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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RESOURCES FOR INDIAN STUDENT EDUCATION, INC. (R.I.S.E.), Petitioner, v. CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS; CEDARVILLE RANCHERIA TRIBAL COURT; PATRICIA R. LENZI, in her capacity as Chief Judge of the Cedarville Rancheria Tribal Court, Respondent.	CASE NO. 2:14-cv-02543-JAM-CMK **PETITIONER RESOURCES FOR INDIAN STUDENT EDUCATION, INC.'S OPPOSITION TO RESPONDENTS CEDARVILLE RANCHERIA TRIBAL COURT'S AND JUDGE PATRICIA R. LENZI'S MOTION TO DISMISS COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** **DATE: January 28, 2015** **TIME: 9:30 a.m.** **DEPT: 6** *Assigned to Hon. John A. Mendez*

COMES NOW Petitioner RESOURCES FOR INDIAN STUDENT EDUCATION, INC.'S (hereinafter "RISE") Opposition to Respondents CEDARVILLE RANCHERIA TRIBAL COURT'S AND JUDGE PATRICIA R. LENZI'S (hereinafter "Respondents") Motion to Dismiss Complaint.

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INTRODUCTION

On or about October 2, 2014, The CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS (hereinafter "Tribe") filed a Complaint for Damages in the Tribal Court against RISE, Duanna Knighton and Oppenheimer Funds, Inc. The Tribal Court Complaint alleges eight causes of action relating to the compensation and benefits paid to Duanna Knighton while she was employed by the Tribe as a Tribal Administrator and finance director. Furthermore, it alleges certain poor investments that Duanna Knighton made with Tribe funds while she was employed by the Tribe. Duanna Knighton was a concurrent employee of RISE.

RISE is not a member of the Tribe, does not reside upon or own property on the Tribe's grounds, does not operate a business on the Tribe's grounds, has not submitted to the jurisdiction of the Tribal Court, and does not benefit from the laws of the Tribal Court. Other than general allegations of tribal jurisdiction of the Tribal Court over RISE, the Tribe has not provided any factual allegations to support a claim of personal or subject matter jurisdiction by the Tribal Court over RISE.

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

The Tribal Court was brought into existence by Tribal Ordinance on December 14, 2013. Plaintiff is informed and believes, As can be seen by the Tribal Court case number, this filing is only the second case filed with the Court, the first being an eviction

proceeding which led to the "Cedarville Tragedy" as alleged in the Tribal Complaint. As alleged in the Tribal Complaint, following the shooting, there was a change in tribal leadership and council makeup which directly led to the filing of the Tribal Complaint in the Tribal Court.

In addition to filing the Tribal Complaint, the Tribe also filed an Ex Parte Application for a Temporary Restraining Order against RISE and the other Defendants in the Tribal Complaint. The Order was granted by the Tribal Court without providing an opportunity for any of the Defendants, including RISE, with prior notice of the Application or a chance to be heard.

In addition to not providing timely notice of the pending Application or a chance to be heard prior to the issuing of the Temporary Restraining Order, the Tribal Court unilaterally ruled that it has subject matter jurisdiction over the action pursuant to the Tribal Court Code and because the "matter involves nonmember Defendants who engaged in 'consensual relationships' with the Tribe and its members."

In order to represent RISE in the Tribal Court, attorneys must obtain a license to practice before the Tribal Court. This requires the payment of a license fee. Further, it requires the taking of an oath to "support the Constitution and By-Laws of the Cedarville Rancheria."

Furthermore, the Application to for Admission to practice before the Tribal Court requires a Certification that the applicant consents "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 …"

On October 27, 2014, co-defendant DUANNA KNIGHTON filed a motion to Dismiss with the Tribal Court. One of the grounds for the Motion to Dismiss is that the Clerk of the Tribal Court would be called as a witness in this action because of actions that were taken in the prior Tribal Court case.

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In an obvious attempt to retain jurisdiction for the Tribal case, to which it has no such jurisdiction, an Assistant Tribal Court Clerk, Lisa Murray, **self-assigned** herself as the Tribal Court Clerk for purposes of handling all filings with regards to this case.

II.

PETITIONER HAS SUFFICIENTLY PLEAD THIS COURT'S JURISDICTIONOVER THE INSTANT MATTER.

This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. 1331 as it concerns a matter arising from the Constitution, laws or treaties of the United States. *See, Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 US 316,324 (2008) ["whether a tribal court has adjudicative authority over nonmembers is a federal question."]; *Nat'l Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845, 852, (1985) ["In all of these cases, the governing rule of decision has been provided by federal law. In this case the petitioners contend that the Tribal Court has no power to enter a judgment against them."]

Respondents' unlawful exercise of Tribal Court jurisdiction is an actionable violation of federal common law, *Ex Parte Young* 209 U.S. 123 (1908). Because their actions exceed the Tribe's legal authority, this suit against the individual defendant in her official capacity is appropriate. *See, Michigan v. Bay Mills Indian Community*, 134 S. Ct. 2024, 2035 (2014).

The Court further has subject matter jurisdiction because RISE is not required to exhaust all available Tribal Court remedies because (1) the assertion of tribal court jurisdiction is "motivated by a desire to harass or is conducted in bad faith;" (2) the tribal court action is "patently violative of express jurisdictional prohibitions;" (3) "exhaustion would be futile because of the lack of an adequate opportunity to challenge the tribal court's jurisdiction;" and (4) it is "plain" that tribal court jurisdiction is lacking, so that the exhaustion requirement "would serve no purpose other than delay." *Elliott v. White Mountain Apache Tribal Court*, 566 F.3d 842, 847 (9th Cir. 2009)

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Venue is appropriate pursuant to 28 USC 1391(b) as Respondents reside in California and the acts complained of occurred in the District. The Court has personal jurisdiction over Respondent, each of whom is a California resident.

III.

SOVERIGN IMMUNITY DOES NOT PREVENT THIS COURT FROM ASSUMING JURISDICTION OVER THE RESPONDENTS.

Respondents' citation to *Fletcher v. U.S.*, 116 F.3d 1315 (10th Cir. 1997) is equally inapplicable because that case involved tribal members who were found by the tribe to not be entitled to vote in tribal elections or hold tribal office because they did not own an interest in the tribe's mineral estate or headright. *Id.* at 1318. An issue directly related to the intergovernmental workings of the tribe, an issue not present in the instant action.

Respondents' reliance on *Lewis v. Norton* (9th Cir. 2005) 424 F.3d 959, is equally misplaced, as it once again concerns a proposed Federal Court review of an intratribal dispute as to the recognition of who can be deemed a member of a tribe.

> The plaintiffs-appellants are siblings who brought this action against the United States claiming that they are entitled to recognition as members of the Table Mountain Rancheria, a federally-recognized Indian tribe, and therefore to share in the revenue of that tribe's very successful casino near Fresno, California. Although their claim to membership appears to be a strong one, as their father is a recognized member of the tribe, their claim cannot survive the double jurisdictional whammy of sovereign immunity and lack of federal court jurisdiction to intervene in tribal membership disputes.

Id. at 960.

National Farmers Union Ins. Companies v. Crow Tribe of Indians (1985) 471 U.S. 845, cited by Respondents, acknowledges the Federal Court's jurisdiction in determining whether a tribal court has exceeded its jurisdiction when it pertains to non-tribal members.

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> Section 1331 of the Judicial Code provides that a federal district court "shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." It is well settled that this statutory grant of "jurisdiction will support claims founded upon federal common law as well as those of a statutory origin." Federal common law as articulated in rules that are fashioned by court decisions are "laws" as that term is used in § 1331.
>
> Thus, in order to invoke a federal district court's jurisdiction under § 1331, it was not essential that the petitioners base their claim on a federal statute or a provision of the Constitution. It was, however, necessary to assert a claim "arising under" federal law. As Justice Holmes wrote for the Court, a "suit arises under the law that creates the cause of action." Petitioners contend that the right which they assert—a right to be protected against an unlawful exercise of Tribal Court judicial power—has its source in federal law because federal law defines the outer boundaries of an Indian tribe's power over non-Indians.

Id. at 850-51.

> The Court went further to identify as grounds for Federal jurisdiction:
>
> The question whether an Indian tribe retains the power to compel a non-Indian property owner to submit to the civil jurisdiction of a tribal court is one that must be answered by reference to federal law and is a "federal question" under § 1331. Because petitioners contend that federal law has divested the Tribe of this aspect of sovereignty, it is federal law on which they rely as a basis for the asserted right of freedom from Tribal Court interference. They have, therefore, filed an action "arising under" federal law within the meaning of § 1331. The District Court correctly concluded that a federal court may determine under § 1331 whether a tribal court has exceeded the lawful limits of its jurisdiction.

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Id. at 852-53.

Imperial Granite Co. v. Pala Band of Mission Indians (9th Cir. 1991) 940 F.2d 1269, relied upon by Respondents is also distinguishable. In *Imperial Granite Co.*, the Complaint filed in the Federal Court was initiated by the non-tribal entity against the tribe to bring the tribe under the jurisdiction of the Federal Court.

> Imperial Granite Company brought this action against the Pala Band of Mission Indians, certain of its officers, and all members of the tribe. Imperial alleged that it was the lessee of a tract of fee property surrounded by the Band's reservation, and that in about 1933 the government had built a road to the tract that crossed a portion of the reservation. Imperial's lessors had used the road as the only access to their land and, after Imperial leased the property, it used the road as the only access to its quarry. In 1987, the Band denied further access to the road, and denied Imperial's request for an easement.[1] Imperial then filed this lawsuit, alleging that the Band's action violated Imperial's rights under the Constitution, the Indian Civil Rights Act, and state law regarding trespass and nuisance.

Id. at 1270-71.

In the instant action, it was not Petitioner that initiated an action against the Respondents, but filed this action only in response to the Respondents' attempts to assert tribal jurisdiction over the non-tribal member Petitioner. This action was filed as a defensive mechanism to the unwarranted and extra-jurisdictional assertion by the Respondents, in the first instance, over the Petitioner.

Respondents' reliance on *U.S. v. State of Or.* (9th Cir. 1981) 657 F.2d 1009, is equally misplaced. That case concerned whether or not a tribe had consented to the jurisdiction of the Federal Courts based upon an earlier agreement.

> The United States initiated this action in 1968 seeking to establish and protect the treaty fishing rights of all Indian tribes occupying the Columbia River basin. The Yakima Tribe intervened as a party plaintiff soon

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> thereafter. In 1969, the court below entered judgment for the plaintiffs in an opinion reported as Sohappy v. Smith, 302 F.Supp. 899 (D.Or.1969). That judgment enjoined Oregon, then the only defendant, from enforcing specified fishing regulations. More importantly, it also established a procedure for promulgating future state regulations, and expressly retained continuing jurisdiction in order to expedite enforcement of its decree.

Id. at 1011.

Santa Clara Pueblo v. Martinez (1978) 436 U.S. 49 is instrumental in identifying the limits of tribal jurisdiction. In *Santa Clara Pueblo*, the case concerned the internal mechanisms of the Indian Tribe and how it established its own tribal membership. "This case requires us to decide whether a federal court may pass on the validity of an Indian tribe's ordinance denying membership to the children of certain female tribal members." *Id*. at 51. The Motion to Dismiss in *Santa Clara Pueblo* was based "on the ground that the court lacked jurisdiction to decide **intratribal** controversies affecting matters of tribal self-government and sovereignty." *Id.* at 53 (emphasis added).

This case does not involve an intratribal controversy. This case centers on a tribe creating a tribal court for the purpose of attempting to drag non-tribal members under its jurisdiction to adjudicate a dispute that is unrelated to tribal self-government or sovereignty.

> The concept of absolute tribal immunity does not apply to this matter. Indian tribes are "distinct, independent political communities, retaining their original natural rights" in matters of local self-government. Although no longer "possessed of the full attributes of sovereignty," they remain a "separate people, with the power of regulating their internal and social relations." They have power to make their own substantive law in internal matters, see *Roff v. Burney*, 168 U.S. 218, 18 S.Ct. 60, 42 L.Ed. 442 (1897) (membership)s *Jones v. Meehan*, 175 U.S. 1, 29, 20 S.Ct. 1, 12, 44 L.Ed. 49 (1899) (inheritance rules); *United States v. Quiver*, 241 U.S. 602, 36 S.Ct.

> 699, 60 L.Ed. 1176 (1916) (domestic relations), and to enforce that law in their own forums.

Id. at 55-56 (internal citations omitted).

IV.

THE COMPLAINT SHOULD NOT BE DISMISSED DUE TO LACK OF RIPENESS AS PETITIONER IS NOT REQUIRED TO EXHAUST TRIBAL REMEDIES UNDER THESE CIRCUMSTANCES.

> The Tribe contends that BN's complaint fails to allege an injury sufficient to establish the jurisdictional prerequisites of standing and ripeness. To allege an actual controversy within federal court jurisdiction under the Declaratory Judgment Act, 28 U.S.C. § 2201, BN's complaint must have alleged facts showing standing and ripeness. To show standing, BN must have alleged some threatened or actual injury resulting from the challenged ordinance. To show ripeness, BN must have alleged an "impact" from the ordinance "sufficiently direct and immediate as to render the issue appropriate for judicial review at this stage." The standing and ripeness of BN's complaint thus depend on the sufficiency of BN's allegations of threatened or actual injury or direct and immediate impact resulting from the Crow Tribal Ordinance.

Burlington Northern R. Co. v. Crow Tribal Council (9th Cir. 1991) 940 F.2d 1239, 1243 (internal citations omitted).

Burlington Northern R. Co., as cited by Respondents, does not support the claim that Petitioner must exhaust the tribal remedies before seeking the Federal Court's intervention. *Burlington Northern R. Co.* concerned the interpretation of a tribal drafted and passed ordinance, which is not at issue in this case. This matter does not involve the interpretation of a Tribe's ordinance other than a general claim of jurisdiction that, as pointed out above, is so broad as to deny the non-Indian Petitioner Due Process.

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> Through the challenged ordinance, the Tribe reasserts its commitment to sovereign authority over Reservation affairs. The ordinance establishes governmental mechanisms for exercise of that authority. Moreover, the ordinance identifies railroad services as vital to the Tribe's economic development. The foundation of self-determination for the Tribe must be its growing economic independence. Thus arises the necessity for BN's exhaustion of tribal remedies: the Crow Tribe must itself first interpret its own ordinance and define its own jurisdiction.

Id. at 1245-46.

Respondents' conduct has caused and, unless restrained and enjoined by the Court, will continue to cause irreparable harm, damage, and injury to RISE. *See*, *Caribbean Marine Services Co.*, Baldridge, 844 F.2d 668, 674 (9th Cir. 1988) This includes: (1) forcing RISE to participate in legal proceedings in a forum that lacks jurisdiction in violation of RISE's constitutional rights; (2) exposing RISE to the possibility of multiple and duplicative lawsuits and/or motions with the further possibility of inconsistent results; and (3) causing RISE to expend substantial money and resources to establish the lack of the Tribal Court's jurisdiction in this matter by exhausting Tribal Court remedies where (a) the assertion of tribal court jurisdiction is "motivated by a desire to harass or is conducted in bad faith;" (b) the tribal court action is "patently violative of express jurisdictional prohibitions;" (c) "exhaustion would be futile because of the lack of an adequate opportunity to challenge the tribal court's jurisdiction" and; (d) it is "plain" that tribal court jurisdiction is lacking, so that the exhaustion requirement "would serve no purpose other than delay." *Elliott v. White Mountain Apache Tribal Court*, 566 F.3d 842, 847 (9th Cir. 2009).

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

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(1) the tribal court did not have both personal and subject matter jurisdiction; or

(2) the defendant was not afforded due process of law.

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

"Two circumstances preclude recognition: when the tribal court either lacked jurisdiction or denied the losing party due process of law." *AT & T Corp. v. Coeur d'Alene Tribe*, 295 F.3d 899, 903 (9th Cir. 2002). Even *Imperial Granite Co. v. Pala Band of Mission Indians* (9th Cir. 1991) 940 F.2d 1269, cited by Respondents, acknowledges the limitations of tribal immunity: "tribal officials are not necessarily immune from suit. *Santa Clara Pueblo*, 436 U.S. at 59, 98 S.Ct. at 1677. When such officials act beyond their authority, they lose their entitlement to the immunity of the sovereign." Id at 1271.

V.

CONCLUSION

Based upon the foregoing, Petitioner requests that this Court deny the instant Motion to Dismiss, and extend jurisdiction over this matter so that Petitioner can have an appropriate independent review of this Tribe's asserted jurisdiction under circumspect circumstances to preserve the Due Process rights of Petitioner so that it is not subjected to an overzealous exercise of tribal jurisdiction.

DATED: January 14, 2015

Respectfully submitted,

CIHIGOYENETCHE, GROSSBERG & CLOUSE

By: /s/ Anthony C. Ferguson
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Resources for Indian Student Education, Inc. v. Cedarville Rancheria of Northern Paiute Indians
U.S. District Court, Eastern District of California
Case No. 2:14-cv-02543-JAM-CMK

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 January 14, 2015, I served the foregoing document described as **PETITIONER RESOURCES FOR INDIAN STUDENT EDUCATION, INC.'S OPPOSITION TO RESPONDENT CEDARVILLE RANCHERIA TRIBAL COURT'S AND JUDGE PATRICIA R. LENZI'S MOTION TO DISMISS COMPLAINT** on the interested parties in this action as follows:

// **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.

/X/ **BY ELECTRONIC SERVICE** by causing the foregoing document(s) to be electronically filed using the Court's Electronic Filing System which constitutes service of the filed document(s) on the individual(s) listed in the attached mailing list.

/ / **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.

/ / **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

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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.

/ / **(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)**

/X/ **(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 January 14, 2015, at Rancho Cucamonga, California.

/s/ Gay Lyn Crosswhite
GAY LYN CROSSWHITE

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Resources for Indian Student Education, Inc. v. Cedarville Rancheria of Northern Paiute Indians
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