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9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 ROSEBUD SIOUX TRIBE,

13 Plaintiff,

14 v.
15

16 ANTANELLE DUWYENIE, an unmarried
woman, PETER J. DENINNO, JUDGE PRO
17 TEMPORE, GILA COUNTY SUPERIOR
COURT, SUPERIOR COURT OF THE STATE
18 OF ARIZONA,

19 Defendants.
20

Case No: 2:09 CV-01660-PHX-MHM

**REPLY TO STATE JUDICIAL
DEFENDANTS' MOTION TO
DISMISS COMPLAINT**

21 The State Judicial Defendants, Gila County Superior Court Judge Pro Tempore
22 Peter J. DeNinno and the Superior Court for Gila County, through undersigned counsel,
23 hereby file this Reply supporting State Defendants' Motion to Dismiss Complaint with
24 prejudice pursuant to Rule 12(b)(1), Fed. R. Civ. P., as this Court lacks subject-matter
25 jurisdiction.
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1
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **This Court lacks subject matter jurisdiction over Plaintiff's complaint**

4 a. **The Eleventh Amendment & Judicial Immunity**

5 Plaintiff asserts that the Eleventh Amendment does not bar his action on
6 the basis that he is seeking only declaratory relief against Judge DeNinno and State
7 Defendants. Plaintiff's assertion lacks merit. It is well established that the Eleventh
8 Amendment immunizes states and arms of the states from suit in federal court unless
9 they consent to it in *unequivocal terms* or unless Congress, pursuant to a valid exercise
10 of power, unequivocally expresses its intent to abrogate the immunity. *Pennhurst State*
11 *School & Hospital v. Halderman*, 465 U.S. 89, 99 (1984). The Superior Court of Gila
12 County is inarguably an arm of the state and Plaintiff has sued Judge DeNinno in his
13 official capacity. The Eleventh Amendment immunizes state officials from suit in their
14 official capacities, because such suits are, in essence, suits against the state. *Hafer v.*
15 *Melo*, 502 U.S. 21, 30-31 (1991). While the doctrine of *Ex Parte Young*, 209 U.S. 123
16 (1908), provides a narrow exception for suits against state officers seeking *prospective*
17 equitable relief, this exception only applies to *ongoing and continuous* violations of
18 federal law. See *Papasan v. Allain*, 478 U.S. 265, 277-78 (1986) (emphasis added). As
19 recognized by the Ninth Circuit, "simply asking for injunctive relief and not damages
20 does not clear the path for a suit" in federal court against a state official. *Ulaleo v. Paty*,
21 902 F.2d 1395, 1399 (9th Cir. 1990) (emphasis in original). Regardless of how
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1 Plaintiff labels his request for relief, he is seeking retrospective relief from this Court,
2 not prospective relief. Additionally, Plaintiff has not even alleged that there is an
3 “ongoing and continuing violation of a federal law.” Indeed, he cannot credibly do so.
4 That is, the relief requested is not intended to stop a present, continuing violation of
5 federal law. Rather, the complaint simply targets Judge DeNinno’s past actions and
6 demand their reversal. Accordingly, Plaintiff’s claims do not fall within the *Ex Parte*
7 *Young* exception and, therefore, must be dismissed because the Eleventh Amendment
8 deprives this Court of subject-matter jurisdiction.
9

11 b. **Plaintiff’s complaint is barred by the *Rooker-Feldman* Doctrine**

12 Although Plaintiff in name is different than the plaintiff in the Gila Count case,
13 they are inextricably intertwined and their motivations are the same, to challenge the
14 State court ruling. Plaintiff in effect wants to step into another’s shoes to seek reversal
15 of a state court judgment. In that, Plaintiff is essentially a disappointed litigant in
16 Arizona state court who brought this action in federal district court against Judge
17 DeNinno and the Gila County Superior Court.
18

19 Claims for relief are barred by the *Rooker-Feldman* Doctrine if upholding the
20 claims and granting relief would effectively void the state court ruling. *Landers Seed*
21 *Co. v. Champaign Nat’l Bank*, 15 F.3d 729, 732 (7th Cir.1994), *cert. denied*, 513 U.S.
22 811 (1994). However the claim is framed, the underlying inquiry remains whether “the
23 district court is in essence being called upon to review the state court decision.” *District*
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1 of *Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 483-84, n. 16 (1983).

2 No matter how it characterizes the claim, Plaintiff is improperly attempting to
3 have a state court action reviewed and reversed by this Court. This Court does not have
4 subject-matter jurisdiction over Plaintiff's complaint because it is barred by the *Rooker-*
5 *Feldman* doctrine. Accordingly, Plaintiff's complaint must be dismissed.
6

7 **III. CONCLUSION**

8 For the reasons set forth above, the State Judicial Defendants respectfully request
9 that the Plaintiff's Complaint be dismissed for lack of subject matter jurisdiction.
10

11 RESPECTFULLY SUBMITTED this 18th day of December, 2009.

12 TERRY GODDARD
13 Attorney General

14 s/ Brian P. Luse
15 Brian P. Luse
16 Assistant Attorney General
17 Attorneys for the Honorable Peter J.
DeNinno and the Superior Court of
Gila County

18 **CERTIFICATE OF SERVICE**

19
20 X I hereby certify that on December 18th, 2009, I electronically transmitted the
21 attached document to the Clerk's Office using the CM/ECF System for filing and
transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

22 Allan Liebowitz, Attorney for Plaintiff
23 ALiebowitz@cox.net

24 Scott A. Salmon, Attorney for Defendant Antanelle Duwyenie
25 Ssalmon@cavanaghlaw.com
26

1 X I hereby certify that on December 18th, 2009, I caused the attached document to
2 be served by first class mail to:

3 The Honorable Mary H. Murguia
4 United States District Court
5 Sandra Day O'Connor U.S. Courthouse, Suite 525
6 401 West Washington Street, SPC 53
7 Phoenix, AZ 85003-2154

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