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct; executed on April 10, 2025, at Ukiah, California.

/s/ *Ericka Duncan*
ERICKA DUNCAN, Declarant