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6 Attorneys for Petitioner RESOURCES FOR INDIAN  
7 STUDENT EDUCATION, INC. (R.I.S.E.)

8  
9 **UNITED STATES DISTRICT COURT**  
10 **EASTERN DISTRICT OF CALIFORNIA**

11 RESOURCES FOR INDIAN  
12 STUDENT EDUCATION, INC.  
(R.I.S.E.),

13 Petitioner,  
14 v.

15 CEDARVILLE RANCHERIA OF  
16 NORTHERN PAIUTE INDIANS;  
17 CEDARVILLE RANCHERIA TRIBAL  
18 COURT; PATRICIA R. LENZI, in her  
19 capacity as Chief Judge of the Cedarville  
Rancheria Tribal Court,

20 Respondent.  
21  
22

23 CASE NO. 2:14-cv-02543-JAM (CMKx)

24 **MOTION FOR TEMPORARY  
RESTRANDING ORDER AND/OR  
PRELIMINARY INJUNCTION AND  
OTHER EQUITABLE RELIEF**

25 **(Expedited Consideration Requested)**

26 PLEASE TAKE NOTICE that at the earliest possible time for the Court to hear this  
27 Motion, pursuant to Rule 65 of the Federal Rules of Civil Procedure, Petitioner  
28 RESOURCES FOR INDIAN STUDENT EDUCATION, INC. (hereinafter "RISE"),  
through its undersigned counsel of record, moves for a Temporary Restraining Order  
enjoining Respondents from asserting jurisdiction over claims arising from the Complaint  
for Damages filed by the CEDARVILLE RANCHERIA OF NORTHERN PAIUTE

1 INDIANS (hereinafter "Tribe") against RISE in the CEDARVILLE RANCHERIA  
 2 TRIBAL COURT (hereinafter "Tribal Court"), a true and correct copy of which, and  
 3 incorporated herein by this reference, is attached as exhibit "A". Further, Petitioner  
 4 requests a Preliminary Injunction enjoining Respondents from asserting jurisdiction over  
 5 claims arising from the Complaint for Damages filed by the Tribe against RISE in the  
 6 Tribal Court in order to prevent immediate irreparable injury to RISE.

7 Intervention by this Court is necessary because, absent the requested injunction,  
 8 RISE, who is not a member of the Tribe, will be subjected to the foreign jurisdiction of  
 9 the Tribal Court to which it has never submitted to its jurisdiction and be subjected to the  
 10 jurisdiction of a Court which lacks the fundamental Due Process protections for Petitioner  
 11 and subject Petitioner to the jurisdiction of a Court that was established for the sole  
 12 purpose of prosecuting the Tribe's complaint against RISE.

13 Petitioner further requests waiver of the requirement for posting security for  
 14 payment of any costs or damages incurred by Respondents as a result of the Temporary  
 15 Restraining Order and Preliminary Injunction.

16 THE COURT HEREBY WAIVES the requirement of Federal Rules of Civil  
 17 Procedure, Rule 65(c), that plaintiff give security before a preliminary  
 18 injunction may issue, on the grounds that (1) the high probability of success  
 19 on the merits favors exercising the court's discretion to dispense with such  
 20 security, *People ex rel. Van de Kamp v. Tahoe Regional Planning Agency*,  
 21 766 F.2d 1319, 1326 (9th Cir.1985), (2) it appears unlikely that either  
 22 defendant would incur any significant cost or damages as a result of the  
 23 preliminary injunction, *U.S. v. State of Or.*, 675 F.Supp. 1249, 1253  
 24 (D.Or.1987), and (3) to require a bond would have a negative impact on  
 25 plaintiff's constitutional rights, as well as the constitutional rights of other  
 26 members of the public affected by the policy. *Smith v. Board of Elections*  
 27 *Com'rs for Chicago*, 591 F.Supp. 70, 71–72 (N.D.Ill.1984).

28 *Baca v. Moreno Valley Unified Sch. Dist.*, 936 F. Supp. 719, 738 (C.D. Cal. 1996)

1 This motion is based upon the Tribe's Complaint, the Complaint for Injunctive and  
2 Declaratory Relief filed by Petitioner, this notice, the attached Memorandum of Points  
3 and Authorities, all supporting exhibits and declarations, all arguments and evidence  
4 presented prior to or at the hearing of this motion, and the Court's file.

5 A proposed form of Temporary Restraining Order is submitted with this Motion.  
6 Expedited consideration is requested because the Tribe's Complaint was personally  
7 served on Petitioner's counsel, not on Petitioner, on November 7, 2014. The summons,  
8 issued by the Tribal Court, mandates that a responsive pleading be filed within 21 days of  
9 receipt of the Summons and Complaint, otherwise it "may result in the issuance of a  
10 judgment by default against you for the relief demanded in the Complaint."

## **MEMORANDUM OF POINTS AND AUTHORITIES**

I.

## INTRODUCTION

## **The Tribal Court Complaint and Procedural Background**

16 On or about October 2, 2014, The Tribe filed a Complaint for Damages in the  
17 Tribal Court against RISE, Duanna Knighton and Oppenheimer Funds, Inc, a true and  
18 correct copy is attached, and incorporated herein by this reference, hereto as exhibit "A".  
19 lawsuit is captioned *Cedarville Rancheria of Northern Paiute Indians v. Duanna*  
20 *Knighton, et al.*, CED-CI-2014-00002 (hereinafter "Tribal Court Complaint").

21 The Tribal Court Complaint alleges eight causes of action relating to the  
22 compensation and benefits paid to Duanna Knighton while she was employed by the Tribe  
23 as a Tribal Administrator and finance director. Furthermore, it alleges certain poor  
24 investments that Duanna Knighton made with Tribe funds while she was employed by the  
25 Tribe. Duanna Knighton was a concurrent employee of RISE.

26 RISE is not a member of the Tribe, does not reside upon or own property on the  
27 Tribe's grounds, does not operate a business on the Tribe's grounds, has not submitted to  
28 the jurisdiction of the Tribal Court, and does not benefit from the laws of the Tribal Court.

1 Other than general allegations of tribal jurisdiction of the Tribal Court over RISE, the  
2 Tribe has not provided any factual allegations to support a claim of personal or subject  
3 matter jurisdiction by the Tribal Court over RISE.

4 On or about December 18, 2013, RISE received a letter on behalf of the Tribe  
5 demanding reimbursement of the amount of \$29,925 which was paid to RISE via check  
6 No. 11620 for the alleged "benefits and insurance premiums" for Duanna Knighton.  
7 When she resigned her position with the Tribe, it was agreed via a severance agreement  
8 between the Tribe and Duanna Knighton that she was owed the sum of \$29,925, which  
9 represented accrued but unused 665 hours of sick leave. It was understood that the sum  
10 would be paid to RISE in order to maintain health insurance coverage for Duanna  
11 Knighton with Anthem Blue Cross. Since payment of that amount, a significant portion  
12 of the sum has been expended in making monthly premium payments in the range of  
13 approximately \$900.

14 The Tribal Court was brought into existence by Tribal Ordinance on December 14,  
15 2013. Plaintiff is informed and believes, as can be seen by the Tribal Court case number,  
16 this filing is only the second case filed with the Court, the first being an eviction  
17 proceeding which led to the "Cedarville Tragedy" as alleged in the Tribal Complaint. As  
18 alleged in the Tribal Complaint, following the shooting, there was a change in tribal  
19 leadership and council makeup which directly led to the filing of the Tribal Complaint in  
20 the Tribal Court.

21 In addition to filing the Tribal Complaint, the Tribe also filed an Ex Parte  
22 Application for a Temporary Restraining Order against RISE and the other Defendants in  
23 the Tribal Complaint. The Order was granted by the Tribal Court without providing an  
24 opportunity for any of the Defendants, including RISE, with prior notice of the  
25 Application or a chance to be heard. A true and correct copy of the Order, and  
26 incorporated by this reference, is attached hereto as exhibit "B".

27 In addition to not providing timely notice of the pending Application or a chance to  
28 be heard prior to the issuing of the Temporary Restraining Order, the Tribal Court

1 unilaterally ruled that it has subject matter jurisdiction over the action pursuant to the  
2 Tribal Court Code and because the “matter involves nonmember Defendants who engaged  
3 in ‘consensual relationships’ with the Tribe and its members.”

4 In order to represent RISE in the Tribal Court, attorneys must obtain a license to  
5 practice before the Tribal Court. This requires the payment of a license fee. Further, it  
6 requires the taking of an oath to “support the Constitution and By-Laws of the Cedarville  
7 Rancheria.” A true and correct copy of the Cedarville Judicial Code, and incorporated by  
8 this reference, is attached as exhibit “C”.

9 Furthermore, the Application to for Admission to practice before the Tribal Court  
10 requires a Certification that the applicant consents “to represent defendants in cases  
11 assigned by the Cedarville Rancheria Tribal Court. Additionally, I consent to perform  
12 legal services in the public interest of the Cedarville Rancheria upon request by the Court  
13 ...” A true and correct copy of the “Application for Admission to Practice Law before the  
14 Cedarville Rancheria Tribal Court,” and incorporated by this reference, is attached as  
15 exhibit “D”.

16 On October 27, 2014, co-defendant DUANNA KNIGHTON filed a motion to  
17 Dismiss with the Tribal Court. A true and correct copy of the Notice of Motion and  
18 Motion to Dismiss is attached as exhibit “E”. One of the grounds for the Motion to  
19 Dismiss is that the Clerk of the Tribal Court would be called as a witness in this action  
20 because of actions that were taken in the prior Tribal Court case.

21 In an obvious attempt to retain jurisdiction for the Tribal case, to which it has no  
22 such jurisdiction, an Assistant Tribal Court Clerk, Lisa Murray, **self-assigned** herself as  
23 the Tribal Court Clerk for purposes of handling all filings with regards to this case. A true  
24 and correct copy of the email from Lisa Murray assigning herself as assistant court clerk  
25 is attached hereto as exhibit “F”.

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II.2  
STANDARD OF REVIEW

3 The requirements for a temporary restraining order are the same as those for a  
 4 preliminary injunction. *State of Alaska v. Native Village of Venetie*, 856 F.2d 1384, 1389  
 5 (9th Cir. 1988). To obtain a preliminary injunction, the moving party must demonstrate  
 6 “either (1) a combination of probable success on the merits and the possibility of  
 7 irreparable injury, or (2) that serious questions are raised and the balance of hardships tips  
 8 sharply in its favor.” *Chalk v. United States District Court*, 840 F.2d 701, 704 (9th Cir.  
 9 1988). The grant or denial of a motion for preliminary injunction “lies within the  
 10 discretion of the district court, and its order will be reversed only if the court relied on an  
 11 erroneous legal premise or otherwise abused its discretion.” *Id.* A temporary restraining  
 12 order preserves the status quo and prevents irreparable harm until a hearing can be held.  
 13 See, *Granny Goose Foods, Inc. v. Bd. of Teamsters*, 415 U.S. 423, 439 (1974).

14  
III.15  
ARGUMENT16  
**A. RISE is Likely to Suffer Irreparable Harm in the Absence of Relief.**

17 Respondents’ conduct has caused and, unless restrained and enjoined by the Court,  
 18 will continue to cause irreparable harm, damage, and injury to RISE. See, *Caribbean*  
 19 *Marine Services Co. v. Baldridge*, 844 F.2d 668, 674 (9th Cir. 1988). This includes:  
 20 (1) forcing RISE to participate in legal proceedings in a forum that lacks jurisdiction in  
 21 violation of RISE’s constitutional rights; (2) exposing RISE to the possibility of multiple  
 22 and duplicative lawsuits and/or motions with the further possibility of inconsistent results;  
 23 and (3) causing RISE to expend substantial money and resources to establish the lack of  
 24 the Tribal Court’s jurisdiction in this matter by exhausting Tribal Court remedies where  
 25 (a) the assertion of tribal court jurisdiction is “motivated by a desire to harass or is  
 26 conducted in bad faith;” (b) the tribal court action is “patently violative of express  
 27 jurisdictional prohibitions;” (c) “exhaustion would be futile because of the lack of an  
 28

1 adequate opportunity to challenge the tribal court's jurisdiction" and; (d) it is "plain" that  
2 tribal court jurisdiction is lacking, so that the exhaustion requirement "would serve no  
3 purpose other than delay." *Elliott v. White Mountain Apache Tribal Court*, 566 F.3d 842,  
4 847 (9th Cir. 2009).

5 **B. The Balance of the Equities Tips in RISE's Favor.**

6 A temporary restraining order and preliminary injunction will not result in injury to  
7 The Tribe as they will have a full opportunity to litigate their claims in the United States  
8 District Court. Furthermore, RISE has no other adequate remedy at law. Thus, the  
9 balance of harms weighs in favor of injunctive relief.

10 **C. RISE is Likely to Succeed on the Merits.**

11 In synthesizing the traditional elements of comity with the special  
12 requirements of Indian law, we conclude that, as a general principle, federal  
13 courts should recognize and enforce tribal judgments. However, federal  
14 courts must neither recognize nor enforce tribal judgments if:

15 (1) the tribal court did not have both personal and subject matter  
16 jurisdiction; or  
17 (2) the defendant was not afforded due process of law.

18 *Wilson v. Marchington*, 127 F.3d 805, 810 (9th Cir. 1997)

19 "Two circumstances preclude recognition: when the tribal court either lacked  
20 jurisdiction or denied the losing party due process of law." *AT & T Corp. v. Coeur*  
21 *d'Alene Tribe*, 295 F.3d 899, 903 (9th Cir. 2002)

22 As pointed out above, the Tribal Court did not provide RISE with a modicum of  
23 Due Process prior to asserting personal and subject matter jurisdiction over RISE.  
24 Furthermore, according to the Tribal Judicial Code, in order to effectuate service on a case  
25 where relief requested is over \$5,000, as it is in this matter, personal service is required.  
26 However, to date, no personal service has been accomplished or attempted on RISE.  
27 Instead, the Tribe, presumably with the Tribal Court's consent, emailed and mailed the  
28 TRO paperwork and Complaint to RISE's counsel, and then personally served RISE's

1 counsel. Even though no personal service has been made on RISE, the Tribal Court still  
2 insists on asserting jurisdiction over RISE.

3 The Tribal Code goes on to state: "Where a conflict may appear between this Code  
4 and any statute, regulation or agreement of the United States, the federal law shall govern  
5 if it has specific applicability and if it is clearly in conflict with the provisions of this  
6 Code." Given the fact that the Tribal Code prescribes vastly expanded methods of service  
7 on non-tribal member defendants that exceed the methods permitted by the FRCP, and the  
8 continued assertion of jurisdiction by the Tribal Court, RISE has not been given even the  
9 most remote Due Process rights it is entitled to. Therefore, RISE is likely to succeed in its  
10 challenge to Tribal Jurisdiction.

11 **D. A TRO and Injunction are in the Public Interest.**

12 RISE and the general public have an interest in not being forced to litigate actions  
13 in Tribal Court when they are not members of the Tribe, any connection to the Tribe is  
14 tenuous at best and motivated by a desire to harass potential defendants or is conducted in  
15 bad faith, especially when the Tribe itself is trying to use its own Tribal Court to assert  
16 jurisdiction over the potential defendants. Since this is a brand new Tribal Court,  
17 established to assert the Tribe's claims against Petitioner, giving guidance on the proper  
18 assertion of Tribal jurisdiction is within the public interest.

19  
20 **III.**

21 **CONCLUSION**

22 Based on the foregoing, RISE requests the following relief:

23 I. A Temporary Restraining Order and/or Preliminary Injunction precluding the  
24 Respondents from exercising Tribal Court jurisdiction over RISE with regards to the  
25 lawsuit captioned *Cedarville Rancheria of Northern Paiute Indians v. Duanna Knighton,*  
26 *et al.*, CED-CI-2014-00002; and

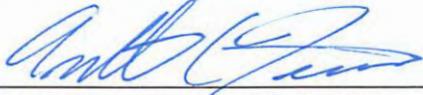
27 2. A Temporary Restraining Order and/or Preliminary Injunction precluding  
28 Respondents or anyone acting in concert with or on behalf of Respondents from

1 adjudicating the claims set forth in the lawsuit captioned *Cedarville Rancheria of*  
2 *Northern Paiute Indians v. Duanna Knighton, et al.*, CED-CI-2014-00002.

3 DATED: November 19, 2014

Respectfully submitted,

4 CIHIGOYENETCHE, GROSSBERG & CLOUSE

5 By: 

6 RICHARD R. CLOUSE

7 ANTHONY C. FERGUSON

8 Attorneys for Petitioner

9 RESOURCES FOR INDIAN STUDENT  
EDUCATION, INC. (R.I.S.E.)

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**EXHIBIT “A”**

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**CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS  
TRIBAL COURT**

**SUMMONS IN A CIVIL CASE**

**FILED**

Cedarville Rancheria  
Tribal Court

Date 10-30-14  
By Court Clerk  
200

CEDARVILLE RANCHERIA OF NORTHERN  
PAJUETE INDIANS.

Case No.: CED-CI-2014-00002

**Plaintiff,**

HON. JUDGE PATRICIA LENZI

DUANNA KNIGHTON; RESOURCES FOR  
INDIAN STUDENT EDUCATION, INC.  
(R.I.S.E.); OPPENHEIMER FUNDS, INC; AND  
DOES 1-10, INCLUSIVE.

**Defendants.**

**NOTICE TO DEFENDANT:**

This Summons is notification that you are being sued in the Cedarville Rancheria Tribal Court by the above-named Plaintiff(s).

**YOU ARE REQUIRED TO:**

**1. Serve upon Plaintiff(s) attorney,**

Jack Duran

## Duran Law Office

4010 Foothills Blvd., S-103, N. 28

Roseville, CA 95747

luzanlaw@valpo.edu

Office: 916-779-3316

Phone: 916-520-3526

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### Answers to the Questions

## An answer to the C

#### An Answer to the Complaint within

in answer to the Complaint within 21 days after receiving this summons and the complaint in this matter, or take other actions permitted under the Cedarville Rancheria Judicial Code and applicable laws, including the Federal Rules of Civil Procedure pursuant to Cedarville Rancheria Judicial Code Section 702.

2. File any answer served on the parties to this action with this Court within the time limits specified.

Failure to answer or to take other actions permitted by the applicable Cedarville Rancheria Tribal Laws, including the Judicial Code and the Federal Rules of Civil Procedure may result in the issuance of a judgment by default against you for the relief demanded in the Complaint.

DATED this 30 day of October , 2014.

Oscar Murray  
Oscar Murray

Ilse Murray

**Assistant Court Clerk**

1 Jack Duran, Jr. (SBN: 221704)  
2 DURAN LAW OFFICE  
3 4010 Foothills Blvd, S-103, N.98  
4 Roseville, CA 95747  
5 Telephone: (916) 779-3316  
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7 Email: [duranlaw@yahoo.com](mailto:duranlaw@yahoo.com)

8  
9 Attorneys for Plaintiff CEDARVILLE  
10 RANCHERIA OF NORTHERN PAIUTE INDIANS

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12 CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS

13 TRIBAL COURT

14 CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS,

15 Case No.:

16 COMPLAINT FOR DAMAGES

- 17 1. FRAUD AND DECEIT
- 18 2. RECOVERY OF PENSION PAYMENTS
- 19 3. RECOVERY OF INVESTMENT
- 20 LOSSES
- 21 4. BREACH OF FIDUCIARY DUTY
- 22 5. AIDING AND ABETTING BREACH
- 23 OF FIDUCIARY DUTY
- 24 6. UNJUST ENRICHMENT
- 25 7. COMMON COUNTS-ACCOUNT
- 26 STATED
- 27 8. COMMON COUNTS-MONEY HAD
- 28 AND RECEIVED

29 HON. JUDGE PATRICIA LENZI

30  
31 PLAINTIFF alleges as follows:

32 PARTIES

33 1. PLAINTIFF CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS  
34 ("Tribe") is, and was at all times herein mentioned, a federally recognized Indian Tribe, with  
35 approximately twelve (12) voting members, with an Administrative Office located in Alturas,  
36 California. The Tribe's Reservation, housing, Travel Center and Community Center are located in  
37 Cedarville, California.

1       2. PLAINTIFF is informed and believes and thereon alleges that DEFENDANT  
2 DUANNA KNIGHTON is the Tribe's former Tribal Administrator who also, during her  
3 employment with the Tribe was an employee or officer of Resources for Indian Student Education,  
4 Inc. (R.I.S.E.) and is subject to the Tribe's jurisdiction as a former tribal employee and the  
5 allegations herein concerns tribal and federal grant funds with the bulk of the actions and omissions  
6 alleged against KNIGHTON occurring within the jurisdiction of the Tribe.

7       3. PLAINTIFF is informed and believes that DEFENDANT R.I.S.E. is a California not-  
8 for-profit corporation providing educational services and programs to Indian children, the funding of  
9 which chiefly comes from state and federal grants and private donations.

10 4. PLAINTIFF is informed and believes OPPENHEIMER FUNDS, INC., doing  
11 business as OPPENHEIMER FUNDS, is a New York based financial fund manager that currently  
12 holds funds, at issue in this matter, on deposit from the Tribe for the benefit of DEFENDANT  
13 KNIGHTON.

14       5.     The true names and capacities, whether individual, corporate, associate or otherwise,  
15 of DEFENDANTS named herein as DOES 1 through 10, inclusive, are unknown to PLAINTIFF  
16 who therefore sues said DEFENDANTS by such fictitious names. PLAINTIFF will amend this  
17 Complaint to show the true names and capacities when they have been ascertained. In any instance  
18 in this Complaint in which a DEFENDANT is the subject of any allegation herein, the fictitiously  
19 named DEFENDANTS are also encompassed in the allegations.

20       6. PLAINTIFF is informed and believes and thereon alleges that at all times herein  
21 mentioned DEFENDANTS, DOES 1 through 10, were the agents and employees of each of the  
22 remaining Defendants and were acting within the scope of said representative capacity and agency.  
23 PLAINTIFF is further informed and believes and thereon alleges that each Defendant, including  
24 those identified as DOES, ratified each and every act of all remaining Defendants, including those  
25 identified as DOES.

## **JURISDICTION AND VENUE**

27 7. This Court has subject matter jurisdiction over this action pursuant to Tribal Court  
28 Code §201 et seq., enacted via Ordinance 13-07 on December 14, 2013.

1       8.     The Council hereby files this "complaint" alleging causes of action against  
2 DUANNA KNIGHTON, R.I.S.E., OPPENIEIMER FUNDS, INC. and DOES 1-10 and therefore is  
3 informed, believes, and thereon alleges that Defendants have sufficient contact with the events  
4 herein alleged.

5 9. Venue is also proper here as the property, parties, and legal issues which are the  
6 subject of this action are located on and inextricably tied with the Tribe and its sovereign territory.

## **GENERAL ALLEGATIONS**

## **KNIGHTON'S COMPENSATION AND BENEFITS**

9       10. On information and belief, on about July 1996, Defendant DUANNA KNIGHTON  
10 was hired by the Tribe as an office assistant. At the time of hiring, KNIGHTON had no previous  
11 experience working for an Indian Tribe, nor had she had any experience with the duties and  
12 responsibilities of a Tribal Administrator as outlined in the Tribe's Tribal Administrator Job  
13 Description.

14        11. At the time of KNIGHTON's hiring, she started as an hourly employee paid at  
15 \$15.00 per hour for providing up to twenty (20) hours per week for services. There were no  
16 employment benefits offered by the Tribe for her part-time work.

17 12. On or about April 1, 1998, KNIGHTON is alleged to have received a pay raise from  
18 \$15.00 per hour to \$18.50 per hour, and was allegedly now working up to thirty (30) hours per week  
19 for the Tribe.

13. On or about January 1, 1999, KNIGHTON allegedly became a *salaried* tribal  
employee with an annual rate of pay of \$31,320.00 per year, again, working no more than thirty (30)  
hours per week.

23       14. Between the years of 1999 and 2003 (over four years), KNIGHTON's salary rose  
24 from \$31,320 to \$54,600.00, including benefits – an increase in excess of forty (40) percent of her  
25 starting 1999 salary.

26 15. Between 2004, until her departure from employment with the Tribe in 2013,  
27 KNIGHTON's salary is alleged to have risen from \$54,600, plus benefits, in 2004, to over \$83,000,  
28 plus benefits in 2013, due in part from KNIGHTON allegedly now working forty (40) hours per

1 week for the Tribe which allegedly included work for the Tribe's Indian Housing Program (IHP) and  
2 Environmental Protection Agency (EPA), allegedly funded with federal grant funds, which  
3 increased her salary by \$2,500.00 (IHP) and \$15,000.00 (EPA), respectively, annually.

#### 4 THE TRIBE'S INVESTMENT LOSSES

5 16. During the period of KNIGHTON's employment, KNIGHTON made various  
6 investment decisions on behalf of the Tribe via several financial institutions. According to a 2006  
7 Audit report, at the time of the report, the Tribe had in excess of \$2.1 million dollars invested. The  
8 2007 Audit reported \$3.07 million dollars invested at the end of 2007. By the end of 2008, the  
9 Tribe's investments had lost in excess of \$1.2 million dollars, a portion of which included funds  
10 allocated to the Tribe's children. Subsequent to KNIGHTON'S resignation, it was discovered that  
11 the Tribe's investments, at the direction of KNIGHTON, were invested in high-risk investments. A  
12 review of KNIGHTON's resume submitted at the time of her employment with the Tribe shows she  
13 did not have any previous training concerning financial investments or investment portfolios.

14 17. The funds allocated to the Tribe's children were co-mingled with funds invested on  
15 behalf of the Tribe's adults and were not properly protected from taxation. A reading of the Tribe's  
16 Audit Reports, starting with the 2006 report, includes a finding of the Tribe's lack of adoption of an  
17 investment policy. KNIGHTON never recommended the implementation of this policy, despite the  
18 auditors' recommendations. KNIGHTON hid the audit reports from the Tribe's General  
19 Membership. In sum, the Tribe's General Membership only became aware of the 2008 \$1.2. million  
20 dollar investment losses after KNIGHTON resigned.

#### 21 THE TRIBE'S PURCHASE OF THE R.I.S.E PROPERTY

22 18. In January 2009, the Tribe's leadership changed, with the installation of Cherie Lash  
23 Rhoades, as Tribal Chairperson. By June of 2009, the Tribe thereafter purchased a property from  
24 R.I.S.E., allegedly for \$300,000. KNIGHTON is alleged to have been either an employee or a  
25 Director of R.I.S.E., at the time of the Tribe's purchase of the building, with KNIGHTON having  
26 negotiated the purchase of the building on behalf of the Tribe. KNIGHTON initially recommended  
27 a purchase price of \$350,000. In support of the purchase, KNIGHTON represented that the Tribe  
28 could recoup its investment with rents from R.I.S.E. occupying a portion of the building. After the

1 Tribe turned down KNIGHTON'S recommendation to purchase the building at \$350,000, the Tribe  
2 counter-offered at \$300,000, which R.I.S.E. accepted. Subsequent to the purchase neither the  
3 building itself nor the \$300,000 building purchase price ever showed up on the R.I.S.E. Inc.,  
4 corporate filings. After the purchase, it was discovered that KNIGHTON made her recommendation  
5 to purchase the R.I.S.E. building without a professional appraisal. R.I.S.E. also moved its operations  
6 within twelve (12) months of the Tribe's purchase of the building. After KNIGHTON'S resignation  
7 from the Tribe, the Tribe discovered that at the time KNIGHTON made the recommendation to  
8 purchase the R.I.S.E. property, R.I.S.E. was in a desperate financial position, bordering on  
9 insolvency.

#### 10 KNIGHTON'S RESIGNATION

11 19. On information and belief, in March 2013, KNIGHTON resigned her position as  
12 Tribal Administrator. In the months leading up to her resignation, the Tribe's Executive Council  
13 commented, during Executive Session, that KNIGHTON, over the last year, did not show up for  
14 work and appeared to be working more on R.I.S.E. matters when she was supposed to be working  
15 for the Tribe.

16 20. On information and belief, prior to her resignation, KNIGHTON requested she cash  
17 out her vacation pay even though the Tribe's policies and procedures forbade it. KNIGHTON  
18 attempted to have Tribal Administrator, Jack Conovalov, sign off on her request, but he refused.  
19 KNIGHTON then went to the Tribal Vice-Chairman, who unknowingly signed the authorization  
20 based upon KNIGHTON's representation that the cash-out had been approved by Tribal  
21 Chairperson, Cherie Lash Rhoades. A check in excess of \$29,000 was paid by the Tribe to RISE on  
22 behalf of KNIGHTON. This \$29,000 cash out was against the Tribe's policies and procedures.

23 21. When KNIGHTON resigned, she took all files, including the Tribe's files, room  
24 furnishings and a computer, representing to the Tribe that the property removed was the property of  
25 R.I.S.E.

26 22. In late 2013, the Tribe wrote to both R.I.S.E. and KINGHTON, demanding the return  
27 of the vacation pay cash-out (\$29,995.00) and any and all tribal property, including the computer.  
28 Both R.I.S.E and KNIGHTON denied the Tribe's request through their legal counsel. (See Exhibit

1 Both R.I.S.E and KNIGHTON denied the Tribe's request through their legal counsel. (See Exhibit  
2 "A".)

### 3 THE CEDARVILLE TRAGEDY

4 23. On February 20, 2014, during a Tribal meeting, former Tribal Chairperson, Cherie  
5 Lash Rhoades, allegedly shot five members of the Tribe and the Tribe's Tribal Administrator. Four  
6 persons, including three Cedarville tribal members, one of which was Chairman Rurik Davis, Cherie  
7 Lash Rhoades' brother and a vocal critic of KNIGHTON'S handling of the Tribe's finances, were  
8 killed.

### 9 THE TRIBE'S AUDIT FINDINGS

10 24. After the tragedy in February 2014, the Tribe conducted a forensic accounting of the  
11 Tribe's financial position. It was discovered through a review of the Tribe's annual audit reports  
12 (2005-Present) that the auditors made various "Internal Control" findings specifically "Material  
13 Weaknesses" which included, but are not limited to the following:

- 14 • General Ledger deficiencies, requiring additional training for the Tribe's  
15 Administrator, lack of GAAP accounting; lack of council minutes; bank accounts  
16 being reconciled by the same person; incorrect transfer recording; pension  
17 contributions, including employee matches not being calculated correctly;
- 18 • Lack of financial policies and procedures;
- 19 • Lack of an investment policy; and
- 20 • Sick pay miscalculations.

21 KNIGHTON is alleged to have concealed the audit findings from the Tribe. None of the  
22 audit findings were ever implemented by KNIGHTON, the Tribe's Administrator.

### 24 FIRST CAUSE OF ACTION

#### 25 FRAUD AND DECEIT

26 (Defendant KNIGHTON)

27 25. PLAINTIFF incorporates by reference Paragraphs 1 through 24 as though fully set  
28 forth herein.

1       26. On information and belief, KNIGHTON is alleged to have manipulated the Tribe's  
2 policies and procedures to provide her fringe benefits, including a pension, and sick days in excess  
3 of what would normally be paid to a Tribal Administrator for a like-sized Tribe. The Tribe is  
4 informed and believes that it overpaid its statutory share of pension and sick pay on behalf of  
5 KNIGHTON. KNIGHTON who was in charge of the benefit payments, refused to advise, or failed  
6 to advise, the Tribe of pension plan overpayments when the payments were due, each year, of her  
7 employment. The overpayments of pension benefits were placed in trust by PLAINTIFF at the  
8 direction of KNIGHTON with OPPENHEIMERFUND, INC.

9       27. On information and belief, KNIGHTON is alleged to have manipulated the Tribe's  
10 policy for vacation hours. At some point, KNIGHTON is alleged to have accumulated in excess of  
11 one-hundred and eight two (182) hours of vacation pay, an extraordinary amount of vacation leave,  
12 for an employee working less than forty hours a week. After KNIGHTON resigned from the Tribe's  
13 employment, the Tribe, in an Executive Council meeting, commented that KNIGHTON was  
14 frequently absent from work and that she complained of being "over worked" at less than forty-  
15 hours per week. Moreover, the Executive Council alleged that the work KNIGHTON was doing  
16 while employed with PLAINTIFF Tribe related to her work for R.I.S.E., and not PLAINTIFF.

17       28. The policy manipulations made by KNIGHTON were in fact false, and made to her  
18 sole advantage, with the sole intent of personal financial gain and with the intent to harm the Tribe.  
19 The true facts were that like-sized Tribes paid far less in salary and benefits to Tribal  
20 Administrators, and PLAINTIFF overpaid KNIGHTON. PLAINTIFF rarely received income from  
21 grant funds unless PLAINTIFF was trained in the specific grant fund category. KNIGHTON had  
22 neither the training nor the experience with Indian Housing or Tribal Environmental Protection  
23 Agency grant programs she is alleged to have received payments from.

24       29. When KNIGHTON made these policy manipulations and representations concerning  
25 her salary, sick pay and vacation pay, she knew these statements were false. She made these  
26 representations with the intent to defraud and deceive PLAINTIFF and with the intent to induce  
27 PLAINTIFF to act in detrimental reliance on those misrepresentations, which caused PLAINTIFF  
28 damage in the form of uncalled for salary and fringe benefits. At the time KNIGHTON made these

1 misrepresentations, KNIGHTON knew they were false.

2       30. PLAINTIFF, at the time these representations were made by KNIGHTON, and at the  
3 time PLAINTIFF approved of such salary, and benefits, was ignorant of the falsity of KNIGHTON's  
4 misrepresentations and believed them to be true.

5       31.    In reliance on KNIGHTON's misrepresentations, the Tribe was induced to and did  
6 increase her pay and paid excessive benefits. If PLAINTIFF had known of the actual intention of  
7 KNIGHTON, PLAINTIFF would not have taken such action, which it did to its detrimental reliance.  
8 PLAINTIFF's reliance on KNIGHTON's representations was justified because KNIGHTON as the  
9 Tribe's administrator, the person responsible for handling the Tribe's day-to-day government, and  
10 payment of its employees, was in a position of trust.

11       32.     As a proximate result of KNIGHTON's fraud and deceit and the facts herein alleged,  
12 PLAINTIFF was damaged in the sum of the amount of overpaid salary and fringe benefits, which it  
13 shall calculate with precision once discovery is conducted in this matter.

14 33. In doing the acts herein alleged, KNIGHTON acted with oppression, fraud, and  
15 malice, and PLAINTIFF is entitled to punitive damages in the sum to be determined at Trial.

## **SECOND CAUSE OF ACTION**

## **RECOVERY OF UNAUTHORIZED AND EXCESSIVE PENSION PAYMENTS**

(Defendant KNIGHTON)

20       34. PLAINTIFF incorporates by reference Paragraphs 1 through 33 as though fully set  
21 forth herein. As a result of the allegations herein, PLAINTIFF is entitled to recover the unauthorized  
22 and excessive pension payments paid to KNIGHTON at an amount to be ascertained with precision  
23 via discovery in this matter.

### THIRD CAUSE OF ACTION

## RECOVERY OF UNAUTHORIZED INVESTMENT LOSSES

(Defendant KNIGHTON)

28 35. PLAINTIFF incorporates by reference Paragraphs 1 through 34 as though fully set

1 forth herein. As a result of the allegations herein, PLAINTIFF is entitled to recover the unauthorized  
2 investment losses as ascertained with precision via discovery in this matter.

3  
4 **FOURTH CAUSE OF ACTION**

5 **BREACH OF FIDUCIARY DUTY**

6 (Defendant KNIGHTON)

7 36. PLAINTIFF incorporates by reference Paragraphs 1 through 35 as though fully set  
8 forth herein.

9 37. KNIGHTON at all times was under a fiduciary duty of loyalty, due care and good  
10 faith to PLAINTIFF, wherein she was to avoid:

11 A. Participating in any transaction where her loyalty was divided;  
12 B. Participating in any transaction where her financial benefit exceeded the  
13 financial benefit of PLAINTIFF;  
14 C. Unjustly enriching herself to the detriment of PLAINTIFF.

15 38. On information and belief PLAINTIFF alleges that KNIGHTON violated her  
16 fiduciary duties of loyalty, due care and good faith to PLAINTIFF.

17 39. On information and belief, KNIGHTON violated her fiduciary duty to PLAINTIFF  
18 by failing to perform her employment responsibilities on behalf of the Tribe and in particular by  
19 increasing her salary and benefits beyond what would be paid to an employee of a like-sized tribe,  
20 and instead, received a financial benefit, above and beyond the benefit received by the Tribe, in  
21 work performed.

22 40. On information and belief, KNIGHTON violated her fiduciary duties to PLAINTIFF  
23 in investing the Tribe's money without the appropriate authority, concealing investment documents  
24 and audit reports from the Tribe to hide investment losses and by attempting to enter financial  
25 agreements without the appropriate authorization or waivers of tribal sovereign immunity.

26 41. As demonstrated by the allegations above KNIGHTON failed to exercise the care  
27 required and breached her duty of loyalty, due care, and good faith by not receiving the appropriate  
28 Tribal authorizations and making unreasonable risky investments, leading to the investment losses,

1 excess transaction fees and state and federal tax exposure.

2 42. As a direct and proximate result of KNIGHTON's breaches, PLAINTIFF has been  
3 damaged in an amount to be determined at trial.

4

5 **FIFTH CAUSE OF ACTION**

6 **AIDING AND ABETTING BREACH OF FIDUCIARY DUTY**

7 (Defendants KNIGHTON and R.I.S.E.)

8 43. PLAINTIFF incorporates by reference Paragraphs 1 through 42 as though fully set  
9 forth herein.

10 44. Defendant R.I.S.E. was aware that Defendant KNIGHTON owed Plaintiff a fiduciary  
11 duty.

12 45. Defendant R.I.S.E. knowingly provided substantial assistance and encouragement to  
13 Defendant KNIGHTON in her breaches of fiduciary duties.

14 46. Defendant R.I.S.E. ultimately failed to honor, and without excuse, breached the  
15 agreements by performing substandard and incorrect accounting and auditing work, as set forth  
16 above, yet demanded and accepted payment for services claimed to have been rendered.

17 47. Defendant R.I.S.E. therefore aided and abetted Defendant KNIGHTON in her  
18 breaches of fiduciary duties to PLAINTIFF. As a result DEFENDANTS are jointly responsible for  
19 the damages resulting from the fiduciary breaches alleged herein and PLAINTIFF has been damaged  
20 in an amount to be determined at trial.

21

22 **SIXTH CAUSE OF ACTION**

23 **UNJUST ENRICHMENT**

24 (Defendants KNIGHTON and R.I.S.E.)

25 48. PLAINTIFF incorporates by reference Paragraphs 1 through 47 as though fully set  
26 forth herein.

27 49. On information and belief, Defendants KNIGHTON and R.I.S.E. are alleged to have  
28 manipulated PLAINTIFF into the purchase of an administrative building that was constructed by

1 R.I.S.E. for \$300,000. At the time of the purchase, Defendant KNIGHTON was the PLAINTIFF'S  
2 Tribal Administrator and an officer or agent of Defendant R.I.S.E. Defendant KNIGHTON, as both  
3 the Tribe's Administrator and a R.I.S.E. officer or agent was in a conflict of interest in  
4 recommending and negotiating the sale of the R.I.S.E. building to PLAINTIFF. At the time of the  
5 purchase of the R.I.S.E. building, Defendant KNIGHTON failed to inform PLAINTIFF of her  
6 conflict of interest and withdraw from further action concerning the sale. At the time of the sale,  
7 Defendant KNIGHTON failed to disclose to the PLAINTIFF that R.I.S.E. was in poor financial  
8 health and that the R.I.S.E. building did not appear on R.I.S.E.'s tax filings. At no time prior to the  
9 sale did Defendant KNIGHTON disclose to PLAINTIFF that it should or could have obtained an  
10 appraisal on the building to determine whether PLAINTIFF was realizing the benefit of its bargain.

11 50. On information and belief, Defendant KNIGHTON is alleged to have manipulated  
12 PLAINTIFF into the purchase of the R.I.S.E. building by telling PLAINTIFF before purchase that it  
13 was purchasing the building below market rate and that after the purchase, PLAINTIFF could pay  
14 off the building loan within five (5) years after purchase and that R.I.S.E. would pay rent to  
15 PLAINTIFF until the note on the building was paid off.

16 51. The manipulations made by Defendant KNIGHTON were in fact false, and made to  
17 her and R.I.S.E.'s sole advantage, with the sole intent of personal financial gain and with the intent  
18 to harm PLAINTIFF. The true facts were: that the building was not sold below market rate, but  
19 \$150,000 above market rate, that R.I.S.E. would not remain a tenant of PLAINTIFF, R.I.S.E. would  
20 leave within twelve (12) months of the purchase and that the note was not paid off within five (5)  
21 years as represented. Moreover, Defendant KNIGHTON failed to disclose to PLAINTIFF that after  
22 paying off the building loan, KNIGHTON and R.I.S.E. would split the proceeds of the building sale.

23 52. When Defendant KNIGHTON made these misrepresentations, she knew them to be  
24 false, and they were made with the intent to defraud and deceive PLAINTIFF and with the intent to  
25 induce PLAINTIFF to act in the manner herein alleged. At the time Defendant KNIGHTON made  
26 the aforementioned promises to PLAINTIFF, she had no intention of performing them.

27 53. PLAINTIFF, at the time these representations were made by Defendant KNIGHTON  
28 and at the time PLAINTIFF approved of such salary, and benefits, was ignorant of the falsity of the

1 misrepresentations and believed them to be true.

2       54. Further, in reliance on Defendant KNIGHTON's misrepresentations, PLAINTIFF  
3 was induced to and did purchase the R.I.S.E. building. If PLAINTIFF had known of the actual  
4 intention of Defendant KNIGHTON, PLAINTIFF would not have taken such action. PLAINTIFF's  
5 reliance on Defendant KNIGHTON's representations was justified because Defendant KNIGHTON  
6 as the PLAINTIFF's administrator, was in a position of trust.

7 55. As a proximate result of Defendants' fraud and deceit and the facts herein alleged,  
8 PLAINTIFF paid twice the value of the R.I.S.E. building by reason of which PLAINTIFF has been  
9 damaged in the sum of \$150,000, plus interest.

10 56. In doing the acts herein alleged, Defendants acted with oppression, fraud, and malice,  
11 and PLAINTIFF is entitled to punitive damages in the sum to be determined at Trial.

## **SEVENTH CAUSE OF ACTION**

## COMMON COUNT-ACCOUNT STATED

(Defendants KNIGHTON and R.I.S.E.)

16 57. PLAINTIFF incorporates by reference Paragraphs 1 through 56 as though fully set  
17 forth herein.

18       58.    Whereas, within the last year, PLAINTIFF provided the full account stated to  
19 Defendants KNIGHTON and R.I.S.E., for the return of the \$29,925.00 unauthorized benefit  
20 payment and defendants, both of them, have refused to pay PLAINTIFF upon request.

21 59. Wherein, PLAINTIFF prays for relief as set forth below.

## **EIGHTH CAUSE OF ACTION**

## **COMMON COUNT- MONEY HAD AND RECEIVED**

(Defendants KNIGHTON and R.I.S.E.)

26 60. PLAINTIFF incorporates by reference Paragraphs 1 through 59 as though fully set  
27 forth herein.

28 61. Defendants KNIGHTON and R.I.S.E., have failed to reimburse PLAINTIFF the

1 amount of \$29,925.00, requested by PLAINTIFF via a written statement, the amount of  
2 unauthorized payment of sick pay cashed out by Defendant KNIGHTON and forwarded to  
3 Defendant R.I.S.E. on her behalf.

4 62. Wherein, PLAINTIFF prays for relief as set forth below.

5

6 **PRAYER FOR RELIEF**

7 WHEREFORE PLAINTIFF prays for judgment as follows:

8 1. For judgment in favor of PLAINTIFF and against Defendant KNIGHTON according  
9 to proof as to Causes of Actions One through Eight (1-8) and as against Defendant R.I.S.E as to  
10 Causes of Actions Five through Eight (5-8);

11 2. For general and special damages against DEFENDANTS according to proof;

12 3. For prejudgment and post judgment interest;

13 4. For punitive damages;

14 5. For costs of suit incurred herein;

15 6. For such other and further award the Court deems just and proper.

16

17 Dated: 9/25/14

18 DURAN LAW OFFICE

19  
20 JAC. DURAN, Jr.  
21 Attorney for Plaintiff  
22 CEDARVILLE RANCHERIA OF  
23 NORTHERN PAIUTE INDIANS  
24  
25  
26  
27  
28

**EX. A**

dlo

**DURAN LAW OFFICE**

Jack Duran, Esq.

**SENT VIA REGISTERED MAIL RETURN RECEIPT AND FACSMILE (909) 483-1840**

February 10, 2014

CGCLaw  
8038 Have Ave, Suite E  
Rancho Cucamonga, CA 91730  
Attn: Richard Clouse, Esq.

Re: **Demand Letter: Cedarville Rancheria of Northern Paiute Indians Check #11620 \$29,925.00**

Dear Mr. Clouse:

Duran Law Office serves as the General Counsel to the Cedarville Rancheria of Northern Paiute Indians (Tribe). It has been nearly a month since your correspondence, dated January 16, 2014, indicated that you were *analyzing and consulting* concerning the reimbursement issue. Again, the Tribe demands the portion of funds presently possessed by RISE. If I do not hear from you within five (5) days concerning whether your client will return the funds, my client will be compelled to file suit to recover the funds. If compelled to file suit the likelihood costs and expenses related to the filing and prosecuting the claim will likely exceed the amount retained by your client.

**The Tribe hereby demands the immediate return of the funds, the transaction of which was paid by Bank of America, on or before February 15, 2014, via certified check, or the Tribe will pursue any and all legal means to recoup the funds.**

Your immediate review of this matter is requested. I look forward to receipt of the funds on or before February 15, 2014. If you fail to respond to this demand within the time provided, the Tribe has authorized me to immediately commence legal action to recover these funds.

Very truly yours,

/JD/

Duran Law Office  
Owner

cc: Cedarville Rancheria of Northern Paiute Indians, Tribal Council

4010 Foothills Blvd, Suite 103, No. 98

Roseville, CA 95747

(916) 779-3316 (Office)

(916) 520-3526 (Fax)



February 13, 2014

Jack Duran, Esq.  
Law Offices of Jack Duran  
4010 Foothills Blvd, Suite 103, No. 98  
Roseville, CA 95747  
[duranolaw@yahoo.com](mailto:duranolaw@yahoo.com)

**Re: Cedarville Rancheria of Northern Paiute Indians v. RISE**  
**Date of Loss: February 28, 2013**

Dear Mr. Duran:

Since our previous correspondence to you we have had an opportunity to more fully analyze the propriety of your demand for reimbursement of the sum of \$29,925 which was paid to RISE as a result of a severance agreement entered into between the Cedarville Rancheria of Northern Paiute Indians (hereinafter "CRNPI") to their outgoing Finance Director, Duanna Knighton.

Ms. Knighton was an employee of both CRNPI, as well as RISE. Her health benefits were paid by CRNPI through reimbursement to RISE for a group policy maintained by RISE, which we understand was an agreed upon arrangement previously utilized for persons who were employed by CRNPI. The sum in question was owed by CRNPI to Ms. Knighton for accrued but unused sick leave amounting to approximately 665 hours.

This sum was paid to RISE in order to maintain Ms. Knighton's health care benefits. Records maintained by RISE indicate that this sum was deposited into a separate account on or about March 5, 2013, and that there have been regular disbursements made on a monthly basis solely for the purpose of paying the insurance premiums for Ms. Knighton's Anthem/Blue Cross coverage.

Clearly, therefore, at no time did RISE ever intend to exercise beneficial ownership over these funds. Rather, it has clearly maintained and disbursed funds from this account in furtherance of what appears to be a clear intent of CRNPI and Ms. Knighton in negotiating her severance agreement from CRNPI. This has had the effect of creating a "resulting trust."

Jack Duran, Esq.

Law Offices of Jack Duran

*Re: Cedarville Rancheria of Northern Paiute Indians v. RISE*

February 13, 2014

Page 2

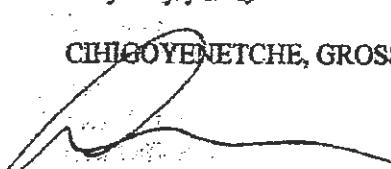
A "resulting trust" is often called an "intention-enforcing trust" (citations omitted) ... arising by implication of law in order to enforce the inferred intent of parties to a transaction. (*Calistoga Civic Club v. City of Calistoga* [1983] 143 Cal.App.3d, 111, 117-118). The resulting trust is a creature of equity and need not be evidenced in writing or even by express declaration (*Id.* at 118).

The severance agreement was negotiated between Ms. Knighton and the then Tribal Council, which included former Tribal Administrator Jack Conovolaff. We understand that in the ensuing months following the negotiation of the severance agreement involving Ms. Knighton, there has been a change in tribal leadership. We are informed and believe that the change in tribal leadership included the removal of both Mr. Conovolaff and others on the Tribal Council.

We understand that current Tribal leadership includes an individual who had previously made overtures toward Ms. Knighton, and which were rebuffed by Ms. Knighton. It is disconcerting to consider that the current demand to rescind the severance agreement, which appears to have been entered into in good faith by Ms. Knighton, is nothing more than a retaliatory act arising from quid pro quo harassment.

Irrespective of the motivation behind CRNPI's demand for reimbursement, the fact is that the funds in question are in trust for Ms. Knighton; it is her property. It is not within RISE's authority to now return the funds in question to CRNPI. We must decline your demand for return of any of the funds paid.

Very truly yours,

  
CIRIJOYENETCHE, GROSSBERG & CLOUSE

RICHARD R. CLOUSE

RRC/glc

**EXHIBIT “B”**

1 CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS  
2  
3

4 TRIBAL COURT  
5  
6

7 CEDARVILLE RANCHERIA OF NORTHERN  
8 PAIUTE INDIANS,  
9

Case No.: CED-CI-2014-00002

10 Plaintiff,  
11  
12 v.  
13

14 DUANNA KNIGHTON; RESOURCES FOR  
15 INDIAN STUDENT EDUCATION, INC.  
16 (R.I.S.E.); OPPENHEIMER FUNDS, INC; AND  
17 DOES 1-10, INCLUSIVE,  
18

19 ORDER GRANTING EX PARTE  
20 APPLICATION FOR TEMPORARY  
21 RESTRAINING ORDER AGAINST  
22 DUANNA KNIGHTON, RISE,  
23 OPPENHEIMER FUND, INC., AND DOES  
24 1-10; AND SETTING HEARING FOR  
25 ORDER TO SHOW CAUSE RE:  
26 PRELIMINARY INJUNCTION

27 Defendants.  
28

29 Hearing Date: October 14, 2014  
30 Time: 9:00 am  
31 TELEPHONIC for All parties  
32

33 HON. JUDGE PATRICIA LENZI  
34  
35

36 Plaintiff, CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS  
37 ("TRIBE"), having filed a Complaint for Injunctive Relief, Application for Ex Parte Temporary  
38 Restraining Order, the Court finds as follows:

39 1. This Court has subject matter jurisdiction over this action pursuant to Tribal Court Code  
40 §201 et seq., and jurisdiction over this matter because this matter involves nonmember Defendants  
41 who engaged in "consensual relationships" with the Tribe and its members.

42 2. Plaintiffs have made a sufficient showing that neither written nor oral prior notice need  
43 be given to Defendant's KNIGHTON, OPPENHEIMER, R.I.S.E., and Does 1-10, certain as yet  
44 unidentified persons, (collectively the "Defendants"), because it is likely that immediate and  
45 irreparable injury, loss or damage will result to the Plaintiffs before the adverse party or their  
46 attorney can be heard in opposition. Notice shall not be required before this Order is entered as  
47 Defendants may attempt to accept, transfer, encumber, conceal, move, or otherwise dispose of any  
48 funds held by Defendant OPPENHEIMER that are in dispute in the above-entitled action, until a  
49 time at which it can be determined which funds, if any, belong to Defendant KNIGHTON and/or

50 *Mohavica Alturas*

51 - 1 -

52 ORDER GRANTING EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AGAINST DUANNA KNIGHTON, RISE,  
53 OPPENHEIMER FUND, INC., AND DOES 1-10; AND SETTING HEARING FOR ORDER TO SHOW CAUSE RE: PRELIMINARY  
54 INJUNCTION

1 Plaintiff TRIBE, if Defendants are given advance notice of the TRIBE's intention to obtain this  
2 Order.

3       3. There is good cause to believe that Defendants, if not restrained will withdraw, transfer,  
4 conceal, encumber, dispose of, and/or continue to work to maintain control of the funds to the  
5 disadvantage of the Tribe.

6       IT IS HEREBY ORDERED that Defendants, its officers, agents, employees and attorneys  
7 and upon those persons in active concert or participation with them who receive actual notice of the  
8 order by personal service or otherwise, be and hereby are temporarily restrained directly or  
9 indirectly from aiding and abetting the concealment of, transfer of, or making of any material  
10 changes in position to, the funds on deposit with OPPENHEIMER.

11       IT IS FURTHER ORDERED that Defendants, its officers, agents, employees and attorneys  
12 and upon those persons in active concert or participation with them who receive actual notice of the  
13 order by personal service or otherwise, shall hereby freeze all accounts in the name of Defendant  
14 KNIGHTON that are currently on deposit with Defendant OPPENHEIMER, and Defendant  
15 OPPENHEIMER shall contact this Court and Plaintiff to confirm the accounts are indeed blocked;  
16 and

17       IT IS FURTHER ORDERED that Defendants, its officers, agents, employees and attorneys  
18 and upon those persons in active concert or participation with them who receive actual notice of the  
19 order by personal service or otherwise, shall turn over to Plaintiffs copies of all documents related to  
20 any accounts held by the Defendant OPPENHEIMER in the name of the Defendant KNIGHTON  
21 including, but not limited to, bank statements, transaction histories, and written communications to  
22 the TRIBE's Chairwoman, Brandi Penn.

23       IT IS FURTHER ORDERED that the Plaintiffs shall forthwith file this Temporary  
24 Restraining Order with the Clerk of the Court and serve copies of said Order on Defendants; and

25       IT IS FURTHER ORDERED that Defendants served with a copy of this Order shall  
26 forthwith give actual notice of this Order to each of said Defendants' officers, agents, attorneys and  
27 to each person acting in active concert or participation with them; and,

1 (i) That unless this Court rules otherwise, a Hearing to Show Cause as to why this  
2 Temporary Restraining Order should not remain in effect shall take place on the 14th day of  
3 October, 2014, at 9:00 a.m., as a telephonic hearing before this Court. The Court Clerk shall notify  
4 all parties of the call-in number for this hearing as soon as practicable, and shall do so prior to the  
5 date and time set for hearing; and

6 (ii) That Defendants shall file any responsive pleadings no later than the 10th day of  
7 October, 2014 by close of business in this Court; and

8 (iii) As a Tribal Government and Tribal Government Enterprise, Plaintiffs are not required  
9 to post a bond prior to issuance of this Temporary Restraining Order.

10

11 IT IS HEREBY FURTHER ORDERED THAT parties affected by the Proposed Order can  
12 apply to the Court for modification or dissolution on two (2) days' notice or such shorter notice as  
13 the Court may allow.

14

15

DATED this 1<sup>st</sup> day of October, 2014.

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Honorable Patricia Lenzi, Chief Judge  
Cedarville Rancheria Tribal Court

Honorable Patricia Lenzi, Chief Judge  
Cedarville Rancheria Tribal Court

**EXHIBIT “C”**

**CEDARVILLE RANCHERIA  
JUDICIAL CODE**

**PREAMBLE**

This Code of the Cedarville Rancheria is enacted for the purpose of protecting and promoting tribal sovereignty, strengthening tribal self-government, providing for the judicial needs of the Cedarville Rancheria, and thereby assuring the protection of tribal resources and the rights of the members of the Cedarville Rancheria and all others within its jurisdiction.

**TITLE I: COURTS**

**PART I: ESTABLISHMENT AND OPERATION OF THE  
CEDARVILLE RANCHERIA TRIBAL COURT**

**Section 101. Establishment of Tribal Court.**

There is hereby established a tribal court of general jurisdiction as a Court of record. The Cedarville Rancheria Tribal Court "Tribal Court" or "Court" shall consist of a Trial Division and an Appellate Division.

**Section 102. Tribal Designation.**

Wherever the formal designation "Tribe," "Tribal" or "Rancheria" appears in this Code, such designation shall refer to the Cedarville Rancheria unless specifically designated otherwise.

**Section 103. Appropriations and Funding.**

- A. The Community Council of the Rancheria shall appropriate and authorize the expenditure of tribal funds for the operation of the Tribal Court. The amounts to be appropriated shall be consistent with the needs of the Tribal Court for proper administration of justice within the Reservation and for the Rancheria as determined by the Community Council.
- B. To assist the Community Council in making appropriations for operation of the Court, the Tribal Administrator, in consultation with the Chief Judge shall submit proposed budgets and reports of expenses and expenditures at such intervals and in such form as may be prescribed by the Community Council.
- C. The Community Council may prescribe a system of accounting for funds received from any source by the court and the Tribal Administrator.

**Section 104. Conflict with Other Laws.**

- A. Tribal Laws.

To the extent that this Code may conflict with tribal laws or ordinances which have been enacted to comply with statutes or regulations of any agency of the United States, such tribal laws or ordinances shall govern over the provisions of this Code if they have specific applicability and are clearly in conflict with the provisions of this Code.

**B. Federal Laws.**

Where a conflict may appear between this Code and any statute, regulation or agreement of the United States, the federal law shall govern if it has specific applicability and if it clearly is in conflict with the provisions of this Code.

**C. State Laws.**

To the extent that the laws of any state may be applicable to the subject matter of this Code, such laws shall be read to be advisory and not directly binding and shall not govern the relations of the parties.

**PART II: JURISDICTION**

**Section 201. Cedarville Rancheria Tribal Court Jurisdiction**

**A. Territory.**

The jurisdiction of the Tribal Court and the effective area of this Code shall extend to disputes arising within or concerning all territory within the Cedarville Rancheria boundaries, including, but not limited to, trust lands, fee patent lands, allotments, assignments, roads, waters, bridges and existing and future lands outside the boundaries owned or controlled by the Rancheria for its benefit, the benefit of its members and the benefit of other Indian persons.

**B. Subject Matter.**

The jurisdiction of the Tribal Court shall extend to:

1. All persons who reside or are found within the territorial jurisdiction of the Rancheria and are: Tribal members or eligible for membership in the Rancheria; members of other federally recognized Indian tribes; or Indians who are recognized as such by an Indian community or by the federal government for any purpose.
2. All persons described in Subdivision B.1., wherever located, while exercising tribal rights pursuant to federal, state or tribal law.
3. All persons outside the exterior boundaries of the Cedarville Rancheria Reservation, as defined herein, within the jurisdiction of the Rancheria pursuant

to federal or tribal law, including all persons whose activity on or off reservation threatens the Rancheria, government or its membership.

4. All other persons whose actions involve or affect the Rancheria, or its members, through commercial dealings, contracts, leases or other arrangements. For purposes of this Code, person shall mean all natural persons, corporations, joint ventures, partnerships, trust, trust funds, public or private organizations or any business entity of whatever kind.

**C. Actions.**

The judicial power of the Tribal Court shall extend to:

1. All matters and actions within the power and authority of the Cedarville Rancheria including controversies arising out of the Constitution and By-Laws of the Cedarville Rancheria, statutes, ordinances, resolutions and codes enacted by the Cedarville Rancheria; and such other matters arising under enactments of the Cedarville Rancheria or the customs and traditions of the Cedarville Rancheria.
2. All civil causes of action arising at common law including, without limitation, all contract claims (whether the contract at issue is written or oral or existing at law), all tort claims (regardless of the nature), all property claims (regardless of the nature), all insurance claims, and all claims based on commercial dealing with the Band, its agencies, sub-entities, and corporations chartered pursuant to its laws, and all nuisance claims. The court shall have original jurisdiction whether the common law cause of action is one which has been defined as Band common law, or is one which exists at common law in another jurisdiction and which is brought before the Tribal Court based upon reference to the law of that other jurisdiction. For the purposes of this Code, "common law" shall mean the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from the usages and customs, or from the judgments and decrees of courts recognizing and affirming such usages and customs, and as is generally distinguished from statutory law.
3. Other actions arising under the laws of the Rancheria as provided in those laws.
4. Limitation of Actions.

No complaint shall be filed in a civil action unless the events shall have occurred within a six (6) year period prior to the date of filing the complaint; provided, that this general statute of limitations shall not apply to suits filed to recover public money or public property intentionally or erroneously misspent, misappropriated or misused in any way; and further provided that this general statute of limitations shall not apply to any debt owed the Rancheria or any of its agencies, arms or instrumentalities, whether organized or not under tribal law.

**D. Concurrent Jurisdiction.**

The jurisdiction invoked by this Code over any person, cause of action or subject shall be concurrent with any valid jurisdiction over the same of the courts of the United States, any state, or any political subdivision thereof; provided, however, this code does not recognize, grant, or cede jurisdiction to any state or other political or governmental entity which jurisdiction does not otherwise exist in law.

Inclusion of language, definitions, procedure or other statutory or administrative provisions of the state of California or other state or federal entities in this Code shall not be deemed an adoption of that law by the Cedarville Rancheria and shall not be deemed an action deferring to state or federal jurisdiction within the Cedarville Rancheria where such state or federal jurisdiction may be concurrent or does not otherwise exist.

**Section 202. Suits Against the Band.**

**A. Sovereign Immunity of Band.**

The sovereign immunity from suit of the Band and every elected Executive Council member or tribal official with respect to any action taken in an official capacity or in the exercise of the official powers of any such office, in any court, federal, state or tribal is hereby affirmed; nothing in this Code shall constitute a waiver of the Rancheria's sovereign immunity. The Tribal Court shall have no jurisdiction over any suit brought against the Rancheria in the absence of unequivocally expressed waiver of that immunity of the Community Council.

**B. Tribal Action Not a Waiver of Sovereign Immunity.**

No enforcement action taken pursuant to this Code, including the filing of an action by the Rancheria or any agency of the Rancheria in the Tribal Court, shall constitute a waiver of sovereign immunity from suit of the Rancheria, or any elected Executive Council member or tribal official with respect to any action taken in an official capacity, or in the exercise of the official powers of any such office, either as to any counterclaim, regardless of whether the counterclaim arises out of the same transaction or occurrence, or in any other respect.

**C. Resolution Required for Waiver of Sovereign Immunity.**

The sovereign immunity of the Rancheria and any elected Executive Council member or tribal official with respect to any action taken in an official capacity, or in the exercise of the official powers of any such office, in any action filed in the Tribal Court with respect thereto, may only be waived by a formal resolution of the Community Council of the Cedarville Rancheria. All waivers shall be unequivocally expressed in such resolution. No waiver of the Rancheria's sovereign immunity from suit may be implied from any action or document. Waivers of sovereign immunity shall not be general, but shall be specific and limited as to the jurisdiction or forum within which an action may be heard,

duration, grantee, action and property or funds, if any of the Rancheria or any agency, subdivision or governmental or commercial entity of the Rancheria subject thereto. No express waiver of sovereign immunity by resolution of the Community Council of the Cedarville Rancheria shall be deemed consent to the levy of any judgment, lien or attachment upon property of the Rancheria or any agency, subdivision or governmental or commercial entity of the Rancheria other than property specifically pledged or assigned therein.

**Section 203. Amendments and Revisions.**

This Code may be amended by action of the Executive Committee or Community Council of the Cedarville Rancheria. Amendments, additions and deletions to this Code shall become a part hereof for all purposes and shall be codified and incorporated herein in a manner consistent with its numbering and organization. Other than actions regarding procedural issues, no enactment, ordinance, resolution, or otherwise, shall apply to any pending cases before the Tribal Court at the time action is taken by the Community Council of the Cedarville Rancheria.

**Section 204. Code Reviser.**

**A. Appointment.**

The Tribal Administrator is hereby appointed Code Reviser for the Cedarville Rancheria. The Community Council, Executive Committee, tribal officials or the Chief Judge may submit for review and approval all codes, ordinances and statutory law contemplated for application and use by the Court. The Community Council shall review and vote on the Ordinance. The Ordinance shall be effective upon an affirmative vote of the Community Council. All Court Ordinances are subject to periodic revision and amendment with the consent of the Executive Committee or Community Council. Court operation policies and procedures are not subject to Community Council review and approval. However, any policies and procedures shall be provided to the Executive Committee for review and comment. Court policies and procedures shall also be made available upon request.

**B. Duties of Reviser.**

The Reviser shall carry out all duties assigned under this Section, including, but not limited to:

1. Certify, by signature and date, any and all amendments, corrections, revisions, updates, and expansions to this Code, and other Codes, ordinances and statutory laws enacted by the Community Council of the Cedarville Rancheria. Provided however, the Reviser's actions shall be ministerial in nature and the Reviser shall not be empowered to determine whether an action is necessary or sufficient for the lawful enactment into law of any amendment, correction, revision, update or expansion of this Code or other tribal laws.
2. Keep an official indexed and written record, which shall be public, of all Certifications made by the Reviser under this section.

3. Provide copies of all certified revisions of the Code to any person or agency requesting such copies. The Reviser may establish a reasonable cost for such copies.

C. Certification to Code Reviser.

Upon adoption of any and all amendments, corrections, revisions, updates or expansions of the Code by the Executive Committee or the Community Council of the Cedarville Rancheria, the Secretary of the Executive Committee shall convey a copy of the amendment, correction, revision, update or expansion of the Code, together with a copy of the resolution adopting it, to the Reviser.

D. Effective Date of Revisions.

Upon receipt of all the necessary documents from the Secretary of the Executive Committee, the Reviser shall make a written and dated Certification of Amendment, which shall be permanently attached to the said documents and kept in the permanent files of the Reviser. All revisions of the Code shall be effective on the date of the written certification required by this Section, and not before.

E. Distribution.

Distribution of the new Code provisions shall be at the discretion of the Reviser and may be at a cost established by him/her.

### **PART III: JUDGES**

Section 301. Trial Division.

The judiciary of the Tribal Court, Trial Division, shall consist of a Chief Judge and may also include one or more Associate Judges.

The Executive Committee of the Cedarville Rancheria, or the Chief Judge by order, may appoint additional persons to serve as deputy/special judges or justices. Each such appointment of a deputy/special judge or justice shall be personal and shall not create an office which survives the death, resignation or removal of the appointee. The appointment of a deputy/special judge or justice may be for the performance of such specific duties or cases as may be assigned him/her by the Chief Judge or by the Executive Committee of the Cedarville Rancheria, and she/he shall serve until the cases or duties specifically assigned have been completed, or pursuant to the terms of any contract.

A deputy judge shall perform the duties and functions of a judge of the Tribal Court as may be designated by his/her appointment or contract subject to any restrictions or limitations imposed by law, by resolution of the Community Council of the Cedarville Rancheria, or the Chief Judge, as the case may be. The findings, rulings, opinions and orders of a deputy judge or justice shall

be signed "Judge" or "Justice," as appropriate to the case and shall have the same force and effect as if made by a regular judge or justice of the court.

Section 302. Appellate Division.

In any appeal from a final decision of a trial judge, whether Chief, Associate, or Deputy/Special, an appeals tribunal of three justices shall be appointed by the Community Council of the Cedarville Rancheria. Such justices of an appeal tribunal shall serve until cases specially assigned them have been completed. A justice of an appeals tribunal may only be removed prior to completion of assigned matters by the Community Council of the Cedarville Rancheria pursuant to the provisions of this Code for the removal of a judge of the Tribal Court.

Section 303. Qualifications.

A. Any person Twenty-Five (25) years or older shall be eligible to serve as a Judge or Justice of the Tribal Court, except the following:

1. The Tribal Administrator, Assistant Clerks and members of the Executive Council.
2. Those who have been convicted by a court of the United States or of any state of the United States for a felony, as a felony is defined by the laws of that jurisdiction or a gross misdemeanor within one year immediately preceding the proposed appointment as judge or justice.

B. All judges or justices of the Tribal Court, whether Chief, Associate or Deputy/Special, shall be lawyers experienced in the practice of tribal and federal Indian law and licensed to practice in the highest court of any state.

Section 304. Evaluation and Selection.

Candidates for the positions of the Chief Judge and Justices shall be screened by the Executive Committee and the Tribal Administrator. The Screening Committee shall submit its recommendations for appointments to the Community Council of the Cedarville Rancheria who shall make a final decision. Associate Judges shall be selected in the same manner except that the Chief Judge shall participate on the screening committee.

Section 305. Appointment, Terms, Compensation.

The Chief Judge, Associate Judges and Justices shall be appointed by the Community Council of the Cedarville Rancheria to two (2) year terms under written contracts specifying the compensation and other terms and conditions of the employment of the judge. Ninety (90) days prior to the expiration of the term of office of each Judge or Justice, the Community Council of the Cedarville Rancheria shall consider whether to renew the contract of employment of each Judge/Justice for an additional term. If the Community Council of the Cedarville Rancheria determines to not renew the contract, it shall so notify the Judge/Justice, in writing, at least thirty

(30) days prior to the expiration of the Judge/Justice's current term. Failure of the Community Council to take affirmative action to non-renew the Judge/Justice's contract as provided herein shall result in an automatic appointment for an additional three (3) year term and renewal of the existing contract of employment. The compensation of any Judge/Justice shall not be reduced during his/her term of office.

**Section 306. Removal of Judges/Justice.**

The Community Council of the Cedarville Rancheria may remove any Judge or Justice of the Tribal Court during the term of his/her office only for cause based upon any of the following grounds:

1. Serious misconduct or incompetence in the performance of her/his duties as Judge/Justice.
2. Personal conduct involving moral turpitude, whether or not related to judicial duties, or conduct which brings the prestige of her/his office or that of the Tribe into public disrepute.
3. Habitual neglect of her/his duties as Judge or Justice.
4. Persistent illness or other disability which renders her/him incapable or otherwise unable to regularly perform her/his duties as Judge or Justice.

Such removal shall be by an affirmative vote of two-thirds of the Community Council of the Cedarville Rancheria at a valid meeting called for the purpose of considering such removal, provided that the subject Judge or Justice shall be given a full hearing and fair opportunity to present testimony and evidence in her/his behalf, and to cross-examine and rebut all witness and evidence considered by the Community Council in support of removal. The subject Judge or justice shall be given not less than twenty (20) days written notice in advance of the hearing, which notice shall include an itemization of the charges or grounds for removal which are to be considered. Such notice shall be served by registered or certified mail, or delivered personally to her/him by a party duly authorized by the Community Council of the Cedarville Rancheria.

**Section 307. Conflicts of Interest.**

No Judge or Appellate Justice shall officiate in any proceedings in which her/his impartiality might reasonably be questioned, in which she/he has any personal bias or prejudice concerning any party, she/he has any personal knowledge of any disputed evidentiary facts, she/he has any personal interest, or in which any party, witness or counsel is related to her/him by blood, adoption or marriage, within the third degree, or in which any party, witness or counsel stands in relationship to the Judge or Appellate Justice as a current ward, attorney, client, employer, employee, landlord, tenant, business associate, creditor or debtor.

Prior relationship of the sort listed above may constitute a conflict of interest, and parties may raise the issue. The Judge or Appellate Justice may or may not grant the motion for a conflict for

prior relationships. For this purpose; however, the service of Judge or Appellate Justice for the Rancheria shall not disqualify the Judge or Appellate Justice by virtue of said employment by the Rancheria.

Any party may bring a motion for disqualification of a judge or appellate justice on the grounds set forth herein or on the grounds of personal bias or prejudice towards any party to the proceeding. A motion for disqualification shall be supported by an affidavit of the party bringing the motion setting forth the grounds therefore. If the judge grants the motion she/he shall appoint another judge to preside over the case. If the judge denies the motion, she/he shall do so by written order setting forth the reasons for denial.

A conflict of interest may be waived if all parties have entered a waiver, in writing, to the conflict of interest, and agreed to proceed before the Judge or Appellate Justice, irrespective of the conflict of interest.

#### Section 308. Oath of Office.

Prior to assuming any judicial office of the Tribal Court, the appointee shall take the following oath:

I swear (or affirm) that I will support and defend the Constitution and By-Laws of the Cedarville Rancheria, and the laws of the Cedarville Rancheria, that I will faithfully and diligently perform the duties of (Chief Judge, Associate Judge, Deputy Judge, Appellate Judge, as applicable) of the Tribal Court, to the utmost of my ability, with impartiality and without improper favor, to the end that justice may be fully served.

The Chief Judge and Associate Judge shall take the prescribed oath before the Chairperson of the Cedarville Rancheria. Deputy Judges and Justices may take the prescribed oath by affidavit, before the Chief Judge, or before any member of the Executive Committee of the Cedarville Rancheria.

### **PART IV: COURT ADMINISTRATOR**

#### Section 401. Appointment.

The Court Administrator shall be Cedarville Rancheria's Tribal Administrator. The Court Administrator may appoint such clerks and assistants that may be needed for operation of the court. Any person serving as the clerk or as an assistant may be discharged from that position.

Wherever the formal designation "Clerk" or "Clerk of Court" appears in this Code, such designation shall also refer to the Court Administrator. The terms Clerk of Court and Court Administrator shall be interchangeable.

#### Section 402. Duties.

The Court Administrator shall be responsible for the administration of the Tribal Court, and for such other administrative and ministerial duties as may be prescribed by this Code or assigned to her/him by the Community Council of the Cedarville Rancheria or the Chief Judge. The duties of the Court Administrator shall include but shall not be limited to the following:

1. Maintaining records of all court proceedings to include identification of the title and nature of all cases; the name of the judge; the names and addresses of the parties, attorneys, lay advocates and witnesses; the substance of the complaints; the dates of hearings and trials; all hearings and trials; all court rulings and decisions, findings, orders and judgments; the preservation of testimony for perpetual memory by electronic recording, or otherwise; and any other facts or circumstances decided by the judges or deemed of importance by the Court Administrator. Unless specifically excepted by this Code, the records of the Court shall be sealed.
2. Maintaining all pleadings, documents and other materials filed with the Court.
3. Maintaining all evidentiary materials, transcripts and records of testimony filed with the court.
4. Collecting and accounting for fines, fees and other monies and properties taken into custody by the Tribal Court, and transmitting them to the accounting department by the Tribe. Funds received from the office of the Court Administrator by the accounting department shall be designated as Tribal Court funds and shall be used only for expenses incurred by the Tribal Court, or for training of Cedarville Rancheria police officers, at the discretion of the Court Administrator with the approval of the Chief Judge.
5. Preparation of and service of notices, summons, subpoenas, warrants, rulings, findings, opinions and orders as prescribed by this Code and as may be designated by the Judges of the Court.
6. Assisting persons in the drafting and execution of complaints, petitions, answers, motions and other pleadings and documents for Tribal Court proceedings; provided, however, the Clerk and her/his assistants shall not give advice on questions of law, nor shall they appear or act on behalf of any person in any Tribal Court proceedings.
7. Administering oaths and witnessing execution of documents.
8. Maintaining a supply of blank forms to the prescribed by the Tribal Court for use by all persons having business before the Tribal Court.
9. Other duties necessary to ensure the effective operations of the Tribal Court.

#### **PART V: COUNSEL**

Section 501. Legal Representation.

Any person who is a party in any trial or other proceedings before the court may represent himself or herself, or be represented by lay counsel, or a professional attorney, who is licensed to practice law before the Tribal Court.

Section 502. Licensing of Professional Attorneys.

Professional attorneys may appear on behalf of any party in any proceedings before the Tribal Court, provided they are licensed to practice. A license to practice may be issued by the Tribal court upon compliance with the following:

1. Filing with the Court Administrator an affidavit attesting that the applicant is licensed to practice law before the highest court of any state. A photocopy of said license shall be submitted with the affidavit.
2. Filing an affidavit that the applicant has studied and is familiar with the Constitution and By-Laws of the Cedarville Rancheria, the Cedarville Rancheria, this Code, all other ordinances or codes of the Tribe, Title 25 of the United States Code and Title 25 of the Code of Federal Regulations.
3. Paying an annual license fee of one hundred dollars (\$100). The annual license fee may be reduced to twenty-five dollars (\$25) in the discretion of the Chief Judge for any attorney who is employed by a not-for-profit legal services program or otherwise seeks to represent clients on a pro-bono or reduced fee basis. The annual license fee shall be waived for any attorney employed by the Cedarville Rancheria.
4. Taking the following oath before the Court Administrator or the Chief Judge, by affidavit or in person:

"I do solemnly swear (or affirm) that I will support the Constitution and By-Laws of the Cedarville Rancheria;

I will maintain the respect due to the Tribal Court and its judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly valid or debatable under the law; I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and I will never seek to mislead any judge or jury by any artifice, or by false statement or misrepresentation of fact or law;

I will employ in the conduct of my duties the highest degree of ethics and moral standards with which my profession is charged, and I will be guided at all times by the quest for truth in justice;

In the conduct of my duties as an attorney, I will not impugn the morals,

character, honesty, good faith, or competence of any person, nor advance any fact prejudicial to the honor or reputation of any person, unless required by the justice of the cause with which I am charged."

**Section 503. Licensing of Advocates.**

A member of the Tribe or a member of another Indian Tribe may be licensed to practice in the Tribal Court. To qualify for licensure as an advocate, the applicant must be at least twenty-one (21) years old; of good moral character; have never been convicted of a felony and not had her/his civil rights restored; have never been convicted of a crime against the Tribe or any other Indian tribe; and must be familiar with the Constitution and By-Laws of the Cedarville Rancheria; and the codes, statutes, ordinances of the Cedarville Rancheria.

No fee shall be assessed for licensing as an advocate.

An applicant seeking licensure as an advocate shall subscribe to the oath set forth in Section 2 for professional attorneys, substituting the term "advocate" for "attorney" therein.

**Section 504. Revocation or Suspension of License.**

A license issued pursuant to this Part V may be revoked or suspended by the Tribal Court. Such action may be taken on its own motion or upon sworn complaint by any member of the Cedarville Rancheria or on motion of the Court. Revocation or suspension shall be ordered only after written notice to the licensee of the motion or complaint and after a hearing before all judges of the Court unless a conflict of interest prohibits such participation. Following a hearing, the court may revoke or suspend the license upon a finding that the licensee has been disbarred or suspended from the practice of law by any court of the United States, any state, or a tribal court or has filed a false affidavit to obtain her/his license, or has violated her/his oath, or has engaged in misconduct or unethical behavior in the performance of her/his duties as an attorney or lay advocate or has been found in contempt of court by the Tribal Court.

**Section 505. Implied Consent to Jurisdiction of the Court.**

Any person who submits an application for licensure as a professional attorney under this Code gives implied consent to the assertion of jurisdiction of the Court over her/him for all purposes relating to her/his practice of law before the Court, whether or not, the Court would otherwise have such jurisdiction.

**PART VI: CONTEMPT OF COURT**

**Section 601. Definition.**

Willful behavior by any person which disrupts, obstructs, or otherwise interferes with the conduct of any proceeding by the Court, which obstructs or interferes with the administration of justice, or which constitutes disobedience or resistance to or interference with any lawful summons, subpoena, process, order, rule, decree or command of the Tribal Court shall constitute

contempt. The willful failure of a party to comply with the terms of a judgment directed against her/him, with which she/he is able to comply, shall be contempt of court which shall be punished in the manner prescribed by this Code.

**Section 602. Contempt in Presence of Court.**

When contempt of court is committed in the presence of a Tribal Judge, it may be punished summarily by that judge. In such case, an order shall then be made reciting the facts constituting the contempt, adjudging the person guilty of contempt, and prescribing the punishment therefore in accordance with Section 604 of this Part. Failure to appear in response to any citation of an enforcement officer of the Tribe on any matter, or to a subpoena, summons, order or other notice, duly issued by the Court, shall constitute contempt in the presence of the court and may be summarily punished by the court without further notice.

**Section 603. Contempt Outside Presence of Court.**

When it appears to the Court that a contempt may have been committed out of the presence of the Court, it may issue a summons to the person so charged directing her/him to appear at a time and place designated for a hearing and show cause why she/he should not be held in contempt. If such person served with the summons fails to appear at the time and place so designated, the Tribal Court shall conduct a hearing, and if it finds her/him guilty of contempt, an order shall then be made reciting the facts constituting the contempt, adjudging the person guilty of contempt, and prescribing the punishment therefore in accord with Section 604 of this Part VI.

**Section 604. Punishment for Contempt.**

Any person found in contempt of court shall be subject to a fine not to exceed five hundred dollars (\$500) and/or imprisonment not to exceed ninety (90) days, as may be determined by a judge of the court. The person charged or found in contempt shall be notified of the finding of the Court and the prescribed punishment by any means permitted in this Code for service of process and the penalty may be enforced by the means provided in this section or for the execution and enforcement of judgments as provided in Title 2 of this Code.

If the Court determines to impose a penalty of imprisonment, it is authorized to issue a warrant commanding a law enforcement officer of the Cedarville Rancheria to arrest the person and detain her/him pending a hearing before the Tribal Court. The warrant issued shall provide for release on case bail in an amount set by the Court not to exceed the amount of fines or restitution for any underlying offense(s) together with the contempt penalty which has been or could be imposed.

**PART VII: GENERAL COURT PROCEDURES**

**Section 701. Assignment of Cases.**

The Chief Judge shall be responsible for assignment of cases and other matters for determination or disposition to the respective judges or justices of the Court.

**Section 702. Court Rules and Procedures.**

The Chief Judge of the Court may promulgate rules of procedures for the conduct of its proceedings which are not inconsistent with this Code or other governing and applicable law. Tribal Court proceedings shall be conducted in accordance with the Federal Rules of Civil Procedure and Rules of Evidence.

The Chief Judge shall rule on all matters of law and motion, discovery, and issue minute orders and all other Court documents, unless delegated to a Special Judge or Special Master.

**Section 703. Sessions of Court.**

The Tribal court may hold such sessions of court as deemed necessary, commencing at such time as designated by the Court Administrator in consultation with presiding judges for a particular case. Special sessions of the Tribal Court may be called by the Chief Judge at any time, or, in her/his presence by an Associate/Special Judge. Judges may conduct trials or other proceedings for individual cases assigned to them at such times as they may designate, and such trials or proceedings may be recessed and reconvened from time to time until they are completed.

**Section 704. Filing Timelines.**

All personal injury or property damage cases shall be filed within one-hundred and eighty (180) days of the alleged injury, occurrence, action or nonfeasance, unless the cause of action is subject to an alternate timeline enumerated in a document executed by the Tribe's Community Council or its authorized representative. Contract cases shall be filed according to appropriate tribal, federal or state timelines. The Court may extend a timeline in the interest of justice.

**Section 705. Time for Hearing.**

All cases shall be heard within one-hundred and eighty (180) days of the filing date, unless the Court finds, after proper inquiry, and presentation of evidence, justice demands a reasonable extension of time.

**Section 706. Jury Trials.**

All cases before the Tribal Court shall be tried to a judge sitting without a jury, unless a jury trial is otherwise required by applicable law.

**Section 707. Awards.**

At the conclusion of hearing, the Court shall issue a written opinion within ninety (90) days.

If an award is favorable to the Claimant against the Rancheria against the Rancheria, the Rancheria's insurer shall pay the award, if applicable, within ninety (90) days of the publication of the Court's opinion.

Section 708. Limitation on Awards.

- A. All awards are limited to the Rancheria or tribal entities policy limits under their policy of insurance.
- B. Tribal funds or property shall not be subject to any award, encumbrance or liquidation.
- C. The Court shall not issue an award for attorneys or expert witness fees or exemplary or punitive damages.
- D. The Court shall not issue an award based on any theory of strict products liability or strict liability.
- E. The Court shall not issue an award as against the Rancheria or a tribal defendant caused by the negligence of a non-tribal third party.
- F. The Court shall not issue an award based on alleged conduct outside the scope of official conduct, illegal conduct or conduct criminal in nature.
- G. No award shall include damages which are the result of the acts or inactions of a non-tribal third party.

Section 709. Confidentiality.

All Tribal Court matters shall remain confidential. All pleadings, documents, depositions, etc., shall remain confidential and shall not be used outside the jurisdiction of the Rancheria unless a request for a release of said court documents is presented by a majority of the Rancheria's Community Council. Upon presentation of a request for release, any release shall be made by Court order and subject to any limitations deemed necessary by the Court.

Prior to the release of Court awarded funds, the Court shall approve a "release" executed by the prevailing party, restating the requirement of confidentiality, unless the Court has previously authorized the release of the opinion, award, etc.

Section 710. Court Immunity from Suit.

This Court shall be immune from suit, unless the Rancheria's sovereign immunity is clearly, expressly and properly waived by the Community Council. Nothing in the Code shall be construed as consent of the Court to be sued or authorizes the Court to waive the Rancheria's immunity.

Section 711. Means to Carry Jurisdiction Into Effect.

Where jurisdiction over any matter is vested in the Tribal court, all the means necessary to carry such jurisdiction into effect are also included; and in the exercise of its jurisdiction, if the means

are not specified in this Code or the rules promulgated by the Court, the Court may adopt any suitable process or mode of processing which appears to the Court to be fair and just and most consistent with the spirit of tribal law.

Section 712. Law Applicable in Civil Actions.

- A. In all civil actions, the Court shall first apply such written laws of the Rancheria which have been enacted by the Cedarville Rancheria Community Council.
- B. Where there are no superseding written laws the Court shall apply tribal customary and traditional law if such exists. Tribal customary or traditional law shall mean those traditional values and practices of the Cedarville Rancheria handed down, through the generations, either orally or through writing. In the event, any doubt arises as to the customs and usages of the Tribe, the Court may request the advice and assistance of elders who are knowledgeable about such matters.
- C. Where an issue arises in an action which is not addressed by written laws or custom and traditional law, the court may apply the laws of any tribe, the federal government, or any state. Application of such law shall not be deemed an adoption of such law or deference to the jurisdiction from which that law originates.

Section 713. Bureau of Indian Affairs Relations.

No employee of the Bureau of Indian Affairs, or the Department of Interior shall obstruct, interfere with, or control the function of the court, nor shall she/he seek to influence such functions in any manner.

**EXHIBIT “D”**

Office Use Only: Date of Application: \_\_\_\_\_  
Date of Admission to  
Practice before the CRTC: \_\_\_\_\_

APPLICATION FOR ADMISSION TO PRACTICE LAW  
BEFORE THE CEDARVILLE RANCHERIA TRIBAL COURT

I. BASIC INFORMATION:

Full Name: \_\_\_\_\_ DOB: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Fax Number: \_\_\_\_\_ Cellular Phone: \_\_\_\_\_

State/federal License Number: \_\_\_\_\_

Date admitted to state/federal bar: \_\_\_\_\_

States where admitted to practice: \_\_\_\_\_

Present Employment: \_\_\_\_\_

II. EDUCATION:

Name of Institution	Location	Date Admitted	Degree Earned

III. INFORMATION:

A. Have you, the applicant, ever been convicted of a felony in any federal or state court of competent jurisdiction? \_\_\_\_\_ If yes, please explain where, when and the circumstances.

\_\_\_\_\_

\_\_\_\_\_

B. Are you, the applicant, a member of the Cedarville Rancheria? \_\_\_\_\_

C. Are you, the applicant, an enrolled member of a federally recognized tribe? \_\_\_\_\_

If yes, please state the name of your tribe. \_\_\_\_\_

Enrollment Number (Please provide copy): \_\_\_\_\_

D. Are you, the applicant, an employee of the United States or the State of California? \_\_\_\_\_

E. Are you, the applicant, willing to accept court appointment on a pro bono basis? \_\_\_\_\_

F. Are you, the applicant, applying to practice as a lay advocate? \_\_\_\_\_ If yes, please list your qualifications for the practice of law in tribal court. \_\_\_\_\_

G. Do you, the applicant, speak the Paiute language? \_\_\_\_\_ Do you, the applicant, read and/or write the Paiute language? \_\_\_\_\_ Briefly describe your knowledge of the Paiute language. \_\_\_\_\_

H. Describe your knowledge of the Constitution, By-Laws, Codes, Ordinances and Policies of the Cedarville Rancheria. \_\_\_\_\_

I. Briefly describe your knowledge and experience of Title 25 of the United States Code and Title 25 of the Code of Federal Regulations. \_\_\_\_\_

J. Briefly describe your knowledge of 18 U.S.C. 1162 and 28 U.S.C. 1360 to Public Law 280, and the application to the Indian tribes and their individual Rancheria members. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IV. CERTIFICATION:

I, \_\_\_\_\_, hereby consent to represent defendants in cases assigned by the Cedarville Rancheria Tribal Court. Additionally, I consent to perform legal services in the public interest of the Cedarville Rancheria upon request by the Court and will comply with all laws of the Cedarville Rancheria Tribal Court and all judicial orders and rules of the Court. I certify that all information in this application is true and correct to the best of my knowledge.

Date: \_\_\_\_\_ Signature of Applicant

Received by Clerk of Court on \_\_\_\_\_ Initialized: \_\_\_\_\_

Office Use Only: Fee Paid: \_\_\_\_\_ Amount: \_\_\_\_\_ Date Paid: \_\_\_\_\_

**EXHIBIT “E”**

1 Wayne H. Maire, State Bar No. 88850  
2 Patrick L. Deedon, State Bar No. 245490  
3 Collin M. Bogener, State Bar No. 272560  
4 **MAIRE BURGESS & DEEDON**  
5 Post Office Drawer 994607  
6 Redding, CA 96099-4607  
7 (530) 246-6050 / 246-6060 (fax)

8 Attorney(s) for Defendant,  
9 DUANNA KNIGHTON

10 **CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS**

11 **TRIBAL COURT**

12 CEDARVILLE RANCHERIA OF  
13 NORTHERN PAIUTE INDIANS,

14 Plaintiff, CASE NO.: CED-CI-2014-00002

15 vs. **NOTICE OF MOTION AND MOTION**  
16 **TO DISMISS PLAINTIFF'S**  
17 **COMPLAINT UNDER RULE 12(b)(2)**

18 DUANNA KNIGHTON; RESOURCES FOR DATE : December 2, 2014  
19 INDIAN STUDENT EDUCATION, INC. TIME : TBD

20 (R.I.S.E.); OPPENHEIMER FUNDS, INC.,  
21 and DOES 1-10, inclusive,

22 Defendants.

23 **TO PLAINTIFF AND THEIR COUNSEL OF RECORD:**

24 **PLEASE TAKE NOTICE THAT ON** December 2, 2014 at a time TBD in the Cedarville  
25 Rancheria Tribal Court located in Alturas, California, Defendant, Duanna Knighton (hereinafter  
26 "Knighton"), will and hereby does move to dismiss, with prejudice, Plaintiff Cedarville Rancheria  
27 of Northern Paiute Indians' Complaint, which was filed on October 2, 2014 in the above named  
28 Court. Knighton brings this motion pursuant to Rule 12(b)(2) of the Federal Rules of Civil

1 Procedure. This motion is based on this notice of motion and motion, the following memorandum  
2 of points and authorities, the pleadings on file in this matter, the reply memorandum Defendant  
3 intends to file, and any further argument the Court may allow.

4

5 Dated: October 27, 2014

6

7

8

9

10

11

MAIRE BURGESS & DEEDON



WAYNE H. MAIRE  
PATRICK L. DEEDON  
COLLIN M. BOGENER  
Attorney(s) for Defendant,  
DUANNA KNIGHTON

12

13

14

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27

28

1 Re: *Cedarville Rancheria of Northern Paiute Indians v. Knighton, et al. (#6204)*  
2 Tribal Court Case No. CED-CI-2014-00002

3 **PROOF OF SERVICE**

4 I am a citizen of the United States and employed in Shasta County, California; I am over  
5 the age of eighteen years and not a party to the within action; my business address is 2851 Park  
6 Marina Drive, Suite 300, Redding, California 96001; P.O. Drawer 994607, Redding, California  
7 96099-4607; on this date I served:

8 **NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S COMPLAINT  
9 UNDER RULE 12(b)(2)**

10  **United States Mail** - on all parties in said action by placing a true copy of the  
11 above described document(s) enclosed in a sealed envelope in the designated  
12 area for outgoing mail addressed as set forth below.

13  **Facsimile** - by personally sending to the addressee's facsimile number a true  
14 copy of the above-described document(s).

15  **Electronic Service** - by causing such document to be served electronically to  
16 the addresses listed below.

17  **Express Service** - on all parties in said action by placing a true copy of the  
18 above-described document(s) in an authorized area for pick-up by an  
19 authorized express service courier the same day it is collected and processed in  
20 the ordinary course of business as set forth below.

21  **Personal Service** - By personally delivering or causing to be delivered a true  
22 copy of the above-described document to the person(s) and at the address(es)  
23 set forth as shown below.

24  **Federal** - I declare that I am employed in the office of a member of the bar  
25 of this Court at whose discretion service was made.

26 **SEE ATTACHED MAILING LIST**

27 I declare under penalty of perjury that the foregoing is true and correct. Executed  
28 10/28/14, at Redding, California.

29 By: J. Hill  
30 T. HILL

**PROOF OF SERVICE MAILING LIST**

Jack Duran, Jr.  
DURAN LAW OFFICE  
4010 Foothills Blvd., S-103, N. 98  
Roseville, CA 95747  
Tel: (916) 779-3316 / 520-3526  
*duranlaw@yahoo.com*

**ATTORNEY FOR PLAINTIFF  
CEDARVILLE RANCHERIA OF  
NORTHERN PAJUTE INDIANS**

Richard R. Clouse  
CGG LAW  
8038 Haven Ave., Suite E  
Rancho Cucamonga, CA 91730  
Tel: (909) 483-1850 / 483-1840  
*riclouse@cgclaw.com*

*ATTORNEY FOR DEFENDANT  
R.I.S.E.*

Arthur Gabinet  
Legal Dept.  
OPPENHEIMER  
225 Liberty St.  
New York, NY 10281-1008

**GENERAL COUNSEL FOR  
DEFENDANT  
OPPENHEIMER FUNDS, INC.**

1 Wayne H. Maire, State Bar No. 88850  
2 Patrick L. Deedon, State Bar No. 245490  
3 Collin M. Bogener, State Bar No. 272560  
4 **MAIRE BURGESS & DEEDON**  
5 Post Office Drawer 994607  
6 Redding, CA 96099-4607  
7 (530) 246-6050 / 246-6060 (fax)

8 Attorney(s) for Defendant,  
9 DUANNA KNIGHTON

10 **CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS**

11 **TRIBAL COURT**

12 CEDARVILLE RANCHERIA OF  
13 NORTHERN PAIUTE INDIANS,

14 Plaintiff,

15 vs.  
16 **MEMORANDUM OF POINTS AND**  
17 **AUTHORITIES IN SUPPORT OF**  
18 **MOTION TO DISMISS PLAINTIFF'S**  
19 **COMPLAINT UNDER RULE 12(b)(2)**

20 **DATE : December 2, 2014**  
21 **TIME : TBD**

22 DUANNA KNIGHTON; RESOURCES FOR  
23 INDIAN STUDENT EDUCATION, INC.  
24 (R.I.S.E.); OPPENHEIMER FUNDS, INC.,  
25 and DOES 1-10, inclusive,

26 Defendants.

27 **I. INTRODUCTION**

28 It is respectfully submitted that, the Cedarville Rancheria Tribal Court has no personal jurisdiction over Defendant, Duanna Knighton, and she should therefore be dismissed from this matter. Her connections with the jurisdiction of the Tribal Court are not "substantial" or "continuous and systematic" in order to meet the general jurisdiction test for personal jurisdiction. Further, the Tribal Court's exercise of jurisdiction over Ms. Knighton does not comport with principles of fair play and substantial justice, as jurisdiction would not be reasonable. For this

1 reason, this Court should not exert specific jurisdiction over Ms. Knighton in order to exercise  
2 personal jurisdiction over her. Importantly, this forum presents a danger risk to all parties  
3 involved, as the last and only case to be heard in this Court resulted in a shooting that killed four  
4 individuals. Further, the new Tribal Administrator and Court Clerk, Nikki Munholand, is a  
5 witness in this matter. As this case is related to that previous case, to pursue this matter in this  
6 forum places all individuals, as well as anyone else present, at risk. For these reasons, this Court  
7 lacks personal jurisdiction over Ms. Knighton and therefore she should be dismissed from this  
action.

## II. FACTUAL BACKGROUND

9 Plaintiff, Cedarville Rancheria of Northern Paiute Indians (hereinafter "Plaintiff"), filed  
10 the current action against Defendant, Duanna Knighton (hereinafter "Knighton"), alleging various  
11 causes of action which essentially claims that Knighton was provided more compensation when  
12 her employment for Plaintiff ended than she should have received (See Plaintiff's Complaint for  
13 Damages (hereinafter "PC")). According to the PC, Knighton was an employee for Plaintiff from  
1996 to early 2013. (See ¶¶s 10 to 15 of PC).

15 Plaintiff has claimed that its Tribal Court has personal jurisdiction over Knighton. (See ¶2  
16 of PC.) Knighton has never resided on tribal land; she does not own property on tribal land; she  
17 does not operate any business on tribal land, and does not benefit from the laws of the Tribal Court.  
18 Plaintiff provides no support for how this personal jurisdiction exists other than the allegation that  
Knighton was a former tribal employee. (See ¶ 2 of PC.)

Moreover, as related in Plaintiff's complaint, on February 20, 2014, a shooting occurred during tribal court, where a former tribal chairperson, Cherie Lash Rhoades, shot and killed four tribal members. (See ¶ 23 of PC.) This was a tragedy which was reported in the media nationally. The shooter and the victims were all linked to the present dispute. The tribal court hearing which occurred that day was the first matter heard in this Tribal Court. The second matter to be heard is the present one. Further, the current clerk of the Tribal Court and Tribal Administrator was a witness to that incident and is a witness to the matters and things complained of by the Tribe.

### III. LEGAL AUTHORITY

Under Federal Rules of Procedure, Rule 12(b)(2), a complaint will be dismissed against a party if the court cannot exercise personal jurisdiction over the individual. Due process precludes a court from asserting jurisdiction over a non-resident unless he or she has sufficient "minimum contacts" with the forum state so that the exercise of jurisdiction "does not offend traditional notions or fair play and substantial justice." *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316 (1945). Under the "minimum contacts" analysis, this Court must either have general jurisdiction or specific jurisdiction over an individual in order to proceed. *Doe v. Unocal Corp.* 248 F.3d 915, 923 (9<sup>th</sup> Cir. 2001).

9 General jurisdiction is only present if the non-resident's activities in the forum state are  
10 "substantial" or "continuous and systematic." The standard for establishing general jurisdiction  
11 is "fairly high." *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1083 (9<sup>th</sup> Cir.  
12 2000). Courts have established a three-part test to determine if a plaintiff has established specific  
13 jurisdiction: (1) the non-resident defendant must perform some act by which he or she purposely  
14 avails herself of the privilege of conducting activities in the forum; (2) the claim must be one  
15 which arises out of or relates to the defendant's forum-related activities; and (3) the exercise of  
16 jurisdiction must comport with principles of fair play and substantial justice, *i.e.*, it must be  
reasonable. *Lake v. Lake*, 817 F.2d 1416, 1421 (9<sup>th</sup> Cir. 1987).

17        In order to determine the reasonableness, under the fair play and substantial justice  
18 analysis, the court must evaluate seven factors, which are: (1) the burden on the defendant; (2) the  
19 existence of the alternative forum; (3) convenient and effective relief for the plaintiff; (4) the forum  
20 state's interest in adjudicating the suit; (5) efficient resolution of the controversy; (6) purposeful  
21 interjection; and (7) conflicts with sovereignty. *Pacific Atlantic Trading Co. v. The M/V Main*  
22 *Express*, 758 F.2d 1325, 1329- 1331.

23 In effect, a plaintiff must first establish that the defendant has "minimum contacts" through  
24 either general or specific jurisdiction. Then it must be established that the jurisdiction is  
25 reasonable by analyzing the seven factors above. Plaintiff is unable to meet these requirements in  
26 the present matter.

#### IV. DISCUSSION

The Cedarville Rancheria Tribal Court (hereinafter “Tribal Court”) does not have personal jurisdiction over Knighton. Initially, Knighton’s activities are not “substantial” or “continuous and systematic” in order to meet the “high standard” of general jurisdiction. Knighton does not reside in the jurisdiction of the Tribal Court; she does not own property in the jurisdiction of the Tribal Court and therefore pays no property taxes within that area; she does not operate any business within the jurisdiction of the Tribal Court; and she currently does not benefit from the laws of the Tribal Court. Other than Knighton’s previous employment for Plaintiff, she has no contacts whatsoever within the jurisdiction of the Tribal Court, and therefore general jurisdiction is not present. The Tribal Court did not exist during Knighton’s employment with the Tribe.

10        Likewise, the Tribal Court does not have specific jurisdiction over Knighton. This is  
11      evident after an analysis of the seven factors regarding reasonableness. Knighton has never  
12      resided on Plaintiff's tribal land; Knighton has never owned property on Plaintiff's tribal land; and  
13      Knighton has not even been on Plaintiff's tribal land since 2012. In fact, during Knighton's  
14      employment for Plaintiff, she worked in an office in Alturas which was not on Plaintiff's tribal  
land.

16 Additionally, to have this matter heard in this Tribal Court presents a danger to all parties  
17 involved. The only previous case heard in this Court resulted in the death of four tribal members.  
18 The shooter in that case, as well as the victims, were all interconnected with the present matter.  
19 This case is the first case since that incident. Clearly, this is an extremely emotional matter for  
20 the individuals involved, and there is the possibility that a similar incident could occur during this  
21 litigation. The safety of the parties is the prime concern. For that reason, this matter should not  
22 be held in Tribal Court. As an additional factor, the current Court Clerk and Tribal Administrator,  
23 Nikki Munholand, is a witness to the matters and things alleged by the Tribe. Accordingly, it  
would be a conflict of interest for the Tribal Court to consider this matter.

24 A review of the factors above indicate that litigating this matter in this Court is not  
25 reasonable. The burden on the defendant is large, as she does not live, own property or otherwise  
26 benefit from the Tribal land. Federal Court presents an appropriate alternative forum, as this  
27 matter concerns an Indian Tribe, and all of Plaintiff's allegations may be properly addressed in  
28 Federal Court. The Tribal Court is surely concerned regarding the danger present as a result of

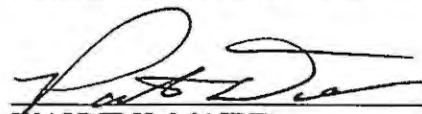
1 the shooting that occurred during the last court case and the inherent conflict present with Ms.  
2 Munholand. Knighton has not purposefully interjected herself into the forum. Lastly, Plaintiff  
3 may assert that moving this matter to Federal Court may affect sovereignty, but as stated above,  
4 in interests of safety and fair play and substantial justice, Federal Court is suited to hear this matter.  
5 Overall, these factors strongly weigh in favor of Knighton, in that it would not be appropriate to  
6 hear the dispute in this Tribal Court.

7 **V. CONCLUSION**

8 With all due respect, this Tribal Court does not have general or specific jurisdiction over  
9 Knighton which is required in order for this Court to have personal jurisdiction over her in this  
10 dispute. Knighton does not live, work, own property, operate a business or otherwise benefit from  
11 the Tribal land in order for the Tribal Court to have jurisdiction over her. Further, the last matter  
12 in front of this Court resulted in a shooting claiming the lives of four individuals. The shooter and  
13 victims were all linked to the current matter, making a similar incident possible, placing all parties  
14 in danger should this Court remain the forum. Additionally, an inherent conflict exists as one of  
15 the prime witnesses in this matter is Nikki Munholand, whom is also the Tribal Administrator and  
16 Clerk of the Tribal Court. For these reasons, as outlined above, Knighton respectfully requests  
17 that this Court dismiss her from this action due to lack of personal jurisdiction.

18 Dated: October 28, 2014

19 MAIRE BURGESS & DEEDON

20   
21 WAYNE H. MAIRE  
22 PATRICK L. DEEDON  
23 COLLIN M. BOGENER  
24 Attorney(s) for Defendant,  
25 DUANNA KNIGHTON

1 Re: *Cedarville Rancheria of Northern Paiute Indians v. Knighton, et al. (#6204)*  
2 Tribal Court Case No. CED-CI-2014-00002

3 **PROOF OF SERVICE**

4 I am a citizen of the United States and employed in Shasta County, California; I am over  
5 the age of eighteen years and not a party to the within action; my business address is 2851 Park  
6 Marina Drive, Suite 300, Redding, California 96001; P.O. Drawer 994607, Redding, California  
7 96099-4607; on this date I served:

8 **MEMORANDUM OF POINTS AND AUTHORITIES IN  
9 SUPPORT OF MOTION TO DISMISS PLAINTIFF'S COMPLAINT  
10 UNDER RULE 12(b)(2)**

11  **United States Mail** - on all parties in said action by placing a true copy of the  
12 above described document(s) enclosed in a sealed envelope in the designated  
13 area for outgoing mail addressed as set forth below.

14  **Facsimile** - by personally sending to the addressee's facsimile number a true  
15 copy of the above-described document(s).

16  **Electronic Service** - by causing such document to be served electronically to  
17 the addresses listed below.

18  **Express Service** - on all parties in said action by placing a true copy of the  
19 above-described document(s) in an authorized area for pick-up by an  
20 authorized express service courier the same day it is collected and processed in  
21 the ordinary course of business as set forth below.

22  **Personal Service** - By personally delivering or causing to be delivered a true  
23 copy of the above-described document to the person(s) and at the address(es)  
24 set forth as shown below.

25  **Federal** - I declare that I am employed in the office of a member of the bar  
26 of this Court at whose discretion service was made.

27 **SEE ATTACHED MAILING LIST**

28 I declare under penalty of perjury that the foregoing is true and correct. Executed  
29 10/28/14, at Redding, California.

30 By: T. Hill  
31 T. HILL

**PROOF OF SERVICE MAILING LIST**

Jack Duran, Jr.  
DURAN LAW OFFICE  
4010 Foothills Blvd., S-103, N. 98  
Roseville, CA 95747  
Tel: (916) 779-3316 / 520-3526  
[duranlaw@yahoo.com](mailto:duranlaw@yahoo.com)

**ATTORNEY FOR PLAINTIFF  
CEDARVILLE RANCHERIA OF  
NORTHERN PAJUTE INDIANS**

Richard R. Clouse  
CGG LAW  
8038 Haven Ave., Suite E  
Rancho Cucamonga, CA 91730  
Tel: (909) 483-1850 / 483-1840  
[riclouse@cgclaw.com](mailto:riclouse@cgclaw.com)

**ATTORNEY FOR DEFENDANT  
R.I.S.E.**

Arthur Gabinet  
Legal Dept.  
OPPENHEIMER  
225 Liberty St.  
New York, NY 10281-1008

**GENERAL COUNSEL FOR  
DEFENDANT  
OPPENHEIMER FUNDS, INC.**

**EXHIBIT “F”**

**Anthony Ferguson**

---

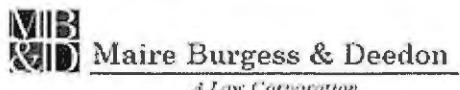
**From:** Patrick Deedon [pdeedon@maire-law.com]  
**Sent:** Friday, October 31, 2014 8:49 AM  
**To:** Rich Clouse; Anthony Ferguson  
**Cc:** Terri Hill; Tonya Geers; Wayne Maire  
**Subject:** FW: Assistant Court Clerk  
**Attachments:** P&A.docx

I suspect Ms. Munholand was replaced because of the motion we filed. We indicated that she was a witness, thus had a conflict of interest. I'm attaching our P&As.

Regards,

**Patrick L. Deedon**

Attorney At Law



2851 Park Marina Drive, Suite 300  
Redding, California 96001  
(530) 246-6050  
(530) 246-6060 [fax]  
[pdeedon@maire-law.com](mailto:pdeedon@maire-law.com)  
[www.maire-law.com](http://www.maire-law.com)

**From:** Lisa Murray [<mailto:cr.lisamurray@gmail.com>]  
**Sent:** Thursday, October 30, 2014 12:53 PM  
**To:** Jack Duran; [riclouse@cgclaw.com](mailto:riclouse@cgclaw.com); Patrick Deedon; Tonya Geers  
**Cc:** Nikki Munholand; Patricia Lenzi  
**Subject:** Fwd: Assistant Court Clerk

To the Honorable Patricia R. Lenzi and all parties in **Cedarville Rancheria v. Knighton, R.I.S.E and does 1 to 10**, CED-CI-2014-0002

Please be advised that Assistant Court Clerk Lisa Murray will be acting as the sole Court Clerk for this matter from this date forward. Lisa Murray will be handling all calls, filings and correspondence related to the above-captioned case. Do not send any materials related to this case to Court Clerk Nikki Munholand.

You can reach Assistant Court Clerk Lisa Murray as follows:

Lisa Murray  
Assistant Court Clerk, Cedarville Rancheria Tribal Court  
300 West 1st Street  
Alturas, CA 96101  
[530-233-3969](tel:530-233-3969)  
[cr.lisamurray@gmail.com](mailto:cr.lisamurray@gmail.com)

Thank you for your cooperation

Signed,

*Lisa Murray*

Assistant Court Clerk

## PROOF OF SERVICE

STATE OF CALIFORNIA -- COUNTY OF SAN BERNARDINO

I am employed in the County of San Bernardino, State of California. I am over the age of 18 and not a party to the within action; my business address is 8038 Haven Avenue, Suite E, Rancho Cucamonga, CA 91730.

On November 19, 2014, I served the foregoing document described as **MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR PRELIMINARY INJUNCTION AND OTHER EQUITABLE RELIEF (Expedited Consideration Requested)** on the interested parties in this action as follows:

14 **BY MAIL (C.C.P. § 1013(a)):** By placing the document listed above in a sealed envelope addressed to the parties set forth on the attached Service List. I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Rancho Cucamonga, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

11 **BY OVERNIGHT MAIL (C.C.P. § 1013(c)): By FEDERAL EXPRESS,**  
following ordinary business practices for collection and processing of  
correspondence with said overnight mail service, the document listed above was  
placed in a sealed envelope addressed to the parties set forth on the attached  
Service List, and delivered to an authorized courier or driver authorized by the  
express service carrier, with delivery fees fully prepaid or provided for.

11 **BY FAX TRANSMISSION (C.C.P. § 1013(e); C.R.C. 2.306):** The document listed above was transmitted from fax number (909) 483-1840 to a fax machine maintained by the person on whom the document is served at the fax telephone number set forth on the attached Service List, on this date before 5:00 p.m., and a record of the transmission caused to be printed showing the date and time of the transmission, and that the transmission was reported as complete and without error.

11 **BY ELECTRONIC SERVICE (C.C.P. § 1010.6(a)(6); C.R.C. 2.260):** The document listed above was served electronically by e-mailed PDF files to the parties listed on the attached Service List. The transmission was reported as complete and without error. My electronic notification address is [gaycrosswhite@cgclaw.com](mailto:gaycrosswhite@cgclaw.com).

11 (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. (C.C.P. § 2015.5)

N/ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 19, 2014, at Rancho Cucamonga, California.

Gay Lyn Crosswhite  
GAY LYN CROSSWHITE

CHIGOYENETCHE, GROSSBERG & CLOUSE

**SERVICE LIST**

1  
2  
3 Jack Duran, Jr.  
4 Duran Law Office  
5 4010 Foothill Boulevard, S-103, N.98  
6 Roseville, CA 95747  
7 (916) 779-3316  
8 (916) 520-3526  
9  
10  
11  
12  
13  
14  
15  
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[duranlaw@yahoo.com](mailto:duranlaw@yahoo.com)