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9 CEDARVILLE RANCHERIA OF
10 NORTHERN PAIUTE INDIANS

11 **UNITED STATES DISTRICT COURT**
12 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
13 **SACRAMENTO DIVISION**

14 RESOURCES FOR INDIAN STUDENT
15 EDUCATION, INC (RISE)

16 Plaintiff,

17 v.

18 CEDARVILLE RANCHERIA OF NORTHERN
19 PAIUTE INDIANS; CEDARVILLE
20 RANCHERIA TRIBAL COURT; PATRICIA R.
21 LENZI

22 Defendants.

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

**DEFENDANT CEDARVILLE
RANCHERIA'S REPLY TO PLAINTIFF'S
OPPOSITION TO MOTION TO DISMISS
AND OPPOSITION TO MOTION FOR
RULE 11 SANCTIONS**

[Fed. R. Civ. P. 11, 12(b)(1), (6)]

Date: January 28, 2015

Time: 9:30 A.M.

Courtroom: 6

Judge: The Honorable John A. Mendez

I. INTRODUCTION

Plaintiff RISE's opposition to Defendant Tribe's motions can be summarized as follows: "It is unfair for Plaintiff (RISE) to be hauled into Tribal Court because the Court and its personnel are biased towards Plaintiff." Plaintiff supports its opposition with a smattering of inapplicable Indian law which focuses on waiver of tribal remedies in circumstances of harassment and bad faith. Yet the opposition presents no facts showing harassment and bad faith. Just bald conclusions. Plaintiff does not rebut the well-established Indian law precedent requiring Plaintiff to first exhaust its tribal remedies. Hence, in the absence of any factual support for its position that tribal remedies should be

1 waived due to the Tribe's alleged bad faith toward Plaintiff, Defendant Tribe's motion to dismiss
2 and motion for Rule 11 sanctions should be granted.

3 **II. ARGUMENT**

4 **A. Plaintiff's Allegations of Bias Do Not Confer Federal Court Jurisdiction**

5 The United States Supreme Court has a long-established history of rejecting attacks on a
6 Tribal Court as a means of acquiring federal court jurisdiction.

7 Plaintiff claims that the Tribal Court's alleged bias and incompetence permit Plaintiff to
8 avoid exhaustion of tribal remedies. However, the Supreme Court in *Iowa Mutual Inc. Co. v. La*
9 *Plante*, 480 U.S. 9 (1987) specifically rejected this argument as a means of obtaining federal court
10 jurisdiction. In *Iowa Mutual*, as here, plaintiff insurance company challenged the Tribal Court's
11 jurisdiction in federal district court before seeking Tribal appellate court review. One of the
12 arguments made by the plaintiff insurance company in pursuit of federal court diversity jurisdiction
13 was that federal jurisdiction was necessary to protect plaintiff from the Tribal Court's "bias and
14 incompetence." *Iowa Mutual*, supra, 480 U.S. at p. 19. The Supreme Court rejected this argument:

15 "[P]etitioner also contends that the policies underlying the grant of
16 ...jurisdiction, protection against local bias and incompetence, justify the
17 exercise of federal jurisdiction. The alleged incompetence of Tribal Courts is
18 not among the exceptions to the exhaustion requirement established in
19 National Farmers Union . . . n.21 and would be contrary to congressional
20 policy promoting the development of tribal courts. Moreover, the Indian Civil
21 Rights Act, 25 U.S.C. §1302 provides non-Indians with various protections
22 against unfair treatment in tribal Courts. Although, petitioner must exhaust
23 available tribal remedies before instituting suit in federal court, the
24 Court's determination of tribal jurisdiction is ultimately subject to review."

25 *Id.*

26 Here, analogous to the insurance company's claims of bias and incompetence in *Iowa*
27 *Mutual* that were rejected, Plaintiff's allegations of perceived Tribal Court bias, and presumably
28 court incompetence, are not valid arguments for Plaintiff to obtain federal court jurisdiction of this

1 matter. Plaintiff also alleges that jurisdiction here is proper because the Tribal Court has its own
2 means of licensure, its own court procedures, and its own oath. This argument carries no weight for
3 the simple reason that it violates the well-established federal court policy of encouraging and
4 promoting tribal sovereignty among the Indian tribes. This policy of tribal sovereignty supports
5 tribal court jurisdiction as outlined in *Iowa Mutual* and its progeny.

6 Plaintiff's attempt to bootstrap federal jurisdiction over this matter by claiming tribal bias
7 and Court incompetence, are not valid arguments to "waive" exhaustion of tribal remedies. As such,
8 Defendant Tribe's motion to dismiss should be granted due to Plaintiff's failure to exhaust tribal
9 remedies.

10 **B. Defendant Tribe's Assertion of Jurisdiction is Based On a Consensual**
11 **Relationship Between RISE and the Tribe**

12 The Tribe's assertion of jurisdiction over Plaintiff RISE and use of its Tribal Court is not
13 based upon bad faith or bias, but based upon a contractual relationship. It is important for this Court
14 to understand the Tribal Court's basis of jurisdiction as to Plaintiff RISE, and specifically why the
15 Tribe seeks jurisdiction in the Tribal Court over Plaintiff and its employee, Ms. Knighton, for
16 adjudication of the Tribe's grievances.

17 As fully alleged in the Tribe's underlying complaint against RISE and Ms. Knighton, the
18 Tribe has brought several causes of action related to a real estate sales transaction between the Tribe
19 and Plaintiff. At the time of the transaction, Ms. Knighton served as an employee of both RISE and
20 the Tribe. In 2009, the Tribe purchased an administration building located in Alturas, California,
21 which presently serves as the Tribe's Administrative Offices. After the building sale, RISE
22 remained a tenant of the Tribe for over a year. RISE's property also remained in the Tribe's
23 Administrative building until Ms. Knighton's departure from the Tribe's employment in March
24 2013.

25 Specific to RISE, the Tribe's claims against it arise out of the sale of the Administration
26 Building and other contractual relations between the Tribe and RISE. The Tribe's position is that
27 the circumstances of the sale of the building and the consensual relationship between the Tribe and
28 RISE are sufficient to confer jurisdiction in the Tribal Court. (See generally Tribe's Complaint

1 attached to Plaintiff RISE's Complaint.)

2 Had Plaintiff RISE challenged tribal court jurisdiction at the onset of this litigation, or
3 communicated with opposing counsel as to the basis of jurisdiction, it would be aware why the Tribe
4 sought jurisdiction over this dispute. As set forth above, Defendant Tribe's claims as to RISE are
5 not based upon bias or bad faith, but a contractual relationship. The assertion of tribal jurisdiction
6 over the Tribe's claims against RISE are legitimate and pursuant to established law, namely
7 *Montana v. United States*, 450 U.S. 544, at 565-566 (1981). Thus, the Tribe's motion to dismiss
8 should be granted to permit its own Court to determine jurisdiction over Plaintiff RISE.

9 **C. Sovereign Immunity Bars RISE's Suit Against the Tribe**

10 Because the Tribe has not consented to RISE's suit, its suit must be dismissed. Federal
11 courts have long recognized that Indian Tribes possess the sovereign immunity from suit
12 traditionally enjoyed by sovereign powers. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978).
13 This immunity applies to all federal suits for damages, declaratory relief, and injunctive relief unless
14 there is an express tribal waiver or congressional abrogation. *Id.* at 58-59. See *Imperial Granite Co.*
15 *v. Pala Band of Mission Indians*, 940 F.2d 1269, 1271 (9th Cir. 1991). The sovereign immunity
16 doctrine's ambit covers tribal officials and employees acting within the scope of their authority. See
17 *Fletcher v. United States*, 116 F.3d 1315, 1324 (10th Cir. 1997); *Hardin v. White Mountain Apache*
18 *Tribe*, 779 F.2d 476, 479 (9th Cir. 1985).

19 It is black letter law that in the absence of a waiver of tribal sovereign immunity, a summons
20 and complaint against a federally recognized Indian Tribe must fail. Further, as RISE's arguments
21 as to alleged Tribal and Tribal Court bias are illegitimate arguments in seeking federal court
22 jurisdiction, as held by the United States Supreme Court, Plaintiff RISE is left with no arguments to
23 support its position in opposition. Again, had Plaintiff RISE challenged jurisdiction in the Tribal
24 Court it would understand, completely, why the Tribe seeks jurisdiction over RISE there and not
25 before this federal court.

26 As such, because Plaintiff RISE has failed to show that Defendant Tribe waived the
27 requirement of tribal exhaustion, Defendant Tribe's motion to dismiss should be granted. RISE has
28 failed to state a viable cause of action in its complaint.

**D. Defendant Tribe's Motion for Sanctions Should Also Be Granted Because
RISE's Complaint Meets the Threshold for Rule 11 Sanctions**

Rule 11 sanctions are warranted because Plaintiff RISE failed to conduct the most rudimentary due diligence into the precedential requirements of tribal court exhaustion. RISE's claims of Tribal Court bias, incompetence and bad faith, in seeking to avoid tribal exhaustion, have been previously rejected by the United States Supreme Court in *Iowa Mutual*.

RISE cites actions the Tribe took against it (e.g., its TRO application in Tribal Court) as its basis to seek a waiver of the tribal exhaustion rule. But none of the arguments posited by RISE are credible. The TRO issued by the Tribal Court against RISE was vacated on October 24, 2014, before RISE filed its instant complaint. RISE filed its complaint on October 30, 2014.

Defendant Tribe made allegations in its underlying Tribal Court complaint of consensual/contractual relations between it and RISE, which are sufficient to confer jurisdiction in the Tribal Court under *Montana v United States*, 450 U.S. 544 (1981). That is, the Tribe is entitled to determine its own jurisdiction prior to federal court review.

The Defendant Tribe has expended time and resources to have adjudicated its grievances in its own Court, under its own law. Plaintiff RISE's side trip to this Court, as outlined in Defendant Tribe's motion to dismiss and this reply brief, is unnecessary and unsupported by established Indian law.

Finally, as stated in his initial declaration, Defendant Tribe's counsel offered at the onset of the Tribal Court action, to stipulate to a special appearance in the Tribal Court so that Plaintiff could contest jurisdiction there. But RISE's counsel refused to even communicate with Defendant Tribe's counsel. In sum, Plaintiff RISE's premature effort to obtain federal court review, before the Tribe could determine its own jurisdiction, is a waste of this Court's and the Tribe's time and resources. There is an old saying -- you can lead a horse to water, but you cannot make them drink. The Tribe led RISE to the water that is Tribal Court jurisdiction, but RISE did not take a drink and instead prematurely went to federal court before allowing the Tribe to determine if it had jurisdiction. If the Tribal Court did determine it had jurisdiction, then RISE could go to this Court. But RISE short-circuited the process, causing the Tribe to needlessly incur attorneys' fees. The Tribe did all it could

1 to avert this wasteful process.

2 Had Plaintiff RISE done even a modicum of due diligence, it would have realized that it had
3 avenues to review a tribal jurisdictional ruling it did not like -- the federal courts -- but only after the
4 Tribe determined its own jurisdiction. Defendant Tribe therefore respectfully requests that this
5 Court grant Defendant Tribe's motion for sanctions and pay for the Tribe's fees and costs in
6 associated with this motion, reply brief, and the hearing, in the sum of \$5,250. (See supplemental
7 declaration of Jack Duran, Jr.)

8 **III. CONCLUSION**

9 Based on the foregoing, Defendant Tribe requests that this Court dismiss this action and
10 award sanctions in the amount of \$5,250.

11 Respectfully submitted this January __, 2015

12 DURAN LAW OFFICE

13
14 By: /s/ Jack Duran, Jr.
15 JACK DURAN, Jr.
16 Attorney for Plaintiff
17 CEDARVILLE RANCHERIA OF
18 NORTHERN PAIUTE INDIANS
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