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UNITED STATES DISTRICT COURT
FOR THE 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-01710-EMC

**MOVANTS' RESPONSE TO
PICAYUNE RANCHERIA OF
CHUKCHANSI INDIANS'
OBJECTIONS TO REPLY EVIDENCE**

Hearing Date: May 29, 2025
Time: 1:30 p.m.
Ctroom: 5, 17th Floor
Judge: Hon. Edward M. Chen

Movants, members of the historic Chukchansi Indian Tribe, hereby respond to "Plaintiff Picayune Rancheria of the Chukchansi Indians' Objections to Reply Evidence" (ECF No. 434).

1. The evidence submitted with the Reply Brief responds to matters raised in opposition to the motion.

Evidence offered in reply is not "new," and not subject to striking on that basis, if it is submitted in response to the facts supplied in an opposition brief in order to "provide[] the full context" to the facts as recited in the opposition. *Terrell v. Contra Costa County*, 232 Fed. Appx. 626, 629 n.2 (9th Cir. 2007); *see Nevarez v. Forty Niners Football Co., LLC*, 326 F.R.D. 562, 591-92 (N.D. Cal. 2018); *Edwards v. Toys "R" Us*, 527 F.Supp.2d 1197, 1205 n.31 (C.D. Cal. 2007). "This is particularly true where the new evidence is consistent with the evidence and arguments presented in the original motion." *Setty v. United Fin. Cas. Co., Inc.*, No. 23-cv-02464-LB, 2023 WL 5184147, *6 (N.D. Cal. Aug. 11, 2023). Courts may

1 also exercise discretion to consider “new evidence” that “appears to be a reasonable response to the
 2 opposition.” *Id.* In addition, Local Rule 7-3 states that “[a]ny reply to an opposition may include affidavits
 3 or declarations.” L.R. 7-3(c). Thus, the mere fact that Movants included a declaration with their Reply is
 4 not grounds to strike the declaration. *See Zkey Investments, LLC v. Facebook, Inc.*, 225 F.Supp.3d 1147,
 5 1158-59 (C.D. Cal. 2016).

6 The evidence Movants submitted with the Reply responds to the factual recitations in the Federal
 7 Defendants’ and the Picayune Tribe’s opposition briefs. Defendants’ opposition presented a partial
 8 outline of California Indian rancherias and the development of federal laws regarding the status of
 9 rancherias and Indian tribes. Federal. Defs’ Opposition 2-4 (ECF No. 425). Defendants described aspects
 10 of the *Hardwick* litigation and how the Bureau of Indian Affairs conducted its efforts to implement the
 11 *Hardwick* Stipulated Judgment, including a BIA document concerning the adoption of a tribal constitution.
 12 *Id.* at 4-6, 15-18; ECF No. 425-1. The opposition brief submitted by the Picayune Tribe similarly
 13 discussed the history of the California Rancheria Act and the Picayune Tribe’s experiences following the
 14 Stipulated Judgment, in connection with the interpretation and implementation of the BIA’s duties under
 15 the Stipulated Judgment. Picayune Tribe’s Opposition 12-16.

16 Accordingly, Movants supported their Reply with declarations and documentary evidence
 17 providing the full context to these historical facts discussed in the opposition briefs. The Declaration of
 18 Jennifer Ruiz (ECF No. 431-16) and the exhibits thereto present ethnographic studies and government
 19 documents showing the relevant history of the Chukchansi Tribe before and after the 1859 Treaty of Camp
 20 Barbour, as well as information detailing the federal government’s recognition of the Chukchansi Tribe
 21 and its allocation of land to Chukchansi Indians through dozens of allotments, and to the Chukchansi Tribe
 22 through the creation of an executive order reservation. This critical point rebuts Defendants’ assertion
 23 that the Picayune Rancheria was set aside for Indians without regard to their tribal affiliation, when in fact
 24 it was reserved for the Chukchansi Tribe. *See* Fed Opp. 10. The Ruiz Declaration also explains that the
 25 Indians on the Picayune Rancheria rejected the IRA’s application to the rancheria, undercutting
 26 Defendants’ assertions regarding Picayune Rancheria Indians’ status prior to distribution under the
 27 California Rancheria Act. *Id.* The Ruiz Declaration supplies broader context for the enactment and
 28 aftermath of the California Rancheria Act, as well as the aftermath of the *Hardwick* Stipulated Judgment

upon the Chukchansi Tribe, in response to the opposition briefs’ reliance on a limited set of facts and generalizations about *Hardwick* tribes, to show how the Stipulated Judgment applied to the Picayune Rancheria and Chukchansi Tribe specifically. The government documents attached to the Reply Brief also support Movants’ construction of the Stipulated Judgment in response to the opposition briefs’ contrary interpretation. ECF 431-1 through 431-7. The Declaration of Lucas Salisbury (ECF 431-14) and its attachment contextualize the allotment of land to Chukchansi Indians within Chukchansi territory and close to the Picayune Rancheria to further respond to Defendants’ statements about the respective status of the Chukchansi Tribe and the Indians of the Picayune Rancheria at the time of termination. The Declaration of Claudia Gonzales (ECF 431-8) and its supporting exhibits elaborate upon how the BIA’s actions, historically and as recently as 2024, have caused damage to the Chukchansi Tribe and its members, in response to assertions by Defendants and the Picayune Tribe that the Movants lack standing to bring their Motion. *See* Fed. Opp. 12, 21; Picayune Opp. 16-19.

The evidentiary material submitted with the Reply reasonably responds to the opposition briefs. Moreover, there is no contention that any of this material is inconsistent with the Movants’ original motion. The Reply evidence should not be rejected as “new” evidence.

2. The Reply Brief does not assert new claims, arguments, or relief, but responds to matters raised in opposition.

The Picayune Tribe also objects to what it characterizes as Movants’ “introduc[ing] new claims” and “abandon[ing] their claims for injunctive relief against the Picayune Tribe.” Objections at 2-3. However, the Picayune Tribe’s objections do not identify any new legal arguments that could be deemed forfeited because they were not contained in Movants’ original motion. There are no grounds to limit the Court’s consideration of the entire Reply Brief.

Movants’ Reply reiterates their request for the primary relief requested in the motion (ECF 420 at 43) based on the facts and legal arguments first set forth in the motion, and taking to heart the arguments contained in the opposition briefs. Movants acknowledge that the federal government does not have the duty or authority to supervise the Picayune Tribe’s enrollment actions, and Movants seek no relief on that basis. In addition, Movants now do not rely on the APA, except as an alternative in the event the court finds Movants cannot obtain relief through the enforcement of the Stipulated Judgment. Movants also do

1 not rely on Rule 60(b)(6), except as may be necessary to amend the Judgment to facilitate the practicalities
 2 of restoring the Chukchansi Tribe to its pre-distribution status, formalizing its organization, and placing
 3 its name on the list of recognized tribal entities.

4 However, although Movants have retreated from some of the motion's broadly-stated arguments,
 5 responded to the opposition briefs, and brought their requested relief into sharper focus, the Reply Brief
 6 does not revise the fundamental legal and factual bases of the motion, and the relief Movants seek through
 7 the enforcement of the Stipulated Judgment remains the same as the primary relief requested in the motion.
 8 As Movants argued in their original motion, the Stipulated Judgment requires Defendants to recognize the
 9 Indian Tribes of the seventeen *Hardwick* rancherias with the same status as they possessed prior to the
 10 distribution of the rancherias' assets; include the recognized tribes on the BIA's list of recognized tribal
 11 entities; and deem the recognized tribes entitled to the benefits that accrue to Indian tribes because of their
 12 status as Indian tribes. *See* Motion, ECF 420, at 16. For the Picayune Rancheria, the Indian tribe to be
 13 recognized under the Stipulated Judgment is the Chukchansi Tribe. *See id.* at 38-42; *see also id.* at 18 &
 14 22-23 (discussing residents of Picayune Rancheria and descendants of allottees as members of larger
 15 Chukchansi Tribe recognized prior to distribution).

16 **3. Further briefing would address the concern underlying the Picayune Tribe's** 17 **objections.**

18 The Picayune Tribe ultimately argues that considerations of fairness require the Court not to
 19 consider "new" reply evidence and issues. To the extent the Court deems any such matters "new,"
 20 Movants submit that the appropriate remedy is not to strike the material, but to permit responsive briefing
 21 by the Picayune Tribe and the Defendants. Such further briefing would provide the "opportunity to
 22 address the relevance or significance of the declarations and exhibits, or rebut any arguments based on
 23 those documents." Objections 2:18-20 (ECF 434). This would cure any perceived unfairness or undue
 24 prejudice while not artificially restricting the materials on which the Court may rely in its determination
 25 of this matter, in which the specifics of the historical factual record are eminently important.

26 Moreover, it is likely that a that a detailed presentation of facts, potentially including expert
 27 testimony regarding historical facts, would help the Court make an informed decision. Movants suggest
 28

1 that, before the Court decides the Motion for Enforcement of Judgment, the parties be permitted to engage
2 in focused discovery, followed by an evidentiary hearing and supplemental briefing.

3 **CONCLUSION**

4 There is no basis for the Court to refuse to consider the declarations and exhibits filed in support
5 of the Reply Brief, and no basis for the Court to ignore any portion of the Reply Brief on grounds that it
6 presents new claims or requests new relief. Movants respectfully request that the Court overrule the
7 Picayune Tribe's objections.

8 Respectfully submitted,

9 Dated: April 15, 2025

10 **PEEBLES BERGIN SCHULTE & ROBINSON LLP**

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13 Attorneys for Movants
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