No. 14-56760

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RICHARD S. HELD RETIREMENT TRUST,

Plaintiff-Appellant,

vs.

JEFF L. GRUBBE; VINCENT GONZALES, III; ANTHONY ANDREAS, III; LARRY N. OLINGER; and JESICA NORTE, each in his or her official capacity as an officer or member of the Tribal Council of the Agua Caliente Band of Cahuilla Indians,

Defendants-Appellees.

On appeal from the United States District Court,
Central District of California,
Honorable Terry J. Hatter, Jr., Senior District Judge

BRIEF OF APPELLEES JEFF L. GRUBBE; VINCENT GONZALES, III; ANTHORY ANDREAS, III; LARRY N. OLINGER; AND JESSICA NORTE

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In its complaint, plaintiff Richard S. Held Retirement Trust (hereinafter, "the Trust") alleged jurisdiction in the District Court under 28 U.S.C. §1331 (federal question) and 28 U.S.C. §1360 (P.L. 280), as well as federal common law. (Docket No. 1, p. 2, line 24, to p. 3, line 10; hereinafter "Doc. #"). For the reasons noted below, such federal subject matter was lacking.

Court of Appeals, Finality, Timeliness

The Trust appeals from the District Court's Order of October 17, 2014 dismissing the action, and thereby disposing of all of the Trust's claims (Doc. 30). The Trust filed its Notice of Appeal to this Court (Doc. 31) on November 5, 2014, which was within the 30 days allowed by F.R.App.P. 4(a)(1)(A). The appeal is therefore timely, and this Court has jurisdiction under 28 U.S.C. §1291.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Does federal question jurisdiction exist for a claim that P.L. 280 requires individual tribal officials to obey a state court order to pay the tribe's money in litigation to which neither the tribe nor the officials is a party, when the funds sought are unquestionably the property of the tribe, not of the individuals?

2. Does P.L. 280 allow a plaintiff to circumvent tribal sovereign immunity by naming as nominal defendants individual elected tribal officials?

ADDENDUM: 28 U.S.C. §1360

As required by Ninth Circuit Rule 28-2.7, the text of 28 U.S.C. §1360 (the civil part of P.L. 280) appears as an Addendum to this brief, following p. 52.

STATEMENT OF THE CASE

By the time this appeal is ready for argument, there may well be controlling circuit precedent precisely on point. This appeal is a companion to *ABBA Bail Bonds, Inc. v. Jeff L. Grubbe, et al.*, No. 13-56701, in which briefing was completed in May, 2014, and which is now awaiting oral argument. In both appeals, the same appellant's attorney makes exactly the same arguments in support of the very same claims against the same defendants. Only the name of the appellant is different. The appeals have not been consolidated.

In each of the two appeals, a non-Indian party seeks money from the same individual member of the same Indian tribe, and has obtained a default judgment from the California Superior Court against that member on a contract claim. Unable to collect on the judgment directly from the individual member, each plaintiff obtained an order from the Superior Court assigning to the plaintiff certain funds that the member's tribe may pay each month to the member. The member's tribe is not a party to the state court litigation in either case, and refuses to comply with the state court assignment orders.

Neither plaintiff sought to enforce its assignment order in the Superior Court that issued it, although either could have attempted to do so. Instead, each plaintiff has filed its own new action in the District Court. In each case, the plaintiff attempts to avoid the bar of tribal sovereign immunity by a transparent and ineffective subterfuge. It names as defendants not the tribe named in the assignment order, but rather the five individual members of the tribe's elected tribal council, which administers the tribe's affairs and controls the expenditure of the tribe's funds.

Against these individual tribal council members, the plaintiffs make a novel claim on an *Ex Parte Young* theory: the federal statute that confers jurisdiction to

make individual reservation Indians defendants in Superior Court in ordinary civil actions (e.g., contract, tort, family law, etc.)[1] confers on the District Court subject matter jurisdiction *by implication* to hear a claim that the individual tribal councilmembers must honor the state court assignment order.

For multiple reasons, this claim necessarily fails, and the District Court so held and properly dismissed in both cases. The District Court does not sit as a court of appeal from the Superior Court. No federal subject matter jurisdiction is *implied* but must be expressly conferred by statute. The *Ex Parte Young* claim fails because it seeks forbidden payment of money rather than allowable prospective injunctive relief. It also does not sufficiently allege a violation of federal law and does not allege that the individual tribal councilmembers acted outside their official tribal capacity. Federal question jurisdiction is thus lacking.

On appeal, both appellants add nothing and make the same arguments to this Court that the District Court rejected. The defendant tribal councilmembers urge this Court to reject them for the same reasons.

STATEMENT OF FACTS

The Agua Caliente Band of Cahuilla Indians (hereinafter, the "Tribe") "is a federally recognized Indian tribe"[2], and the Trust has so alleged. (Complaint, Doc. 1, p. 4, lines 1-3) One of its members is Clifford Mathews. As a member of the Tribe, Mr. Mathews has that relationship with the Tribe, just as he has a relationship with the State of California as one of its citizens, or with the United States as one of its citizens. But none of these governments, either federal, state, or

[1] Public Law 83-280, 67 Stat. 588, 18 U.S.C. §1162 (criminal) and 28 U.S.C. §1360 (civil), commonly known as "P.L. 280". California is one of the states named in and thus subject to this statute.

[2] *Agua Caliente Band of Cahuilla Indians v. Hardin*, 223 F.3d 1041, 1043 (9th Cir., 2000).

tribal, is responsible for the debts of its citizen, Mr. Mathews, solely because of that citizenship.

Mr. Mathews incurred a large debt to the Trust in 2008. To try to collect it, the Trust filed an action in California Superior Court against only him in 2013, asserting claims for breach of contract and common counts.[3] Eventually, in the absence of, and without the involvement of or any notice to, the Tribe, the Superior Court entered its judgment [Doc. 1, Ex. A] against Mr. Mathews only on his underlying debt, and its assignment order [Doc. 1, Ex. B], purporting to assign to the Trust certain funds that the Tribe might otherwise pay to Mr. Mathews. It is these funds that the Tribe refuses to pay to the Trust, and that the Trust now seeks this Court to direct the Tribe to pay to the Trust, as stated in the assignment order.

The Tribe is not subject to the orders of the Superior Court, especially in an action to which it is not a party and of which it had no notice until receiving the assignment order. The Tribe means no disrespect to the Superior Court, but federal law has never subjected any Indian tribe to the process of a state court, except as Congress has rarely and specifically provided. Otherwise, each tribe's sovereign immunity remains intact, unless expressly waived by Congress or the tribe. This is why the Tribe declines to obey the Superior Court's assignment order: the Tribe does not wish to submit to the jurisdiction of a state court when Congress has not conferred such jurisdiction, and the Tribe has not waived its sovereign immunity.

The proceedings in the District Court in this case are simple. Faced with the insurmountable obstacle of the Tribe's sovereign immunity, the Trust attempts to extract money from the Tribe indirectly. Instead of naming the Tribe *in eo nomine* as a defendant, the Trust names Jeff L. Grubbe (the elected Tribal Chairman), Larry N. Olinger (the elected Tribal Vice-Chairman), Vincent Gonzales, III (the

[3] *Richard S. Held Retirement Trust v. Clifford Wilson Mathews,* Riverside County Superior Court, civil no. RIC1210864. Doc. 1, Ex. A.

elected Tribal Secretary-Treasurer), and Anthony Andreas, III (an elected Tribal Councilmember), plus Jessica Norte (a former Tribal Councilmember who left office in 2006, but whom the Trust still names as a defendant). Collectively, these four individuals comprise four of the five[4] members of the Tribe's elected Tribal Council, its governing body, and will be referred to herein as the "Tribal Defendants." The Trust alleged that the Tribal Defendants violated federal law to support an *Ex Parte Young* theory of recovery. The Tribal Defendants moved to dismiss under Rule 12, for lack of federal jurisdiction and for tribal sovereign immunity. The District Court granted the motion based both on sovereign immunity and on lack of jurisdiction due to the Trust's failure to allege a sufficient violation of federal law under *Ex Parte Young* [Doc. 30]. This appeal followed.

STANDARD OF REVIEW

There are no disputed issues of fact in this appeal. All issues are purely legal. The District Court dismissed the action for lack of subject matter jurisdiction. See Order filed October 17, 2014 [Doc. 30]. Therefore, the standard of review is abuse of discretion.

> We review a district court's decision to dismiss a complaint with prejudice for abuse of discretion. [cit.om.] A district court abuses its discretion if it applies the wrong legal rule or if its "application of the [correct] rule was illogical, implausible, or without support in the record." [cit.om.]
>
> *Salaner v. Tarsadia Hotel*, 726 F.3d 1124, 1129 (9th Cir., 2013)

As to the sovereign immunity question, *de novo* review applies. *Miller v. Wright*, 705 F.3d 919, 923 (9th Cir., 2013).

[4] Ms. Norte's seat is now occupied by Mr. Reid Milanovich, who is not named as a defendant.

SUMMARY OF ARGUMENT

1. ***The District Court lacked federal question jurisdiction.*** In its effort to extract money from the Tribe, the Trust prays for declaratory and injunctive relief. ABBA never specifies exactly what its causes of action are or how 28 U.S.C. §1331 and 28 U.S.C. §1360 (P.L. 280) support federal jurisdiction. Instead, the Trust makes singularly opaque statements such as "Refusal to comply with the assignment order by Mathews and Tribal Council members with discretion to act falls within the penumbra of federal law" and "28 U.S.C. §1360 does not confer jurisdiction on federal courts, but violation of that federal law is a federal matter."[5] Perhaps this is so because ABBA's underlying claim in the state court judgment and order which it seeks to have the Tribe honor is breach of contract, clearly a state law claim, not a federal claim. Even though federal law is certainly involved in determining whether P.L. 280 overcomes tribal sovereign immunity as to the Tribal Defendants, the Trust's right to relief does not depend on a substantial question of federal law. The immunity of the Tribal Defendants may present a substantial question of federal law, but only a defense. Federal question jurisdiction must be based on a plaintiff's own affirmative claim, not an anticipated defense. The Trust's right to relief depends instead on its state law cause of action, which does not support federal jurisdiction.

2. ***P.L. 280 does not overcome tribal sovereign immunity as to the Tribe itself or as to its elected officers in their official tribal capacities.*** The Supreme Court has twice held that, although P.L. 280 does confer full civil jurisdiction in the state courts over individual reservation Indians for ordinary civil causes of action (tort, contract, divorce, etc.) against them in their private capacities, P.L. 280 does NOT confer any jurisdiction at all on the state courts over the Tribes

[5] Opening Brief, pp. 2, 9.

themselves. Also, this Court has held that P.L. 280 confers no jurisdiction at all on the federal courts, and that a plaintiff may not circumvent a tribe's immunity by simply naming a tribe's officers as nominal defendants.

To avoid these obstacles, the Trust asserts claims against the Tribe's elected officials under P.L. 280 on an *Ex Parte Young* theory. The subterfuge is obvious. The Trust is still trying to get the same funds from the Tribe as if it had named the Tribe itself as a defendant, rather than its elected officials. The Trust still seeks money from the Tribal treasury, not from the individual members of the elected Tribal Council in their personal non-Tribal capacities. The *Ex Parte Young* allegation cannot subject the Tribe, acting through its officers, to any claim for money. The most that such an allegation can do is to support a claim for prospective non-monetary relief. But, as before, the Trust seeks money.

Even if the Trust sought non-monetary relief, the *Ex Parte Young* allegation still does not support the Trust's claim that the Tribal Defendants violate federal law by not honoring the state court judgment and assignment order in litigation to which neither the Tribe nor they were parties. P.L. 280 did not confer *any* jurisdiction over the Tribe on the state courts, whether to make the Tribe a direct defendant in state court, or to obey the process of the state court in litigation to which the Tribe is a stranger. This is so whether the Trust proceeds directly against the Tribe, or indirectly against its elected officers. Therefore, there is no ongoing violation of federal law for the Trust's *Ex Parte Young* allegation to address.

For all these reasons, the District Court's dismissal of this action should be affirmed.

I.

THE DISTRICT COURT PROPERLY DISMISSED FOR LACK OF FEDERAL JURISDICTION.

The Trust cites 28 U.S.C. §1331 as a basis for federal jurisdiction over its claims (Doc. 1, p. 2, lines 24-28), on the theory that an interpretation of 28 U.S.C. §1360 supports such jurisdiction. However, even if a claim requires interpretation of federal law, that does not mean that the claim automatically "arises under" federal law. As this Court has recently held,

> For a case to 'arise under' federal law, a plaintiff's well-pleaded complaint must establish either (1) that federal law creates the cause of action or (2) that the plaintiff's asserted right to relief depends on a substantial question of federal law.
>
> *K2 America Corp. v. Roland Oil & Gas Co.*, 653 F.3d 1024, 1029 (9th Cir., 2011)

A. 28 U.S.C. §1360 does not create the Trust's causes of action.

The Trust alleges that the state court judgment that it seeks this Court to enforce "is grounded on contract and as such is grounded on the civil laws of the state of California . . ." (Doc. 1, p. 6, lines 2-4). Thus, the Trust's claims are not created by federal law; rather, they are created by state law. In its leading case on the subject, this Court held that such ordinary state law claims cannot be transformed into ones arising under federal law simply because they may also involve the kinds of issues of federal law that frequently attend any tribal litigant:

> There is nothing in the present case that suggests that the action is anything other than a simple breach of contract case. . . . The Tribe . . . seeks recovery of damages for failure to perform a construction contract. . . . [¶] It is true that the "arising under" requirement of section 1331 may be met by "claims founded upon federal common law as well as those of a statutory origin." [cit.om.] However, we can discern no reason to extend the reach of the federal

> common law to cover all contracts entered into by Indian tribes. Otherwise the federal courts might become a small claims court for all such disputes.
>
> *Gila River Indian Community v. Henningston, Durham & Richardson* , 626 F.2d 708, 714-715 (9th Cir., 1980)

> The fact that the Court must review federal statutory and case law to determine whether Plaintiffs may pursue their state law claims against Defendants in federal court does not transform Plaintiffs' action from one arising under New York Law into one arising under federal law.
>
> *Frazier v. Turning Stone Casino*, 254 F.Supp.2d 295, 303 (N.D.N.Y., 2002)

Thus, even though a non-party tribe is involved and issues of federal law must be considered, it is the essential nature and origin of the Trust's claims that determines whether those claims "arise under" federal law. By asserting that its claim "is grounded on contract and as such are grounded on the civil laws of the state of California . . .", the Trust confirms that its claims do not originate in federal law. They originate in state law for purposes of federal question jurisdiction.

B. The Trust's claims do not depend on a substantial question of federal law.

The nub of ABBA's argument is that "28 U.S.C. §1360 does not confer jurisdiction on federal courts, but violation of that federal law is a federal matter." (Opening Brief, p. 9) The federal courts have rejected the Trust's assertion.

1. **P.L. 280 does not confer subject matter jurisdiction of any kind on the federal courts for any claim at all.**

This Court has rejected the Trust's claim that P.L. 280, 28 U.S.C. §1360, confers *any* jurisdiction at all on the federal courts:

> Through what is commonly known as "Public Law 280" ("P.L. 280"), Congress provided to certain states [fn.om.] broad jurisdiction over criminal offenses committed in Indian country, 18 U.S.C. §1162(a), and limited jurisdiction over civil causes of action arising in Indian country, *id.* [28 U.S.C.] §1360(a). . . .
>
> The Supreme Court has explained that §1360(b) "simply" reaffirmed "the existing reservation Indian-Federal Government relationship in all respects save the conferral of state-court jurisdiction to adjudicate private causes of action involving Indians [cit.om.]"
>
> The district court correctly concluded that §1360(b) limits the exercise of state court jurisdiction; it does not confer jurisdiction on federal courts. Although P.L. 280 necessarily preempts and reserves to the Federal government or the tribe jurisdiction not so granted [cit.om.], the law plainly did not confer subject matter jurisdiction upon federal courts.
>
> *K2 America Corp. v. Roland Oil & Gas, LLC*, 653 F.3d 1024, 1027-1028 (9th Cir., 2011)[6]

2. The Tribal Defendants have not violated P.L. 280.

P.L. 280 is a purely jurisdictional statute. One cannot "violate" it. As this Court explained in *K2, supra*, P.L. 280 does no more than confer on the state courts full criminal jurisdiction and a limited measure of civil jurisdiction over individual reservation Indians. By its plain language P.L. 280 does not command

[6] The Trust seeks to distinguish *K2* by noting that, in *K2*, the "plaintiff had failed to take his case before the Superior Court, but in the case at bar the plaintiff has fully exhausted Superior Court jurisdiction." (Opening Brief, p. 12) Even if that is so, it does not matter. Federal jurisdiction does not automatically spring into existence upon or by exhaustion of state remedies. The District Court does not sit as a court of appeal from the state courts. "Simply put, 'the United States District Court, as a court of original jurisdiction, has no authority to review the final determinations of a state court in judicial proceedings." *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir., 2003).

anyone to do anything. It is not aimed at individuals. It is aimed at state courts. An individual cannot violate P.L. 280, although an individual may fail to obey an order from a state court issued under the jurisdiction conferred by P.L. 280 on the state court. But P.L. 280 itself does not command the Tribal Defendants to do anything or to assume any obligation. Thus, they cannot violate P.L. 280.

If the Trust believes that P.L. 280 requires the Tribal Defendants to comply with its assignment order, then the Trust should have sought to enforce that assignment order directly against the Tribal Defendants in the Superior Court that issued it. The Trust's separate action in the District Court seeks to have the federal court enforce an obligation that, even if it existed at all, is enforceable in the state court that created it as a matter of state law under the authority of the federal statute. The District Court is not an enforcement agent for the Superior Court. If the Superior Court has the authority over the Tribal Defendants that the Trust claims, then the Trust should enlist the Superior Court to enforce its own order.

3. The Supreme Court has twice held that P.L. 280 does not waive the sovereign immunity of tribes.

The Supreme Court first held in 1976 that P.L. 280 did no more than allow state courts to make individual reservation Indians defendants in ordinary private civil litigation (torts, contracts, divorces, etc.), while extending no state jurisdiction over the tribes themselves, as distinguished from their individual citizens, or waiving any tribe's sovereign immunity[7]:

[7] The Supreme Court's most recent and leading cases upholding tribal sovereign immunity are *Bay Mills Indian Community v. Michigan*, ___ U.S. ___, 134 S.Ct. 2024 (2014) and *Kiowa Tribe v. Manufacturing Technologies,* 523 U.S. 751, 118 S.Ct. 1800, 140 L.Ed.2d 141 (1998).

> Thus, provision for state criminal jurisdiction over offenses committed by or against Indians on reservations was the central focus of P.L. 280 . . .
>
> *Bryan v. Itasca County*, 426 U.S. 373, 380; 96 S.Ct. 2102, 2107; 48 L.Ed.2d 710 (1976)

> Piecing together as best we can the sparse legislative history of [28 U.S.C. §1360, it] seems to have been primarily intended to address the lack of adequate forums for resolving private legal disputes between reservation Indians, and between Indians and other private citizens, by permitting the courts of the States to decide such disputes; this is definitely the import of the statutory wording conferring upon a State "jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in . . . Indian country . . . to the same extent that such State . . . has jurisdiction over other civil causes of action." With this as the primary focus of [28 U.S.C. §1360], the wording that follows in [28 U.S.C. §1360]—"and those civil laws of such State . . . that are of general application to private persons or private property shall have the same force and effect within Indian country as they have elsewhere within the State"—authorizes application by the state courts of their rules of decision to decide such disputes. [fn. 10: Such civil laws] "would include the laws of contract, tort, marriage, divorce, insanity, descent, etc., but would not include laws declaring or implementing the states' sovereign powers, such as the power to tax, grant franchises, etc. These are not within the fair meaning of 'private' laws."
>
> *Id.*, 426 U.S. at 383-384; 96 S.Ct. at 2108-9

> In short, the consistent and exclusive use of the terms "civil causes of action," "aris[ing] on," "civil laws . . . of general application to private persons or private property," and "adjudicat[ion]," in both the Act and its legislative history virtually compels our conclusion that the primary intent of [28 U.S.C. §1360] was to grant jurisdiction over private civil litigation involving reservation Indians in state court.
>
> *Id.*, 426 U.S. at 384-385, 96 S.Ct. at 2109

Based on this analysis of the purpose and scope of P.L. 280, the Supreme Court held that P.L. 280 extended no state jurisdiction at all over tribes, as distinguished from their individual tribal citizens:

> The Act [28 U.S.C. §1360] itself refutes any such an inference: **there is notably absent any conferral of state jurisdiction over the tribes themselves . . .**
>
> *Bryan, supra*, 426 U.S. at 388-389; 96 S.Ct. at 2111, bold emphasis added

The Supreme Court repeated this conclusion in 1986, specifically holding that P.L. 280 did not waive any tribe's sovereign immunity:

> We have never read Pub.L. 280 to constitute a waiver of Tribal sovereign immunity . . .
>
> *Three Affiliated Tribes of Ft. Berthhold Reservation v. Wold Engineering*, 476 U.S.877, 892; 106 S.Ct. 2305, 2314; 90 L.Ed.2d 881 (1986)

Thus, the Trust is simply wrong in claiming that a supposed violation of P.L. 280 (i.e., the refusal of the Tribal Defendants to honor the Trust's state court judgment and assignment order) somehow creates subject matter jurisdiction to challenge that refusal in federal court as a federal question in which the Trust's right to relief depends on a substantial question of federal law. P.L. 280 did not confer any jurisdiction on the District Court; nor did it waive tribal sovereign immunity. These questions of federal law are no longer open. To present a substantial question of federal law, the federal question must truly be substantial:

> It has in fact become a constant refrain in such cases that federal jurisdiction demands not only a contested federal issue, but a substantial one, indicating a serious federal interest in claiming the advantages thought to be inherent in a federal forum.
>
> *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308, 313; 125 S.Ct. 2363, 2367; 162 L.Ed.2d 257 (2005)

This Court's concurs in *Peabody Coal Co. v. Navajo* Nation, 373 F.3d 945 (9th Cir., 2004). There a coal company sought to enforce not a claim arising directly from a federally-approved mining lease, but rather from an arbitration award in a dispute involving such a federally-approved mining lease. While this Court held that, because of the intense federal regulation of Indian mining leases, their direct enforcement might present a substantial federal question, the enforcement of the arbitration award based on such a lease did not. "Whether the Navajo Nation is in breach of this award is an issue that can be resolved by the common law of contracts." *Id.*, at 951.

Similarly, the mere presence of a federal question, whether 28 U.S.C. §1360 waives the Tribal Defendants' sovereign immunity as to the state court assignment order, does not transform the Trust's underlying contract claim into a claim arising under federal law. If it did, then the result eschewed by this Court in *Gila River, supra*, would prevail: federal courts would become small claims courts for all state law claims against members of tribes that might make any manner of payments to their members. Creditors could routinely name tribal officials as defendants on an *Ex Parte Young* theory that they are violating federal law by not honoring state court judgments against those tribal members on ordinary state law causes of action (contract, tort, etc.) This Court should not countenance such a result.

As a long-settled points of federal law, whether 28 U.S.C. §1360 confers any jurisdiction on district courts, or waives a tribe's sovereign immunity, do not raise a substantial question of federal law for purposes of federal question jurisdiction. Under the second prong of the test of *K2, supra*, the Trust's right to relief does not depend on a *substantial* question of federal law. Its right to relief depends instead on the merits of its contract claim. The District Court correctly determined that federal question jurisdiction was not present in this case.

II.

IF THE TRUST HAS STATED ANY CLAIM AT ALL ON WHICH RELIEF CAN BE GRANTED, IT IS AGAINST THE TRIBAL DEFENDANTS IN THEIR OFFICIAL TRIBAL CAPACITIES ONLY.

It is not clear whether the Trust has sued the Tribal Defendants in their official tribal capacities, or in their non-tribal individual capacities. On the one hand, in the caption to its Complaint [Doc. 1, p. 1], the Trust names them as follows:

> RICHARD S. HELD RETIREMENT TRUST,
>
> Plaintiff,
>
> v.
>
> JEFF L. GRUBBE, Tribal Council Chairman, Agua Caliente Band of Cahuilla Indians; VINCENT GONZALES III, Tribal Council Member, Agua Caliente Band of Cahuilla Indians; ANTHONY ANDREAS III, Tribal Council Member, Agua Caliente Band of Cahuilla Indians; LARRY N. OLINGER, Tribal Council Member, Agua Caliente Band of Cahuilla Indians; JESSICA NORTE, Tribal Council Member, Agua Caliente Band of Cahuilla Indians; CLIFFORD WILSON MATHEWS, AKA CLIFFORD WILSON MATTHEWS; DOES 1-10 inclusive,
>
> Defendants.

In the allegations of the Complaint itself, the Trust repeatedly refers to either the Tribal Council or to the members of the Tribal Council, and never to the Tribal Defendants as individuals or in any other capacity. Even when the Trust identifies the Tribal Defendants, the Trust alleges that

> . . . Agua Caliente Band of Cahuilla Indians, by its Tribal Council, refuses to comply with the assignment order and

> asserts immunity from the orders of the California Superior Court.
>
> Doc. 1, p. 2, lines 12-14
>
> [The Tribal Defendants] are members of the Tribal Council of the Agua Caliente Band of Cahuilla Indians.
>
> Doc. 1, p. 3, lines 27-28
>
> Agua Caliente Band of Cahuilla Indians, by its Tribal Council, asserts immunity from the orders of the California Superior Court.
>
> Doc. 1, p. 5, lines10-11
>
> The Tribal Council of the Agua Caliente Band of Cahuilla Indians has authority and discretion to make payments from the per capita accounts of the judgment debtor, as described by the judgments and assignment order of the Superior Court, but have threatened to refuse, and have refused, and will refuse under the purported authority of the tribe, to comply with the assignment orders as required by and in violation of federal law, 28 U.S.C. §1360.
>
> Doc. 1, p. 6, lines 15-20
>
> Plaintiff Held Trust seeks an order directing Mathews and Tribal Council Members Jeff L. Grubbe, Vincent Gonzales, III, Anthony Andreas, III, Larry N. Olinger, and Jessica Norte to comply with the Assignment Order and Judgment of the California Superior Court . . .
>
> Doc. 1, p. 8, lines 3-6

The caption and all textual allegations of the Trust's Complaint point to suit against the Tribal Defendants in their official tribal capacities as members of the Tribal Council. Nowhere does the Trust make any allegation at all that any Tribal Defendant took any action in any personal non-tribal individual capacity, as opposed to his or her official tribal capacity.

On the other hand, in an attempt to fall within the scope of the jurisdiction that P.L. 280 extended to state courts over individual reservation Indians, the Trust

makes two fleeting and confusing references to the Tribal Defendants in their individual capacities, not in an allegation, but in the headings to the Trust's two causes of action, and in its prayer for relief. The causes of action are entitled:

> PLAINTIFF'S FIRST CAUSE OF ACTION DECLARATORY RELIEF AGAINST DEFENDANT MEMBERS OF THE TRIBAL COUNCIL OF THE AGUA CALIENTE BAND OF CAHUILLA INDIANS IN THEIR OFFICIAL CAPACITY AND IN THEIR INVIDIVUAL CAPACITY ACTING IN VIOLATION OF FEDERAL LAW AND IN THE COURSE AND SCOPE OF TRIBAL LAW.
>
> Doc. 1, p. 5, lines 12-18

> PLAINTIFF'S SECOND CAUSE OF ACTION INJUNCTIVE RELIEF AGAINST DEFENDANT MATHEWS AND MEMBERS OF THE TRIBAL COUNCIL OF THE AGUA CALIENTE BAND OF CAHUILLA INDIANS AND DOES 1 THROUGH 10 IN THEIR OFFICIAL CAPACITY AND IN THEIR INDIVIDUAL CAPACITY ACTING THE IN [sic] COURSE AND SCOPE OF TRIBAL LAW IN VIOLATION OF FEDERAL LAW.
>
> Doc. 1, p. 7, lines 1-8

In its prayer for relief, the Trust does not say whether the relief it seeks against the Tribal Defendants is in their individual private non-Tribal capacities, or in their official Tribal capacities. But the Trust does refer to the Tribal Defendants as officials of the Tribe and members of the Tribal Council. The Trust

> prays for judgment against Defendants and each of them as follows:
>
> AGAINST DEFENDANTS JEFF L. GRUBBE, VINCENT GONZALES III, ANTHONY ANDREAS III, LARRY N. OLINGER and JESSICA NORTE, AND DOES 1 through 10:

> . . . 2. An order directing the named defendants members of the Tribal Council of the Agua Caliente Band of Cahuilla Indians to make payments to plaintiff...
> Doc. 1, p. 8, lines 10-21

These references in the headings and prayer for relief do mention "in their individual capacity" but they also state "acting in the course and scope of tribal law" and "acting [in?] the course and scope of tribal law as members of the Tribal Council of the Agua Caliente Band of Cahuilla Indians".

From these confusing allegations and references in headings and in the prayer, the Tribal Defendants take it that the Trust sues them in their official tribal capacities. There is no allegation of individual actions, just claims for declaratory and injunctive relief for actions taken in their official tribal capacities. If the Trust sues the Tribal Defendants in their individual private non-tribal capacities, then the Trust has stated no claim for any relief against them because there are no allegations at all of any actions by the Tribal Defendants as private individuals in any non-tribal capacity, as discussed fully below. If the Trust has stated any claim for relief at all, it is against the Tribal Defendants in their official Tribal capacities as elected Tribal government officials only.

III.

THE TRUST'S *EX PARTE YOUNG* ALLEGATION DOES NOT OVERCOME THE IMMUNITY OF THE TRIBAL DEFENDANTS IN THIS CASE.

A. The general principle: a plaintiff may not evade tribal sovereign immunity by naming tribal officials as nominal defendants.

The Trust attempts to avoid tribal sovereign immunity[8] by naming the elected members of the Tribe's Tribal Council as defendants, rather than the Tribe itself. This Court routinely rejects such subterfuges**:**

> This tribal immunity extends to individual tribal officials acting in their representative capacity and within the scope of their authority.
>
> *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476, 479 (9th Cir., 1985)

> The final question is whether ACE's tribal immunity extends to two of its employees, defendants Dodd and Purbaugh. We conclude that it does. . . . In these cases the sovereign entity is the "real, substantial party in interest, and is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants.." [cit.om.] Applying this principle to tribal rather than state immunity, we have held that a plaintiff cannot circumvent tribal immunity "by the simple expedient of naming an officer of the Tribe as a defendant, rather than the sovereign entity."
>
> *Cook v. Avi Casino Enterprises, Inc.*, 548 F.3d 718, 726-727 (9th Cir., 2008)

> Johnson is also immune from tort liability by application of NVK's sovereign immunity as an Indian tribe. [cit.om.] This immunity "protects tribal employees acting in their official capacities and within the scope of their authority." [cit.om.] Here, NVK employed Johnson as a TPO at the time of the accident. Plaintiffs do not dispute that Johnson was acting in that capacity when he engaged in the conduct giving rise to Plaintiffs' claims. Accordingly, Johnson is also immune from tort liability under tribal sovereign immunity.
>
> *M.J. ex rel. Beebe v. U.S.*, 721 F.3d 1079, 1084 (9th Cir., 2013)

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[8] As recently as 2014, the Supreme Court has again reaffirmed the vitality of the doctrine of tribal sovereign immunity, against many legal and policy arguments, including some made by the Trust. See *Bay Mills Indian Community v. Michigan*, ___ U.S. ___, 134 S.Ct. 2024 (2014).

B. The Trust's *Ex Parte Young* allegation does not overcome the tribal sovereign immunity of the Tribal Defendants in this case.

Attempting to avoid the sovereign immunity of the Tribal Defendants, the Trust makes an allegation under *Ex Parte Young*, 209 U.S. 123; 28 S.Ct. 441; 52 L.Ed. 714 (1908). In its Complaint the Trust alleges as follows:

> 28. The Tribal Council of the Agua Caliente Band of Cahuilla Indians has authority and discretion to make payments from the per capita accounts of the judgment debtors, as described by the judgments and assignment order of the Superior Court, but have threatened to refuse, and have refused, and will refuse, to comply with the assignment order as required by and in violation of federal law, 28 U.S.C. §1360.
>
> 29. The Tribal Council of the Agua Caliente Band of Cahuilla Indians asserts sovereign immunity as a bar to the jurisdiction of the Superior Court, and on that basis have threatened to refuse, and have refused, and will refuse under the purported authority of the Tribe, to comply with any orders, including assignment orders, as required by and in violation of federal law, 28 U.S.C. §1360.
>
> Doc. 1, p. 6, lines 9-20

This Court has held that a proper allegation under *Ex Parte Young* can overcome tribal sovereign immunity as to an individual tribal official. Such a proper allegation must be that (1) the tribal official has acted outside the authority that the tribe is capable of bestowing on him or her, or not in his or her official tribal capacity; (2) the tribal official is acting in violation of federal law; and (3) the relief sought is non-monetary and prospective only.

For the following reasons, the Trust has not sufficiently alleged any of these three factors to support a claim under *Ex Parte Young* as against the Tribal Defendants. Thus, their immunity remains intact.

1. The Trust has not alleged that any Tribal Defendant acted outside his or her official tribal capacity.

Nowhere in its complaint does the Trust does allege that the Tribal Defendants acted *outside* their official tribal capacities. On the contrary, if anything, the Trust alleges that they acted *within* their tribal authority. The Trust alleges that the Tribal Defendants "are members of the Tribal Council of the Agua Caliente Band of Cahuilla Indians" and that:

> 36. The Tribal Council of the Agua Caliente Band of Cahuilla Indians acknowledges authority and discretion to make the ordered payments for its Tribal member Mathews, but refuses to make such payments, and have threatened to refuse, and will refuse *under the purported authority of the tribe,* to comply with [the Trust's judgment and assignment order].
>
> Doc. 1, p. 7, line 25 to p. 8, line 1

In its Opening Brief, the Trust claims that "a group of Tribal officials, The Tribal Council, acting as tribal executive officers or tribal legislators, or both" has harmed the Trust (p. 22-23). This is also a claim that the Tribal Defendants were acting *within* their official Tribal capacities, not as individuals.

By alleging that the Tribal Defendants are members of the Tribe's elected Tribal Council, have the authority and discretion to honor the Trust's state court judgment, or not, and are acting under color of Tribal law, the Trust alleges that they are acting *within* their tribal capacity, not *outside* it, and that that tribal capacity includes the discretion to honor the Trust's state court judgment, or not. Describing them as "acting as tribal executive officers or tribal legislators" confirms that the Trust sues the Tribal Defendants only in their official capacities.

Furthermore, in the following confusing language from the headings of both its causes of action, the Trust states that its causes of action are asserted against the

> MEMBERS OF THE TRIBAL COUNCIL OF THE AGUA CALIENTE BAND OF CAHUILLA INDIANS . . . IN THEIR OFFICIAL CAPACITY AND IN THEIR INDIVIDUAL CAPACITY ACTING . . . AND [words missing?] *THE COURSE AND SCOPE OF TRIBAL LAW*
>
> Doc. 1, p. 5, lines 13-18; p. 7, lines 3-8, emphasis added

Without an affirmative allegation (and appropriate proof) that the Tribal Defendants have acted *outside* their official tribal capacities as members of the elected Tribal Council, the Trust fails to make an essential allegation under *Ex Parte Young*:

> The defendants argue that Imperial has failed to allege any viable claim that the tribal officials acted outside their authority, so as to subject them to suit. We agree.
>
> The complaint alleges no individual actions by any of the tribal officials named as defendants. As far as we are informed in argument, the only action taken by those officials was to vote as members of the Band's governing body against permitting Imperial to use the road. The votes individually have no legal effect; it is the official action of the Band, following the votes, that caused Imperial's alleged injury.
>
> *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269, 1271 (9th Cir., 1991)

> Claimants may not simply describe their claims as against a tribal official as in his "individual capacity" in order to eliminate tribal immunity. . . . Permitting such a description to affect tribal immunity would eviscerate its protections and ultimately subject Tribes to damage actions for every violation of state or federal law. The sounder approach is to examine the *actions* of the individual tribal defendants. Thus, the Court holds that a tribal official—even if sued in his "individual capacity"—is only "stripped" of tribal immunity when he acts

> "manifestly or palpably beyond his authority . . ." [cit.om.]
> . . .
> Rather, the Court finds that to state a claim for damages against Bell and Campisi, the plaintiffs would have to allege and prove that Bell and Campesi acted "without any colorable claim of authority," apart from whether they acted in violation of federal or state law. [fn.15] . . . Additionally, as the defendants point out, the plaintiffs' complaint does not allege that Bell and Campesi were acting on their own account or for their own personal benefit.
>
> *Basset v. Mashantucket Pequot Museum,*
> 221 F.Supp.2d 271, 280, 281 (D.Conn., 2002)

The above confusing reference in a caption to individual capacities is not a sufficient allegation under *Ex Parte Young.* Even treating the caption as an allegation, that reference only states "IN THEIR . . . INDIVIDUAL CAPACITY ACTING [word missing?] THE COURSE AND SCOPE OF TRIBAL LAW" (Doc. 1, Complaint, p. 7, lines 5-8). Even if one reads "OUTSIDE" into the reference where a word is apparently missing, a bare conclusory allegation that a tribal official acted outside his official capacity is simply insufficient under *Ex Parte Young.* What is required is an allegation of "individual actions" (*Imperial, supra*, at 1271) or acting "without any colorable claim of authority" or "on their own account or for their own personal benefit" (*Basset, supra*, at 281). The Trust simply makes no such allegation at all.

In contrast to the Trust's fleeting reference in a caption to individual capacities, the Tribal Defendants have offered uncontroverted evidence to the effect that, in choosing not to comply with the Trust's judgment and assignment order from the Superior Court, they were acting *within* their official tribal capacities. The Tribal Defendants provided the full text of their Tribe's

Constitution[9], which was approved by the Commissioner of Indian Affairs under 25 U.S.C. §2.[10] Article V of that Constitution authorizes the Tribe's elected Tribal Council as a body, not as individuals, to take the following actions, among others:

> (a) To administer the affairs and manage the business of the Band . . . to protect and preserve the Tribal property . . .
>
> (d) To expend any tribal funds within the exclusive control of the Band . . .
>
> (n) To prescribe the conditions under which the custodian of any Tribal . . . property may honor any subpoena concerning the production . . . of any such . . . property in any litigation to which the Tribe or a Tribal entity is not a party.

The action of which the Trust complains is that the Tribe's Tribal Council, as the Tribe's elected Tribal Government, decided not to comply with the Trust's request that it obey the judgment and assignment order of the Superior Court by refusing to pay money from the Tribal treasury to the Trust. This action was entirely within the power that the Constitution confers on the Tribal Council. It is certainly part of administering the affairs and managing the business of the Tribe,

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[9] In their opening brief on their motion to dismiss in the District Court, the Tribal Defendants requested that the District Court take judicial notice of the full text of the Tribal Constitution, included in the case file of the second case of which judicial notice was requested. [Doc. 14] The Commissioner of Indian Affairs approved the original Constitution on April 18, 1957, and Article V(n) as an amendment on August 9, 1991. The document identified by the Trust as the Tribe's Constitution (2nd Addendum to the Trust's Opening Brief), is apparently a version of the Tribe's Constitution, dated **1967** on its cover page (Opening Brief, pp. 34-40, reference in text at p. 13). Because this document is an improper attempt to supplement the record during appellate briefing, and because it is outdated by 48 years and lacks any foundation, the Tribe objects to the Court's consideration of it for any purpose. A true, correct, and complete copy of the Constitution was the subject of the Tribal Defendants' request for judicial notice in the District Court [Doc. 14]. The relevant portions thereof are quoted *infra*.

[10] This Court has held that such an approval by a federal official itself preempts contrary state law. See *Stuart v. U.S.*, 109 F.3d 1380, 1388 (9th Cir., 1997).

and of protecting and preserving Tribal property[11]. By definition this action is part of expending, or not expending, Tribal funds. It falls squarely within prescribing the conditions under which the custodian of Tribal property may honor process in litigation to which the Tribe is not a party. The Trust does not claim otherwise or allege that the Tribal Council's action was outside the scope of this above Constitutional authority. All that the Tribal Defendants did was to act within the scope of the authority expressly conferred on them by the Tribal Constitution. This Court has held that actions taken as elected members of a Tribal Council are *per se* within the authority that a tribe may confer on its elected officers:

> The defendants argue that Imperial has failed to allege any viable claim that the tribal officials acted outside their authority, so as to subject them to suit. We agree.
>
> The complaint alleges no individual actions by any of the tribal officials named as defendants. As far as we are informed in argument, the only action taken by those officials was to vote as members of the Band's governing body against permitting Imperial to use the road. The votes individually have no legal effect; it is the official action of the Band, following the votes, that caused Imperial's alleged injury.
>
> *Imperial Granite Co. v. Pala Band of Mission Indians,* 940 F.2d 1269, 1271 (9th Cir., 1991)

Without such an allegation, the Trust's claims against the Tribal Defendants in their individual non-tribal capacities do not satisfy the standard of *Ex Parte Young*.

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[11] The Trust assumes the funds belong to Mr. Mathews, the Tribal Member and judgment debtor named in the state court judgment and order, rather than to the Tribe. That is simply not so. The funds belong to the Tribe until and unless the Tribal Council acts to spend or to distribute them to Mr. Mathews or anyone else. "Furthermore, tribal members have no vested right to tribal funds until they have received payment. Felix S. Cohen, Handbook of Federal Indian Law 606 (1982 ed.)." *Quair v. Sisco*, 359 F.Supp.2d 948, 979, n. 4 (E.D.Cal., 2004).

Although the Trust has not alleged that any Tribal Defendant has acted outside his or her official tribal capacity, the Trust has alleged that they acted in violation of federal law, in that they refuse to honor the Trust's state court judgment and assignment order. Even if it were true, this allegation is still not sufficient to show that the Tribal Defendants acted outside their tribal authority. Even if the official's action turns out to be wrong, that alone does not mean that the defendant official acted outside his authority under *Ex Parte Young*. More is needed: that the official had no governmental authority at all to act, not just that his or her action was somehow wrong:

> An action is not *ultra vires* simply because it "is arguably a mistake of fact or law." *United States v. Yakima Tribal Court*, 806 F.2d 853, 859-60 (9th Cir., 1986), *cert. denied*, 481 U.S. 1069, 107 S.Ct. 2461, 95 L.Ed.2d 870 (1987). An action is *ultra vires*, and results in a divesture of sovereign immunity, only if "an employee of the United States acts *completely outside his governmental authority*." *Id.* (emphasis added). [fn.om.] We hold that the *ultra vires* exception does not divest the United States of sovereign immunity in this case.
>
> *Alaska v. Babbitt*, 67 F.3d 864, 867 (9th Cir., 1995)

In *Alaska*, *supra*, 67 F.3d at 867, n. 3, this Court gave an example of such an action "completely outside his governmental authority":

> For example, 'if a dispute occurs pertaining to the sale of an employee's personal house, his government employment provides him with no shield to liability.'

Because the Trust makes no allegation that the Tribal Defendants acted outside their tribal capacity (and instead alleges that they acted *within* that capacity), the Trust cannot invoke *Ex Parte Young*. Even if the Tribal Defendants violated federal law by choosing not to honor the Trust's state court judgment and assignment order, they still made that choice in their official tribal capacity as

members of the Tribal Council in the name of the Tribe at which the assignment order is explicitly aimed. Their action, even were it wrong, is still shielded by their Tribe's sovereign immunity under *Ex Parte Young*.

2. The Trust seeks prohibited monetary relief.

Even if a plaintiff makes the proper allegation that a tribal official has acted beyond his or her tribal authority, that plaintiff may seek *only* prospective injunctive relief under *Ex Parte Young,* and *not* any monetary relief. The Supreme Court and this Court have so held:

> In [cit.om., the Supreme] Court stated
>
> > "[W]hen the action is in essence one for the recovery of money from the state, the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants." *Id.,* at 464, 65 S.Ct., at 350
>
> Thus the rule has evolved that a suit by private parties seeking to impose a liability which must be paid from public funds in the state treasury is barred by the Eleventh Amendment." [cit.om.]
>
> > *Edelman v. Jordan*, 415 U.S. 651, 663; 94 S.Ct. 1347, 1355-1356; 39 L.Ed.2d 662 (1974)
>
> Moreover, to the extent the complaint seeks monetary relief, such claims are barred under *Ex Parte Young*.
>
> > *Miller v. Wright*, 705 F.3d 919, 928 (9th Cir., 2013)
>
> [*Ex Parte Young*] permits actions for prospective non-monetary relief against state or tribal officials in their official capacity to enjoin them from violating federal law, without the presence of the immune State or tribe.
>
> > *Salt River Project Agricultural Improvement and Power District v. Lee*, 672 F.3d 1176, 1181 (9th Cir., 2012)

In this case, the Trust unabashedly seeks an order from this Court commanding the Tribal Defendants to pay money to the Trust. Such a payment would come from the funds of the Tribe, not the personal funds of the Tribal Defendants. The funds that the Trust wishes to divert to itself are funds "from Agua Caliente Band of Cahuilla Indians", NOT from the individual Tribal Defendants. This is confirmed by the Trust's prayer for relief:

> WHEREFORE, Plaintiff HELD TRUST prays for judgment against Defendants and each of them as follows: AGAINST [the 5 named Tribal Defendants and 10 Does]
> . . .
> 2. An order directing the named defendants members of the Tribal Council of the Agua Caliente Band of Cahuilla Indians to make payments to plaintiff RICHARD S. HELD RETIREMENT TRUST as described by the Assignment Order and Judgment of the California Superior Court . . .
> Doc. 1, p. 8, lines 20-23

The Trust's prayer thus seeks an order directing the Tribal Defendants to pay money to the Trust "as described by the Assignment Order". The Superior Court's assignment order is Exhibit B to the Complaint and states:

> IT IS ORDERED:
>
> That the following rights to payment of Judgment Debtor CLIFFORD WILSON MATHEWS . . . be, and hereby are, assigned to the judgment creditor, RICHARD S. HELD RETIREMENT TRUST . . .:
> A. Regular periodic monthly payments from Agua Caliente Band Of Cahuilla Indians in the amount of $22,500 per month each, due to Tribal Member CLIFFORD WILSON MATHEWS . . .
> Doc. 1, Exhibit B, p. 1, lines 25-28 to p. 2 line 3

The Trust thus seeks an order from this Court directing the Tribal Defendants to pay money to the Trust in accordance with the Superior Court's

above assignment order. That order purports to assign to the Trust "Regular periodic monthly payments **from Agua Caliente Band Of Cahuilla Indians** in the amount of $22,500[12] per month each, due to" Mr. Mathews (bold emphasis added). The Trust's own prayer demonstrates that the source of the funds that the Trust seeks is "from Agua Caliente Band of Cahuilla Indians", and NOT from the personal funds of the individual Tribal Defendants.

The Trust's concession that it seeks money from the Tribe, rather than from the individual Tribal Defendants, is fatal to its *Ex Parte Young* claim. A monetary claim is necessarily against the sovereign, and therefore barred, under *Ex Parte Young*, if it seeks money from the sovereign:

> a suit may fail, as one against the sovereign, even if it is claimed that the officer being sued has acted unconstitutionally or beyond his statutory powers, if the relief requested cannot be granted by merely ordering the cessation of the conduct complained of, but will require affirmative action by the sovereign or the disposition of unquestionably sovereign property.
>
> *Larson v. Domestic & Foreign Corp.*, 337 U.S. 682, 691; n. 11; 69 S.Ct. 1457, 1468; 93 L.Ed. 1628 (1949)

> The general rule is that a suit is against the sovereign "if the judgment sought would expend itself on the public treasury."
>
> *Dugan v. Rank*, 372 U.S. 609, 620; 83 S.Ct. 999, 1006; 10 L.Ed.2d 15 (1963)

Here, the Tribe, as any government, can act only through its officers. Those officers have acted, not on behalf of themselves personally, but rather on behalf of the Tribe whose members elected them to conduct its business and expend its funds under the Tribe's Constitution. They determined NOT to pay the Trust in response to a state court judgment and order in litigation to which neither the Tribe

[12] This amount is vastly overstated.

nor any of them is even a party. Any order from this Court to the individual Tribal Defendants to pay money to the Trust as stated in the Trust's Complaint and its assignment order would necessarily expend itself on the Tribal treasury, NOT on the personal wallets or purses of the individual Tribal Defendants. This action is therefore against the Tribe as sovereign, and necessarily barred under *Ex Parte Young*:

> Thus, "when the action is in essence one for the recovery of money from the state, the state is the real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants." *Id.*, [*Ford Motor Co. v. Department of Treasury*, 323 U.S. 459] at 464, 65 S.Ct., at 350.
>
> *Regents of the University of California v. Doe*, 519 U.S. 425, 429; 117 S.Ct. 900, 903;137 L.Ed.2d 55 (1997)

See also *Cook v. Avi Casino Enterprises, Inc.*, 548 F.3d 718, 727 (9th Cir., 2008).

The Trust's reliance on *Maxwell v. County of San Diego*, 697 F.3d 941 (9th Cir., 2012) is misplaced. In *Maxwell*, this Court emphasized the "remedy sought" aspect of the doctrine of tribal sovereign immunity, rather than the "scope of authority" aspect. Following either in this case yields the same result. As noted above, the remedy sought by the Trust is that the Tribal Defendants obey the Superior Court's assignment order. The language of that order is for the Tribal Defendants to pay money "from Agua Caliente Band Of Cahuilla Indians" to the Trust. [Doc. 1, complaint, Exhibit B, p. 2, lines 1-2]

Thus, the remedy sought by the Trust is that the Tribal Defendants pay money from the Tribe's treasury to the Trust. Under *Ex Parte Young* this remedy is unavailable. Any request for money is beyond the scope of *Ex Parte Young*, as noted in detail above. For this reason, *Maxwell* does not change the result that the Trust's *Ex Parte Young* allegation does still not defeat the tribal sovereign

immunity of the Tribal Defendants, whether the test employed is the "remedy sought" or the "scope of authority". Both tests yield the same result in this case.

For this additional reason, the Trust has not satisfied the requirements of *Ex Parte Young.* Monetary relief is simply not available under *Ex Parte Young*, especially when, as here, it would operate directly against the Tribe's treasury.

IV.

THE TRUST GREATLY OVERSTATES *NEVADA V. HICKS.*

Starting at p. 16 of its Opening Brief, the Trust relies extensively on *Nevada v. Hicks,* 533 U.S. 353, 361-362; 121 S.Ct. 2304, 2311; 150 L.Ed.2d 398 (2001). The Trust infers from *Hicks* that tribal sovereign immunity involves a balancing of tribal and state interests, and can be dispensed with if "the operation of the state maybe arrested at the will of the tribe." (Opening Brief, p. 18) The Trust interprets *Hicks* far more broadly than does this Court, and confuses the weighing of interests that maybe appropriate when considering *applicability* of state statutes to reservation Indians with the sovereign immunity of tribes when sued for the *enforcement* of such state laws. The balance of interests may favor the *applicability* of state statutes in some cases, but there is no balancing of interests regarding the *enforcement* of state law against a tribe by suit in any case. By conflating the two, the Trust is simply wrong.

A. *Hicks* is confined to its facts.

In *Hicks* state officials served a state court search warrant on a reservation *on an individual Indian, not on a tribe* (unlike here) in a search for evidence of an off-reservation crime. The Supreme Court framed the issue as follows:

> This case presents the question whether a tribal court may assert jurisdiction over civil claims against state officials who enter tribal land to execute a search warrant against a

> tribe member suspected of having violated state law outside the reservation.
>
> *Id.,* 533 U.S. at 355, 121 S.Ct. at 2308

Thus, the issue in *Hicks* was the jurisdiction of the *tribal* court, not that of the *state* court. *Hicks* itself states that its holding is narrow and specific as to tribal court jurisdiction *only*: "Our holding in this case is limited to the question of tribal court jurisdiction over state officers enforcing state law." *Id.,* 533 U.S. at 358, n. 2. Despite this disclaimer, the Trust cites *Hicks* for the broad proposition that "State laws may be applied to Indian Tribes after balancing the interests of the State and the Tribe." (Opening Brief, p. 17) While such balancing does occur in some cases[13] as to the *applicability* of a state statute to an on-reservation activity, the mere applicability of a state statute does not imply a waiver of tribal sovereign immunity for *enforcement* by the state, as the Trust concludes. In holding that, although an Oklahoma statute *applied* to a tribe, sovereign immunity still prevented the state from suing the tribe to *enforce* that state statute, the Supreme Court explicitly drew just this distinction:

> To say substantive state laws apply to off-reservation conduct, however, is not to say that a tribe no longer enjoys immunity from suit. In *Potawatomi*, for example, we reaffirmed that while Oklahoma may tax cigarette sales by a Tribe's store to nonmembers, the Tribe enjoys immunity from a suit to collect unpaid state taxes. [cit.om.] **There is a difference between the right to demand compliance with state laws and the means available to enforce them.**
>
> *Kiowa Tribe v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 755; 118 S.Ct. 1700, 1703; 140 L.Ed.2d 981 (1998) (bold emphasis added)

[13] E.g., taxation of cigarette sales to non-Indians, see *Washington v. Confederated Tribes of Colville Reservation,* 447 U.S. 134; 100 S.Ct. 2069; 65 L.Ed.2d 10 (1980)

As recently as 2014, the Supreme Court repeated and relied on this very language from *Kiowa* in *Bay Mills Indian Community v. Michigan*, ___ U.S. ___, 134 S.Ct. 2024, 2031 (2014) to reach a similar result..

Citing the Supreme Court's statement that its decision in *Hicks* is confined to the question of tribal court jurisdiction, this Court also views *Hicks* narrowly:

> *Hicks* expressly limited its holding to "the question of tribal-court jurisdiction over state officers enforcing state law" . . . *Id.*, at 358, n.2 . . .To summarize, Supreme Court and Ninth Circuit precedent, as well as the principle that only Congress may limit a tribe's sovereign authority, suggest that *Hicks* is best understood as the narrow decision it explicitly claims to be. *See Hicks*, 533 U.S. at 358. n.2, 121 S.Ct. 2304. Its application of *Montana* [i.e., interest balancing] to a jurisdictional question arising on tribal land should apply only when the specific concerns at issue in that case exist.
>
> *Water Wheel Camp Recreational Area v. Larance*, 642 F.3d 802, 813 (9th Cir., 2011)

See also *McDonald v. Means*, 309 F.3d 530, 540 (9th Cir., 2002) in which this Court again limited the holding of *Hicks* to its facts (i.e., state court process against an individual Indian for an off-reservation crime, question of tribal court jurisdiction over state officials): "The limited nature of *Hicks's* holding renders it inapplicable to the present case."

Unlike *Hicks*, the state court process that the Trust seeks to enforce is directed at the Tribe itself and the Tribe's treasury through its elected Tribal Council members,[14] *not* to any individual reservation Indian. That alone

[14] The assignment order that the Trust seeks to enforce purports to assign to the Trust "Regular periodic monthly payments from the Agua Caliente Band of Cahuilla Indians . . .", Doc. 1 Exhibit B, p. 2, lines 2-3. The Trust obtained its assignment order under California Code of Civil Procedure §708.510. This statute authorizes the Superior Court to "order the judgment debtor to assign to the

distinguishes *Hicks*, as this Court has noted above. Further, the focus of *Hicks* was the scope of the jurisdiction of a tribal court to require state officials to seek relief in tribal court before executing their warrant. Here, there is no claim that the Trust must exhaust any tribal court remedies. Here, there is no question of tribal court jurisdiction. There is no tribal court. Since *Hicks* itself states that its holding does not extend beyond its specific facts, and with this Court so interpreting it, *Hicks* does not stand for the broad proposition advanced by the Trust.

B. *Hicks* does not alter or diminish tribal sovereign immunity.

With the precedential value of *Hicks* thus limited to the extent of *tribal court* jurisdiction, the controlling law is still that California *state court* process does not extend to a *tribe*, as distinguished from its individual members. This Court has held that "Absent a waiver of sovereign immunity, tribes are immune from processes of the [California state] court." *Bishop Paiute Tribe v. County of Inyo*, 291 F.3d 549, 557 (9th Cir., 2002), *reversed on other grounds sub nom. Inyo County v. Paiute-Shoshone Indians*, 538 U.S. 701, 123 S.Ct. 1887, 155 L.Ed.2d 933 (2003). This Court further extends this tribal immunity even to a subpoena

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judgment creditor" certain forms of payment. In this case, the assignment order (Doc. 1, Exhibit B) does not order the individual judgment debtor to do anything. Instead, it makes a free-standing direct assignment itself without the involvement of the judgment debtor: "IT IS ORDERED: That the following rights to payment of Judgment Debtor [names] be, and hereby are, assigned to [the Trust]." (*Id.*, p. 1, lines 24-28). The Tribal Defendants doubt the validity of the assignment order, since it is authorized only by a statute that allows an order directed to the judgment debtor himself to make the assignment himself, not to have the Superior Court make the assignment itself directly, without the judgment debtor doing anything. However, neither the Tribe nor any Tribal Defendant was not a party to the litigation in Superior Court that produced this order, so neither had any notice and could not object to it.

from a federal court on behalf of a criminal defendant. *U.S. v. James*, 980 F.2d 1314, 1319 (9th Cir., 1992).[15]

This result also flows from the important role that tribal sovereign immunity plays in overall tribal sovereignty, the fostering of which is at the heart of modern federal Indian policy:

> The common law sovereign immunity possessed by a Tribe is a necessary corollary to Indian sovereignty and self-governance.
>
> *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering*, 476 U.S. 877, 890; 106 S.Ct. 2305, 2313; 90 L.Ed.2d 881 (1986)

Hicks preserves the essential role of tribal sovereignty. The issue in *Hicks* was whether a tribal court had jurisdiction over non-Indians seeking to enforce a state court subpoena against an individual Indian on a reservation. The test for that inquiry was whether such jurisdiction was "necessary to protect tribal self-government or to control internal relations" (*Id.*, 533 U.S. at 359) or to preserve "the right [of reservation Indians] to make their own laws and be ruled by them" (*Id.*, 533 U.S. at 361, quoting *Williams v. Lee*, 358 U.S. 217, 220; 79 S.Ct. 269; 3 L.Ed.2d 251 (1959).

In the present case, applying the same test yields the opposite result. Here, the reservation Indians (the Tribe) have established their own law, their

[15] The Tenth Circuit has very recently held that a civil subpoena to a non-party tribe is barred by tribal sovereign immunity. See *Bonnet v. Harvest (U.S.) Holdings, Inc.*, 741 F.3d 1155 (10th Cir., 2014). See also *Alltel Communications, LLC v. DeJordy*, 675 F.3d 1100 (8th Cir., 2012) in which the Eighth Circuit reached the same result regarding a subpoena directed at a non-party tribe and a non-party tribal official.

Constitution, with the provisions quoted above,[16] and wish to be ruled by them. While there was no significant intrusion into tribal sovereignty and the right of reservation Indians to make their own laws and be ruled by them in *Hicks*, there certainly is such an intrusion here. The Trust's assignment order is in direct conflict with the Constitution that empowers only the Tribal Council to expend Tribal funds and to determine whether to honor state court process in litigation to which the Tribe is not a party. The Trust seeks to usurp the Tribe's federally-approved Constitution, and thereby to deprive the Tribe of the right to make its own laws and be ruled by them. As the Supreme Court has consistently held since its progenitor case of modern federal Indian law, "Essentially, absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them." *Williams v. Lee*, 358 U.S. 218, 220; 79 S.Ct. 269, 271 (1959), cited with approval in *Nevada v. Hicks*, 533 U.S. 353, 361; 121 S.Ct. 2304, 2311, 150 L.Ede.2d 398 (2001).

For these reasons, *Hicks* is distinguished and does not control this case. If anything, *Hicks* supports the role of tribal sovereign immunity in this case. *Hicks* recognizes the ability of the Tribe to make its own laws and be ruled by them as to the unwanted effort of the Trust to extract money from the Tribe and thereby to defeat its federally-approved Tribal Constitution.

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[16] The Tribal Council is authorized to "administer the affairs and manage the business of the Band"; "to expend any tribal funds"; and "to prescribe the conditions under which the custodian of any Tribal . . . property may honor any subpoena concerning the production . . . of any such . . . property in any litigation to which the Tribe or a Tribal entity is not a party." Constitution, Articles V(a), (d) and (n), Doc. 47-3, pp. 11 and 14.

V.

THE SUPREME COURT AND THIS COURT HAVE ALREADY REJECTED MANY OF THE TRUST'S ARGUMENTS.

A. P.L. 280 does not imply federal court review of state courts.

The Trust claims that Congress must have intended "full jurisdiction" for litigation of claims in state court under P.L. 280, including a waiver of tribal sovereign immunity for federal court review of such immunity when asserted in state court. Then, without providing any basis for it, the Trust makes an even broader claim: federal courts should be able to review *all* claims that a tribe's actions violate either the U.S. Constitution or unspecified federal law:

> 8.1. The Court should find that 28 U.S.C. §1360 provides state courts will full jurisdiction for litigation of claims in which Indians are parties, and for federal court review to enforce state court judgments and orders challenged by claims of Native American Sovereign Immunity. . . .
> 8.2. The Court should also find that federal judicial review of tribal policy and actions implemented by a Tribal Council should be available when those policies and actions are in conflict with the United States Constitution or federal law.
>
> Opening Brief, p. 24

The Trust makes these claims because, without such a federal remedy and a waiver of tribal sovereign immunity, it may not be able to litigate its claims: "Federal Court review must be available because there is no other forum for review." (Opening Brief, p. 14).

The Supreme Court has already rejected such a "right-without-a-remedy" argument in the context of tribal sovereign immunity:

> Our cases allowing states to apply their substantive laws to tribal activities are not to the contrary. . . .To say

> substantive state laws apply to off-reservation conduct, however, is not to say that a tribe no longer enjoys immunity from suit. In *Potawatomi*, for example, we reaffirmed that while Oklahoma may tax cigarette sales by a Tribe's store to nonmembers, the Tribe enjoys immunity from a suit to collect unpaid state taxes. [cit.om.] **There is a difference between the right to demand compliance with state laws and the means available to enforce them.**
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> *Kiowa Tribe v. Manufacturing Technologies, Inc.* 523 U.S. 751, 755; 118 S.Ct. 1700, 1703; 140 L.Ed.2d 981 (1998) (bold emphasis added)

Similarly, in *Santa Clara Pueblo v. Martinez,* 436 U.S. 49 (1978) the Supreme Court considered the Indian Civil Rights Act, which placed major substantive limitations on Indian tribal governments, but for the violation of which the only explicit federal remedy was habeas corpus for those in tribal criminal custody. Even though this left individuals harmed by tribal actions with no federal civil remedy, the Supreme Court refused to imply any federal civil remedy.

The Supreme Court later also rejected the Trust's assertion that tribal sovereign immunity cannot operate to deprive it of a forum for its claim:

> The perceived inequity of permitting the Tribe to recover from a non-Indian for civil wrongs in instances where a non-Indian allegedly may not recover against the Tribe simply must be accepted in view of the overriding federal and tribal interests in these circumstances, much in the same way that the perceived inequity of permitting the United States or North Dakota to sue in cases where they could not be sued as defendants because of their sovereign immunity also must be accepted.
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> *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering*, 476 U.S. 877, 893; 106 S.Ct. 2305, 2314; 90 L.Ed.2d 881 (1986)

Whatever the "perceived inequity" may be, it is a product of the sovereign immunity enjoyed, in varying degrees, by federal, state, and tribal governments, all of which sometimes leave a plaintiff with no remedy. The federal courts are simply not at liberty to create waivers of sovereign immunity when a statute does not call for one because "a waiver of tribal sovereign immunity 'cannot be implied but must be unequivocally expressed.'" *Santa Clara*, *supra*, 436 U.S. at 58, 98 S.Ct. at 1677.

With regard to P.L. 280 itself, *Bryan*, *supra*, as well as *Three Affiliated Tribes*, *supra*, both hold that P.L. 280 did not provide any waiver of tribal sovereign immunity, as quoted above. The Trust's arguments to the contrary have been rejected and are simply no longer viable.

B. Tribal self-government *does* require tribal sovereign immunity.

At pp. 17-18 of its Opening Brief, the Trust urges the Court to balance tribal and state interests to determine if tribal sovereign immunity applies in this case, citing *Hicks*, *supra*, 533 U.S. at 362[17]: "It was held that the State's interest in execution of process outweighs Tribal Immunity, noting that Tribal Immunity is limited to preservation of essential tribal self-government functions and internal relations." To this claim, the Tribal Defendants reply as follows.

First, this is not what *Hicks* says. Instead, *Hicks* relies on and cites *Strate v. A-1 Contractors*, 520 U.S. 438; 117 S.Ct. 1404; 137 L.Ed.2d 661 (1997): "In *Strate* we explained that what is necessary to protect tribal self-government and control internal relations can be understood by looking at [certain examples]." 533 U.S. at 360; 121 S.Ct. at 2311. *Strate* concerned the jurisdiction of a tribal court over conduct involving non-members. No one had sued a tribe. No party invoked sovereign immunity. Instead, there was a balancing of tribal, state and federal

[17] The actual language to which the Trust refers is on p. 360, not p. 362.

interests to determine that adjudicatory jurisdiction was lacking in the tribal court. *Strate* has nothing to do with tribal sovereign immunity, but much to do with tribal sovereignty in general, a much broader concept of which tribal sovereign immunity is but one important aspect. See *Nanomantube v. Kickapoo Tribe,* 631 F.3d 1150, 1152 (2011) in which the Tenth Circuit made this distinction. Whatever balancing may occur regarding tribal adjudicatory jurisdiction over non-members, there is no balancing regarding a claim of tribal sovereign immunity when asserted by a tribe against which state court process is asserted.

Second, tribal sovereign immunity *is* a crucial aspect of overall tribal sovereignty. As recently as 2014, the Supreme Court repeated its 1986 holding on this point:

> That immunity, we have explained, is "a necessary corollary to Indian sovereignty and self-governance." *Three Affiliated Tribes of Fort Berthold Reservation v. Wold Engineering, P.C.*, 476 U.S. 877, 890, 106 S.Ct. 2305, 90 L.E2d.2d 881 (1986)
>
> *Bay Mills Indian Community v. Michigan*, ___ U.S. ___; 134 S.Ct. 2024, 2030 (2014)

In the same case the Supreme Court repeated that sovereign immunity applies in all cases, including off-reservation commercial disputes having no direct effect on tribal self-government. In both *Bay Mills* and *Kiowa* the Supreme Court rejected the same attempts to limit the doctrine as the Trust now urges:

> But, instead, all the State musters are retreads of assertions we have rejected before. *Kiowa* expressly considered the view, now offered by Michigan, that "when tribes take part in the Nation's commerce," immunity "extends beyond what is necessary to safeguard tribal self-governance." [cit.om.]
>
> *Id.,* 134 S.Ct. at 2037

Third, one of the primary reasons why the sovereign immunity of *any* government exists is precisely to protect its treasury from the claims of third parties. As this Court has recognized,

> Immunity of the casino directly protects the sovereign Tribe's treasury, which is one of the historic purposes of sovereign immunity in general. *Cf. Alden v. Maine*, 527 U.S. 706, 750, 119 S.Ct. 2240, 144 L.Ed.2d 636 (1999) (noting that sovereign immunity protects the financial integrity of States, many of which "could have been forced into insolvency but for their immunity from private suits for money damages").
>
> *Allen v. Gold Country Casino*, 464 F.3d 1044, 1047 (9th Cir., 2006)

Thus, the Trust is flat wrong in asserting that "The claims and remedies sought are no threat to tribal self-government, in fact enforcement of contract obligations and court judgments should be in harmony with tribal self-government." (Opening brief, p. 16) On the contrary, they are a huge threat to self-government.

Similarly, at p. 16 of its Opening Brief, the Trust states that "The claims made by The Trust against the Tribal Council members . . . have no bearing on the Tribes' right to self-governance in its intramural matters . . .". This claim is astonishingly false for the reasons noted above. What greater intrusion can there be into a tribe's internal business that requiring that funds from its treasury be paid to a third party? The Tribe's Constitution entrusts to its elected Tribal Council Members the authority and responsibility to expend the Tribe's funds. Any order to them to pay funds to the Trust usurps their authority under the Tribal Constitution, and certainly violates the Tribe's right to make its own laws and be ruled by them.

Therefore, the Trust is simply wrong in claiming that tribal sovereign immunity does not extend beyond what is needed to protect tribal self-government. Instead, it applies in *all* cases when a state court attempts to assert its jurisdiction directly against a tribe. Balancing of interests occurs *only* when a tribe asserts its regulatory or adjudicatory jurisdiction over a non-member on its reservation.

Balancing of interests does not occur when a state court attempts to assert jurisdiction over a tribe, especially when it attempts to reach into a Tribe's treasury to hand Tribal funds to a third party in litigation to which the Tribe and its elected Tribal Government are total strangers.

C. 28 U.S.C. §1360(c) does not subject tribes to state law.

At p. 16 of its Opening Brief, the Trust claims that "Congress clearly intended by 28 U.S.C. §1360(c) that Indians and Indian Tribes should comply with state law." Without repeating the holdings in full, the Tribal Defendants will note that they have already provided quotations from *Bryan* and *Three Affiliated Tribes, supra*, in each of which the Supreme Court expressly rejects the claim that any part of P.L. 280 waived the sovereign immunity of any tribe.

The purpose of subsection (c) is simply to provide a rule of decision in cases in which no state law applies "in the determination of civil causes of action pursuant to this section." 28 U.S.C. §1360(c). The Tribal Defendants do not rely on this subsection as a source of immunity. That immunity inures in the Tribe's status as a federally-recognized tribe, and in the Tribal Defendants' status as the duly elected members of the Tribal government. The Supreme Court also views subsection (c) in this limited way:

> §4(c), 28 U.S.C. §1360(c), providing for the "full force and effect" of any tribal ordinances or customs "heretofore or hereafter adopted by an Indian tribe . . . if not inconsistent with any applicable civil law of the State" contemplates the continuing vitality of tribal government.
>
> *Bryan v. Itasca County*, 426 U.S. 373, 389; 96 S.Ct. 2102, 2111; 48 L.Ed.2d 710 (1976)

Therefore, as the Supreme Court teaches, subsection (c) strengthens, rather than undermines, tribal self-government. It cannot be read to subject tribes to any degree of state court jurisdiction that is not accomplished by subsections (a) or (b).

CONCLUSION

This Court may provide controlling precedent for this appeal if it renders its opinion in the above *ABBA* appeal before determining this appeal. If not, then the Court may wish to consider consolidation, as the issues are identical.

The District Court certainly lacked jurisdiction under 28 U.S.C. §1360 because this Court has held so. Jurisdiction under 28 U.S.C. §1331 is absent for lack of a substantial federal question. The Trust's claims arise under state contract law, not federal law. Nor does such jurisdiction exist by implication from P.L. 280 because federal jurisdiction exists, if at all, only by statutory grant, not implication.

If the Trust really believes that P.L. 280 requires the Tribal Defendants to obey the Superior Court's assignment order, the Trust should have sought to enforce that order against the Tribal Defendants in the Superior Court that issued it. But the Trust instead initiated this separate action in District Court. Doing so attempts to cast the District Court as a court of appeals from the Superior Court. This not the function of the District Court. It also upsets the balance of authority that Congress struck in P.L. 280 by shifting to the state courts routine contract and similar private actions, and the enforcement of their judgments by assignment order or otherwise, against individual reservation Indians. The Trust's current attempt to find "arising under" jurisdiction also flies in the face of the Supreme Court's recent articulation of "arising under" jurisdiction:

> Instead, the question is, does a state law claim necessarily raise a stated federal issue, actually disputed and substantial, which a federal forum may entertain **without disturbing any congressionally approved balance of federal and state judicial responsibilities.**
>
> *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308, 314; 125 S.Ct. 2363, 2368; 162 L.Ed.2d 257 (2005) (bold emphasis added)

In this case, the answer to the question posed in *Grable* is a resounding No. Congress expressly established the balance of federal and state judicial responsibilities for routine contract, tort, and similar claims against individual reservation Indians by assigning jurisdiction over them in P.L. 280 to the state courts, not the federal courts. The state courts are fully capable of entertaining such claims, and of enforcing their judgments and orders. Allowing District Court review of such Superior Court orders needlessly disrupts that balance. For this additional reason, the District Court lacked jurisdiction under 28 U.S.C. §1331.

The Trust's *Ex Parte Young* allegation fails for (1) not alleging action by the Tribal Defendants outside the authority that the Tribe was capable of conferring on them, (2) seeking prohibited monetary relief, and (3) not showing any violation of federal law. This case remains a simple attempt to circumvent the Tribe's sovereign immunity to obtain funds from the Tribe's treasury in a case in which the Tribe and the Tribal Defendants are complete strangers to the Trust.

For the above reasons, the Tribal Defendants urge the Court to affirm the District Court's dismissal of this case.

Dated: May 13, 2015

Respectfully submitted,

/s/_____
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CERTIFICATE OF COMPLIANCE
WITH RULE 32(a), F.R. App.P.;
STATEMENT OF RELATED CASES;
STATEMENT UNDER NINTH CIRCUIT RULE 28-2.7

1. This brief complies with the type-volume limitation of F.R.App.P. 32(a) because this brief contains 13,456 words, excluding parts of the brief exempted by F.R.App.P. 32(a)(7)(B)(ii).
2. This brief complies with the typeface requirements of F.R.App.P. 32(a)(5) and the type style requirements of F.R.App.P. 32(a)(6) because this brief has been prepared in a proportionally-spaced typeface using WORD 2010 in 14-point type.
3. A related case pending in this Court, within the meaning of Ninth Circuit Rule 28-2.6, is No. 13-56701, *ABBA Bail Bonds, Inc. v. Jeff L. Grubbe, et al.*
4. Except for the following, as used in Ninth Circuit Rule 28-2.7, all applicable statutes are contained in the brief, in full or in relevant part: none.

Dated: May 14, 2015

__/s/_____
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ADDENDUM: 28 U.S.C. §1360

(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State as are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of	*Indian country affected*
Alaska	All Indian country within the State
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian Country within the State

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States, or shall authorize the regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe. Band, or community in the exercise of any authority it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.