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COURT AND JUDGE PATRICIA R. LENZI

UNITED STATES DISTRICT COURT  
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

**DEFENDANTS CEDARVILLE  
RANCHERIA TRIBAL COURT  
AND JUDGE PATRICIA R.  
LENZI'S REPLY TO PLAINTIFF'S  
OPPOSITION TO ITS MOTION  
TO DISMISS PURSUANT TO  
RULE 12(b)(1) and (6)**

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

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

**Assigned to: Judge John A. Mendez**

**I. INTRODUCTION**

Plaintiff RESOURCES FOR INDIAN STUDENT EDUCATION, INC.'s  
("plaintiff") opposition to defendants CEDARVILLE RANCHERIA TRIBAL  
COURT and JUDGE PATRICIA R. LENZI (collectively "Tribal Court") completely

misses the mark in its opposition to the Tribal Court's motion to dismiss. Plaintiff fails to properly address the issue of exhaustion of tribal remedies, provides no facts to support an exception to exhaustion, confuses the issues of tribal jurisdiction with tribal immunity, and makes an argument for why the case is ripe, when the Tribal Court never asserted such an argument. Plaintiff fails to make any legitimate arguments in response to the Tribal Court's motion to dismiss, and therefore, the Tribal Court requests that plaintiff's motion be dismissed with prejudice.

## II. REPLY TO PLAINTIFF'S OPPOSITION

### A. Plaintiff Fails To Address the Issue of Exhaustion of Tribal Remedies.

Plaintiff merely reiterates what it states in its complaint, that this Court has jurisdiction over this case, without discussing what, if anything, is required to exhaust tribal remedies. Plaintiff cites to a number of cases, but makes no factual arguments why any of them should apply, or why plaintiff is not required to exhaust all tribal remedies. Plaintiff merely states what it believes to be the law, and then states that venue is appropriate. Plaintiff provides no factual basis why any exception to exhaustion of tribal remedies should apply. It appears plaintiff doesn't understand what is necessary in order to move past this hurdle, when the underlying complaint was filed in tribal court. *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

1 1239, 1244–47 (9th Cir. 1991).

2 Courts have interpreted *National Farmers* as determining that tribal court  
3 exhaustion is not a jurisdictional bar, but rather a prerequisite to a federal court's  
4 exercise of its jurisdiction. *Burlington N. R.R. Co.*, 940 F.2d at 1245 n.3. "Therefore,  
5 under *National Farmers*, the federal courts should not even make a ruling on tribal  
6 court jurisdiction . . . until tribal remedies are exhausted." *Stock West, Inc. v.*  
7 *Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1228 (9th Cir.  
8 1989). Plaintiff provides no factual basis or factual argument as to why any  
9 exception from exhaustion of tribal remedies applies in the instant case.  
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13 **B. Plaintiff Incorrectly Argues That Sovereign Immunity Doesn't Apply,**  
14 **and Confuses the Issues of Tribal Jurisdiction with Sovereign**  
15 **Immunity.**

16 Plaintiff appears to confuse the issues of tribal jurisdiction with that of  
17 sovereign immunity. A tribe may not have tribal jurisdiction, but a tribe, and its  
18 officers, can still have sovereign immunity, preventing any lawsuit including  
19 declaratory and injunctive relief against it. *See Fletcher v. United States*, 116 F.3d  
20 1315, 1324 (10th Cir. 1997); *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476,  
21 479 (9th Cir. 1985); *Romanella v. Hayward*, 933 F.Supp. 163, 167 (Conn. 1996);  
22 *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269, 1271 (9th Cir.  
23 1991).

24 Plaintiff doesn't appear to differentiate between the two, and makes numerous  
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1 arguments and distinctions on a tribe's jurisdictional grounds. *See* Plaintiff's  
2 Opposition at pp. 5-9. Plaintiff fails to address directly the issue of sovereign  
3 immunity of a tribe's officials. Plaintiff never made any claim in its complaint that  
4 either the Cedarville Rancheria Tribal Court or Judge Patricia R. Lenzi acted outside  
5 the scope of their authority, and in fact, specifically sued Judge Lenzi in her official  
6 capacity only. *See* plaintiff's complaint. Absent such allegation, tribal officials  
7 enjoy the same immunity from suit as the Tribe. *United States v. Oregon* (9th Cir.  
8 1981) 657 F.2d 1009, 1012, fn. 8.

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12 Plaintiff merely makes vague, baseless, unsupported allegations regarding the  
13 reasons why the underlying tribal court was created. Regardless, alleged  
14 incompetence or bias of tribal courts "is not among the exceptions to the exhaustion  
15 requirement established" under *National Farmers Union*, 471 U.S. at 856. *Iowa*  
16 *Mut. Ins. Co.* 480 U.S. at 18-19.

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19 Plaintiff also strangely relies on *Santa Clara Pueblo v. Martinez* (1978) 436  
20 U.S. 49, to illustrate why no sovereign immunity exists in this instant case, even  
21 though *Santa Clara Pueblo* deals with the Indian Civil Rights Act, in which case the  
22 U.S. Supreme Court held sovereign immunity existed and that no actions for  
23 declaratory or injunctive relief against the tribe's officers were authorized. *Id.*  
24 Plaintiff chooses various quotes from *Santa Clara Pueblo* to support an argument  
25 that the case itself does not support. In fact, *Santa Clara Pueblo* confirms that  
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1 “without congressional authorization,” the “Indian Nations are exempt from suit”  
2 and concludes that absent of an “unequivocal expression of contrary legislative  
3 intent,” the underlying suits against the tribe were barred. 436 U.S. at 58-59. The  
4 court also held that the statute did not impliedly authorize actions for declaratory or  
5 injunctive relief against either the tribe or its officers. *Id.* at 72.  
6

7  
8 The Tribal Court defendants in the instant case are unsure what relevance the  
9 arguments plaintiff is making has to sovereign immunity itself. Plaintiff’s claims  
10 that sovereign immunity does not apply to defendants Cedarville Rancheria Tribal  
11 Court and Judge Patricia R. Lenzi are unfounded and unsupported. The Tribal Court  
12 defendants were acting within the scope of their authority and sovereign immunity  
13 applies to them in this case.  
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### 16 **C. The Issue of Ripeness Was Not Plead by the Tribal Court**

17 Although ripeness was plead by defendant Cedarville Rancheria of Northern  
18 Paiute Indians, defendants Cedarville Rancheria Tribal Court and Judge Patricia R.  
19 Lenzi did not make such an argument in their motion to dismiss. Moreover, in this  
20 argument plaintiff again fails to provide any factual basis to support its arguments as  
21 to why tribal remedies do not have to be exhausted, and merely restates the  
22 allegations in their complaint and makes restatements of the law. Tribes are  
23 permitted to defer jurisdiction to their courts prior to federal court intervention.  
24 Federal law has long recognized a respect for comity and deference to the tribal  
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1 court as the appropriate court of first impression to determine jurisdiction over a  
 2 Tribe. *See Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845,  
 3 856–57 (1985); *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 15–16 (1987);  
 4 *Burlington N. R.R. Co. v. Crow Tribal Council*, 940 F.2d 1239, 1244–47 (9th Cir.  
 5 1991). Courts have held that exhaustion of tribal remedies is “mandatory.”  
 6 *Burlington N. R.R. Co.*, 940 F.2d at 1245. Plaintiff has provided no factual  
 7 argument why it should not be required to exhaust tribal remedies prior to bringing  
 8 this issue before this Court.

### 12 III. CONCLUSION

13 As plaintiff has provided no basis for why sovereign immunity does not exist  
 14 for any defendant, and no basis for which an exception to exhaust tribal remedies  
 15 exists, plaintiff’s complaint should be dismissed against all defendants. Therefore,  
 16 the Tribal Court requests that this court grant its motion to dismiss with prejudice.  
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18 Dated: January 20, 2015

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**CERTIFICATE OF SERVICE**

**Resources for Indian Student Education, Inc. (RISE) v. Cedarville Rancheria of  
Northern Paiute Indians, et al.**

United States District Court, Eastern District of California  
Case No. 2:14-cv-02543-JAM-CMK

I hereby certify that on the 20th day of January 2015, a copy of the foregoing document has been served via ECF upon all counsel of record in the Court's electronic filing system.

**DEFENDANTS CEDARVILLE RANCHERIA TRIBAL COURT AND  
JUDGE PATRICIA R. LENZI'S REPLY TO PLAINTIFF'S OPPOSITION  
TO ITS MOTION TO DISMISS PURSUANT TO RULE 12(b)(1) and (6)**

By: 

JENNIFER MARIGMEN