

**EVERETT B. COULTER, JR.**

Evans, Craven & Lackie, P.S.

818 W. Riverside, Suite 250

Spokane, WA 99201-0910

(509) 455-5200; fax (509) 455-3632

E-mail: [ecoulter@ecl-law.com](mailto:ecoulter@ecl-law.com)

Attorneys for Defendants

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON**

SHAWN LAWRENCE DESAUTEL,  
TAMARA DESAUTEL DAVIS, and  
TONIA RENE DESAUTEL,

Plaintiffs,

vs.

ANITA B. DUPRIS, ET AL.

Defendants.

Case No. CV-11-301-EFS

**DEFENDANTS' REPLY RE:  
MOTION TO DISMISS**

COMES NOW all defendants by and through their attorneys and submit the following Memorandum of Law in Reply to Plaintiffs' Response to Defendants' Motion to Dismiss.

**1. Federal Subject Matter Jurisdiction**

Defendants' Motion to Dismiss raised federal subject matter jurisdiction as a basis for dismissal. Defendants' reading of Plaintiffs' Response indicates that

**DEFENDANTS' REPLY RE:  
MOTION TO DISMISS**

Page 1

*Evans, Craven & Lackie, P.S.*

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1 Plaintiffs' only argument in respect to federal subject matter jurisdiction is that the  
 2 Plaintiffs are seeking to create an exception to the holding of *Santa Clara Pueblo*  
 3 *v. Martinez*, 436 U.S. 49 (1978). The Plaintiffs seem to suggest that this Court  
 4 should entertain an exception to the United States Supreme Court's holding in  
 5 *Santa Clara Pueblo v. Martinez*, *supra*, and that said exception is an attorney's fee  
 6 exception.

7  
 8  
 9  
 10 Defendants respectfully submit that federal subject matter jurisdiction is  
 11 lacking in this case. Defendants moved pursuant to Rule 12(b)(1) for lack of  
 12 federal subject matter jurisdiction. Federal subject matter jurisdiction is not  
 13 presumed and a plaintiff must establish federal subject matter jurisdiction.  
 14  
 15 *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994); *Stock*  
 16 *West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th Cir. 1989). Plaintiffs  
 17 in this case have the burden to prove the existence of federal subject matter  
 18 jurisdiction. *Stock West, Inc. v. Confederated Tribes*, 873 F.2d 1221, 1225 (9th  
 19 Cir. 1989); *Thornhill Publishing Co., Inc. v. Gen'l Tel & Elect Corp.*, 594 F.2d  
 20 730, 733 (9th Cir. 1979).

21  
 22 To the extent that Plaintiff's seek to assert the United States Constitution as  
 23 the basis to support federal subject matter jurisdiction, such an argument is  
 24

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 30 **DEFENDANTS' REPLY RE:  
 MOTION TO DISMISS**

Page 2

*Evans, Craven & Lackie, P.S.*  
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1 incorrect. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55-56 (1978) reiterated  
2 prior United States Supreme Court rulings that the federal court system should not  
3 intervene in purely intermural tribal affairs and that the United States Constitution  
4 and the Amendments thereto were not applicable to Indian tribes.  
5

6  
7 Plaintiffs are fundamentally claiming that the Colville Confederated Tribe  
8 and the Colville Tribal Court system were somehow wrong in dealing with  
9 Plaintiffs' enrollment claims including awarding attorney's fees against Plaintiff  
10 Shawn Desautel. Such an argument does not create federal subject matter  
11 jurisdiction in that Indian tribes are entitled to regulate their internal affairs  
12 including enrollment matters. *Santa Clara Pueblo v. Martinez*, 436 U.S. 55-46  
13 (1978).  
14

15  
16 Plaintiffs' Response failed to address sovereign immunity as a bar to federal  
17 subject matter jurisdiction. Defendants' Motion to Dismiss for lack of subject  
18 matter jurisdiction cited *Alvarado v. Table Mountain Rancheria*, 509 F.3d 1008  
19 (9th Cir. 2007) as precedential authority holding that federal subject matter  
20 jurisdiction was lacking. The plaintiffs in *Alvarado v. Table Mountain Rancheria*,  
21 *supra*, filed suit in Federal District Court challenging the Table Mountain Tribal  
22 Council's decision regarding enrollment issues. The District Court concluded there  
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29 **DEFENDANTS' REPLY RE:**  
30 **MOTION TO DISMISS**

Page 3

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1 was a lack of subject matter jurisdiction and the Ninth Circuit Court of Appeals  
2 affirmed. The Court held at page 1016 as follows:  
3

4 To confer subject matter jurisdiction in an action against  
5 a sovereign, in addition to a waiver of sovereign  
6 immunity, there must be statutory authority vesting a  
7 district court with subject matter jurisdiction. (Citation  
8 omitted.)

9 There has been no waiver of sovereign immunity in the present Federal  
10 District Court action nor have Plaintiffs alleged that there has been a waiver of the  
11 Confederated Tribes and Bands of the Colville Reservation and its representatives'  
12 inherent sovereign immunity. Rather, it is the Defendants who have asserted the  
13 inherent sovereign immunity. Secondly Plaintiffs have failed to cite any federal  
14 inherent sovereign immunity. Secondly Plaintiffs have failed to cite any federal  
15 question or federal statute that would give rise to federal subject matter  
16 jurisdiction.  
17  
18

19 **2. Failure to State a Claim as Required by Rule 12(b)(6)**  
20

21 Plaintiffs have not responded to Defendants' Motion to Dismiss for failure to  
22 state a claim upon which relief can be granted and as such Defendants do not  
23 submit any reply.  
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30 **DEFENDANTS' REPLY RE:  
MOTION TO DISMISS**

Page 4

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**CONCLUSION**

Plaintiffs have failed to provide a legal basis to support federal subject matter jurisdiction. Plaintiffs' argument is essentially a collateral appeal of decisions from the Colville Tribal Court system in respect to Tribal enrollment issues and collateral issues arising from Plaintiffs' dissatisfaction with the enrollment decisions from Tribal Court.

Respectfully submitted this 13th day of October, 2011.

EVANS, CRAVEN & LACKIE, PS

*/s/ Everett B. Coulter, Jr.*

By \_\_\_\_\_

EVERETT B. COULTER, JR.

WSBA #6877

Attorneys for Defendants

Evans, Craven & Lackie, P.S.

818 W. Riverside Ave., Ste. 250

Spokane, WA 99201

Telephone: (509) 455-5200

Fax: (509) 455-3632

E-mail: [ecoulter@ecl-law.com](mailto:ecoulter@ecl-law.com)

**DEFENDANTS' REPLY RE:  
MOTION TO DISMISS**

Page 5

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 13th day of October, 2011, I electronically filed the foregoing with the Clerk of the Court using CM/ECF System, which will send notification of such filing to the following:

No Known Electronic Notifications

I hereby further certify that I have caused to be served a true and correct copy of the foregoing document(s) on the non-CM/ECF participants as indicated:

Shawn Lawrence DesAutel 1005 W. North Ave. Chewelah, WA 99109	Via Regular Mail <input checked="" type="checkbox"/> Via Certified Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Hand Delivered <input type="checkbox"/>
Tamara DesAutel Davis 7315 W. Lund Rathdrum, ID 83858	Via Regular Mail <input checked="" type="checkbox"/> Via Certified Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Hand Delivered <input type="checkbox"/>
Tonia Rene DesAutel 19029 E. Boone Ave. #20 Spokane Valley, WA 99016	Via Regular Mail <input checked="" type="checkbox"/> Via Certified Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Hand Delivered <input type="checkbox"/>

**/s/ Everett B. Coulter, Jr.**

**DEFENDANTS' REPLY RE:  
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Page 6

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