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NORTHERN PAIUTE INDIANS

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

RESOURCES FOR INDIAN STUDENT EDUCATION, INC (RISE),

Plaintiff,

v.

CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS; CEDARVILLE RANCHERIA TRIBAL COURT; PATRICIA R. LENZI,

Defendants.

Case No. 2:14-cv-02543-JAM-CMK

MEMORANDUM OF POINTS AND AUTHORITIED IN SUPPORT OF DEFENDANT CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS' MOTION TO DISMISS COMPLAINT

[Fed. R. Civ. P. 12(b)(1), (6)]

Date: January 28, 2015
Time: 9:30 a.m.
Courtroom: 6

Judge: The Honorable John A. Mendez

I. INTRODUCTION

The Cedarville Rancheria of Northern Paiute Indians ("Tribe") respectfully moves this Court to dismiss Plaintiff's Complaint. The grounds for dismissal are: (1) the doctrine of sovereign immunity shields Defendant Tribe from this Court's jurisdiction; (2) Plaintiff has failed to exhaust its administrative remedies; (3) Plaintiff's claims are not ripe for adjudication since it has not exhausted its administrative remedies; and (4) the Complaint fails to state a claim for which relief can be granted.

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II. FACTUAL BACKGROUND

The Cedarville Rancheria of Northern Paiute Indians is a federally recognized Indian Tribe with reservation lands within Modoc County California. On October 2, 2014, the Tribe, through counsel, filed suit against several defendants, including the Plaintiff here -- Resources for Indian Student Education, Inc. (RISE). The claims relate to RISE's consensual relationship with the Tribe. Chief among these claims was that a 2009 negotiation and purchase of the Tribe's administrative office, located at 300 W 1st Street, Alturas, California, owned by RISE prior to the sale, was rife with *conflicts of interest* resulting in the Tribe's overpayment for the building. (*See* Tribe's Complaint attached to declaration of Jack Duran, ¶ 4, as Ex. 1.) An additional claim against RISE relates to RISE's refusal to return more than $29,000 in tribal funds RISE held on behalf of the Tribe's former Administrator, Duanna Knighton, who also happens to be in the employ of and is an officer of RISE. These funds were wrongfully obtained by Knighton, in violation of Tribal policy. (*Id*.)

Along with the filing of the Tribe's complaint in the Tribal Court, the Tribe also requested a Temporary Restraining Order as to RISE, among others. The Tribe requested the TRO against RISE simply to maintain the "status quo," and to prevent Ms. Knighton from accessing and transferring or disposing of funds she alleged wrongfully procured. (*See* Request for Ex Parte TRO attached to declaration of Jack Duran, ¶ 4, as Ex. 2). The Tribal Court granted the TRO on October 4, 2014, which lasted until October 24, 2014, when the Court ordered the TRO to be vacated as to Defendants Knighton and RISE. (*See* attached Tribal Court Order, attached to declaration of Jack Duran, ¶ 4, as Ex. 3).

Prior to RISE's filing of its Complaint, on October 23, 2014, the Tribe's attorney received correspondence from RISE Counsel, Richard Clouse. Mr. Clouse's correspondence detailed RISE's jurisdictional concerns and its intent to seek relief in this Court. The Tribe's attorney responded to Mr. Clouse, specifically stating that a federal court filing was premature and that federal courts require tribal courts to determine their jurisdiction as a matter of administrative exhaustion and comity. The Tribe's attorney provided legal authority for its position. The Tribe's attorney also warned RISE's counsel that the Tribe would seek reimbursement of fees and costs to defend against

any premature filing in federal court. (See Declaration of Jack Duran, ¶¶ 2-3, exhibits attached thereto.)

On October 30, 2014, RISE filed the instant action naming the Tribe, Tribal Court and Tribal Court Chief Judge, Patricia Lenzi, as defendants. After RISE filed its complaint in this Court, on November 24, 2014, this Court denied Plaintiff's request for a TRO. On December 1, 2014, the Tribe's counsel sent via email, another request for Plaintiff's counsel, Mr. Clouse, to dismiss the premature complaint. Plaintiff's counsel did not respond to the request at the time of the filing of this motion. (*See* Ex. 4, Electronic Mail to R. Clouse, dated December 1, 2014 attached to declaration of Jack Duran, ¶ 4).

III. ARGUMENT

A. Sovereign Immunity Shields Defendant Tribe from Suit.

1. Standard for Rule 12(b)(1) motions.

In ruling on a Federal Rule of Civil Procedure 12(b)(1) motion to dismiss for lack of subject matter jurisdiction, a federal court must find that the pleadings show, "affirmatively and distinctly, the existence of whatever is essential to federal jurisdiction, and if he does not do so, the court on having the defect called to its attention . . . must dismiss the case, unless the defect can be corrected." *Tosco Corp. v. Cmtys. for a Better Env't*, 236 F.3d 495, 499 (9th Cir. 2001).

2. Sovereign Immunity Prevents this Court from Assuming Jurisdiction Over Defendant Tribe.

Federal courts have long recognized that Indian Tribes possess the sovereign immunity from suit traditionally enjoyed by sovereign powers. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978). This immunity applies to all federal suits for damages, declaratory relief, and injunctive relief unless there is an express tribal waiver or congressional abrogation. *Id*. at 58-59. *See Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269, 1271 (9th Cir. 1991). The doctrine's ambit covers tribal officials and employees acting within the scope of their authority. *See Fletcher v. United States*, 116 F.3d 1315, 1324 (10th Cir. 1997); *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476, 479 (9th Cir. 1985); *Romanella v. Hayward*, 933 F.Supp. 163, 167 (Conn. 1996).

The January 29, 2014 Federal Register of Lists of Federally Recognized Tribes and supports the Tribe's claim to federal recognition. (*See* Exhibit 5, List of Federally recognized Indian Tribes, Federal Register, attached to declaration of Jack Duran, ¶ 4). Hence, as a recognized Indian Tribe, Defendant Tribe is entitled to sovereign immunity against unconsented civil suit, including the instant action seeking declaratory and injunctive relief. Defendant Tribe does not contest to suit. Defendant Tribe has not waived its sovereign immunity. Congress has not abrogated Defendant Tribe's sovereign immunity in this matter. The Complaint against Defendant Tribe should be dismissed.

3. Plaintiff's Complaint Should be Dismissed Under the Ripeness Doctrine.

Ripeness is designed to prevent a federal court from prematurely adjudicating matters by asking it to conduct a preliminary evaluation of: (1) the fitness of the issues for review, and (2) the hardship to the parties of withholding consideration. *National Park Hospitality Ass'n v. Department of the Interior*, 538 U.S. 802, 807-08 (2003).

Here, federal court intervention into this matter is not proper since Plaintiff RISE, having been served a complaint in tribal court, has not challenged jurisdiction in the tribal court prior to seeking federal relief here. Plaintiff is required challenge jurisdiction in the tribal court first and has not done so. Plaintiff has not filed any document with the tribal court, or made an appearance -- special or otherwise -- that could be deemed a challenge to the tribal court's jurisdiction. Although Plaintiff's counsel provided a correspondence to the Tribe's counsel that RISE was taking a "field trip" to the federal court, RISE never challenged tribal court jurisdiction before embarking on the instant "field trip." (*See* Correspondence (Exhibits A, B, 4) to RISE Counsel R. Clouse attached to Declaration of attorney Jack Duran, ¶¶ 2, 4.)

As such Plaintiff's premature complaint should be dismissed.

B. The Complaint Fails to State a Claim as Well and Should be Dismissed.

1. Standard for Rule for 12(b)(6) Motions.

Dismissal under Federal Rule of Civil Procedure 12(b)(6) is proper where there is a "lack of cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory." *Balisteri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). The Court may

properly dismiss the case where "plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

2. Plaintiff Failed to Exhaust Its Administrative Remedies.

According to established law, Tribes are permitted to defer jurisdiction to their courts prior to federal court intervention. Federal law has long recognized a respect for comity and deference to the tribal court as the appropriate court of first impression to determine jurisdiction over a Tribe. *See Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 856–57 (1985); *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 15–16 (1987); *Burlington N. R.R. Co. v. Crow Tribal Council*, 940 F.2d 1239, 1244–47 (9th Cir. 1991).

As support for this premise, the Supreme Court cites: (1) Congress's commitment to "a policy of supporting tribal self-government and self-determination;" (2) a policy that allows "the forum whose jurisdiction is being challenged the first opportunity to evaluate the factual and legal bases for the challenge;" and (3) judicial economy, which will best be served "by allowing a full record to be developed in the Tribal Court." *Nat'l Farmers*, 471 U.S. at 856.

Court's have interpreted *National Farmers* as determining that tribal court exhaustion is not a jurisdictional bar, but rather a prerequisite to a federal court's exercise of its jurisdiction. *Crow Tribal Council*, 940 F.2d at 1245 n.3. "Therefore, under *National Farmers*, the federal courts should not even make a ruling on tribal court jurisdiction . . . until tribal remedies are exhausted." *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1228 (9th Cir. 1989). However, there are four recognized exceptions to the requirement for exhaustion of tribal court remedies where: (1) an assertion of tribal jurisdiction is motivated by a desire to harass or is conducted in bad faith; (2) the action is patently violative of express jurisdictional prohibitions; (3) exhaustion would be futile because of the lack of adequate opportunity to challenge the court's jurisdiction; or (4) it is plain that no federal grant provides for tribal governance of nonmembers' conduct on land covered by *Montana*'s [*Montana v. Unites States*, 450 U.S. 544 (1981)] main rule. *Burlington N. R.R. Co. v. Red Wolf*, 196 F.3d 1059, 1065 (9th Cir. 1999) (citations omitted).

Here, the fact that Plaintiff has not challenged jurisdiction in the tribal court should be enough for this Court to dismiss this matter in its entirety until exhaustion is completed. Although,

Plaintiff alleges the above reasons why exhaustion should be excused, none justify excusing exhaustion in this circumstance. Plaintiff's allegations are similar to those made in *Grand Canyon Skywalk Development, LLC v SA Nu Wa Incorporated, et al*, DC-3:12-cv-080030 DCG. The outcome in that case should be the same here. In *Grand Canyon Skywalk*, the Hulapai Tribe filed suit in tribal court asserting claims related to a skywalk attraction, located within their jurisdiction in Arizona, against a non-tribal entity. The non-tribal entity attempted to challenge jurisdiction in federal court on various grounds. The Court held in favor of the Tribe, finding there was no need to excuse the exhaustion of tribal remedies because the non-tribal entity's facts did not support tribal exhaustion. (*See Grand Canyon Skywalk Development, LLC v SA Nu Wa* Incorporated, et al, DC-3:12-cv-080030 DCG attached as to declaration of attorney Jack Duran, ¶ 4 as Exhibit 6).

Here, Plaintiff alleges that the Complaint in Tribal Court was for purposes of harassment or based in bad faith. Yet the Tribal Court complaint includes causes of action related to a 2009 real estate transaction between the Tribe and RISE. RISE, as party to the RISE-Tribe, transaction was *in contract* with the Tribe which establishes the required jurisdictional nexus under *Montana v. Unites States*, 450 U.S. 544 (1981). As set forth in the Tribal Court complaint, Exhibit 1, RISE was also a tenant of the Tribe for 12 months after the sale of the building, residing on the Tribe's reservation. The Tribal Court complaint also alleges that RISE employee/official, Duanna Knighton, the Tribe's Administrator, was in the employ of the Tribe in excess of 18 years, and had interaction with the Tribe, its members and funds, over that entire period, both on the Tribe's trust and fee lands. Hence, the Tribe is inherently justified in pursuing its grievances against RISE in Tribal Court, as the activities relate to its administrative building located within the Tribe's reservation. Despite Plaintiff's bald assertion, the underlying Tribal Court case alleges no facts suggesting it was filed to harass or brought in bad faith.

RISE also cites to *Plains Commerce Bank v. Long Family Land & Cattle Co.,* 554, 4 US 316, 324 (2008), as the basis for Court jurisdiction and excusing exhaustion of tribal remedies. However, *Plains Commerce* does not support RISE's argument. In *Plains Commerce*, it was a tribal member who had the relationship with the Plains Commerce Bank and filed a case in tribal court -- not the Tribe itself. There, the Court had jurisdiction because plaintiff could not provide any *jurisdictional*

basis for a suit in tribal court. In the instant case, there are many reasons in support of jurisdiction in the Tribal Court – which is primarily based on a real estate contract between RISE and the Tribe.

As to the remaining reasons Plaintiff RISE proffers to excuse jurisdiction (futility and lack of *Montana* nexus), none of them rise to the level to support excusing exhaustion. Moreover, jurisdiction is not futile because if this case is dismissed, Plaintiff can immediately challenge jurisdiction in the Tribal Court. Further, any *Montana* concerns are satisfied by the RISE-Tribe contract for the sale of the Tribe's administrative building. (*See* Opposition to Motion to Dismiss, *Cedarville Rancheria v. Knighton*, Exh. 7, attached to declaration of attorney Duran, ¶ 4). Plaintiff is merely displeased because it has to defend suit in Tribal Court, which it could have anticipated having engaged in a *business relationship* with the Defendant Tribe. As Plaintiff's complaint presents no justifiable reason to excuse exhaustion, the Court should grant Defendant's motion to dismiss.

3. Plaintiff Has Failed to State a Claim Upon Which Relief Can Be Granted.

As previously mentioned, Federal Rule of Civil Procedure12(b)(6) applies where the complaint lacks a cognizable legal theory or does not allege sufficient facts to support one. *Balisteri, supra*, 901 F.2d at 699.

Here, Plaintiff advances untenable legal theories to support jurisdiction: 28 U.S.C. §§ 1331 and 2201. Section 1331, which grants jurisdiction over civil actions arising under the Constitution or federal law, is inapplicable because Plaintiff has not identified the federal statutory basis for its claims. *See Pit River Home & Agric. Coop. Ass'n v. United States*, 30 F.3d 1088, 1097 (9th Cir. 1994).

Although Plaintiff RISE advances section 2201 as the statutory basis for jurisdiction, section 2201 is inapplicable to this case because in the absence of a controversy, jurisdiction does not exists. That is, a controversy does not presently exist because the Tribal Court has not fully determined its jurisdiction over RISE, nor has it heard RISE's arguments against Tribal Court jurisdiction. The Tribal Court's issuance of the 20-day TRO did not provide the Court with the opportunity to fully determine if it had jurisdiction over RISE. Moreover, the issued-TRO was dissolved as against

RISE *prior* to RISE's filing the instant federal action. As there exists no present controversy, Plaintiff RISE has failed to state a jurisdictional claim under 28 U.S.C. section 2201 upon which relief can be granted. Thus, its Complaint must be dismissed.

IV. CONCLUSION

For the foregoing reasons, Plaintiff's Complaint should be dismissed.

Respectfully submitted this15th day of December, 2014.

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DURAN LAW OFFICE

By: */s/ Jack Duran, Jr.*
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CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS