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11 CEDARVILLE RANCHERIA TRIBAL COURT; and  
12 TRIBAL COURT JUDGE PATRICIA R.LENZI

13 **UNITED STATES DISTRICT COURT**  
14 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
15 **SACRAMENTO DIVISION**

16 DUANNA KNIGHTON,  
17 Plaintiff,

18 v.

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

Case No. 2:16-cv-02438-WHO

**DEFENDANTS' NOTICE OF HEARING  
ON MOTION AND MOTION TO  
DISMISS COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF; SUPPORTING MEMORANDUM  
OF POINTS AND AUTHORITIES**

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

Date: February 8, 2017  
Time: 1:30 P.M.  
Courtroom: 2-17<sup>TH</sup> Floor  
Judge: Hon. William H. Orrick

24  
25 **TO THE COURT AND ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

26 Please be advised that on February 8, 2017 at 1:30 pm, in Courtroom 2 of the United  
27 States District Court for the Northern District of California, located at 450 Golden Gate Avenue,

1 San Francisco, California 94102 (Eastern District Court case assigned to visiting Judge Orrick),  
2 Defendants Cedarville Rancheria of Northern Paiute Indians, its tribal court, and its tribal judge  
3 Patricia R. Lenzi, will and hereby do move, pursuant to Rule 12(b)(1) & (6) of the Federal Rules  
4 of Civil Procedure to dismiss the Plaintiff's Complaint for Declaratory and Injunctive Relief on  
5 the following grounds: (1) sovereign immunity as to all three defendants, (2) Tribal Court is the  
6 proper jurisdiction as to all three defendants, (3) the complaint fails to state a claim for which  
7 relief can be granted as to all three defendants, (4) the three defendants are not necessary or  
8 indispensable parties to the Court's review of the Tribal Court's finding of jurisdiction, (5) as to  
9 the Defendant Tribe, Plaintiff's claims are not ripe for adjudication; and (6) the Complaint fails  
10 to state a claim upon which relief can be granted.  
11

12  
13 The motion is based on this notice, the accompanying memorandum of points and  
14 authorities, the oral argument on the hearing of this matter, all pleadings and records heretofore  
15 filed in this action, and all relevant matters subject to judicial notice.  
16

17 Respectfully Submitted this December 16, 2016.  
18

19 DURAN LAW OFFICE  
20

21 /s/ Jack Duran

22 Jack Duran  
23 Attorney for Defendants  
24 CEDARVILLE RANCHERIA OF  
25 NORTHERN PAIUTE INDIANS;  
26 CEDARVILLE RANCHERIA TRIBAL  
27 COURT; and TRIBAL COURT JUDGE  
28 PATRICIA R. LENZI

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1  
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. INTRODUCTION**

4 The Cedarville Rancheria of Northern Paiute Indians, its Tribal Court, and its Tribal  
5 Court Judge Patricia Lenzi (“Defendants”), respectfully move this Court to dismiss Plaintiff’s  
6 Complaint for Declaratory and Injunction Relief (“Complaint”) under Federal Rules of Civil  
7 Procedure 12(b) on the grounds that: (1) the doctrine of sovereign immunity shields Defendants  
8 from the Court’s jurisdiction, (2) Plaintiff’s Complaint fails to state a claim for which relief can  
9 be granted, (3) jurisdiction exists under *Montana v United States*, (4) Defendants are not  
10 necessary or indispensable parties to this post-exhaustion review action pursuant to Rule 19 of  
11 the Federal Rules of Civil Procedure, (5) as to the Defendant Tribe, Plaintiff’s claims are not ripe  
12 for adjudication; and (6) the Complaint fails to state a claim upon which relief can be granted.

13 The Cedarville Rancheria of Northern Paiute Indians (“Tribe”) is a federally recognized  
14 Indian Tribe with reservation lands within Modoc County California. On October 2, 2014, the  
15 Tribe filed suit against several defendants, including the Plaintiff here, Duanna Knighton. The  
16 Tribe brought suit in its Tribal Court before the Honorable Chief Judge and Defendant Patricia  
17 Lenzi. The complaint brought numerous civil claims related to Plaintiff Knighton’s consensual  
18 relationship via long term employment with the Tribe.

19 Chief among those allegations in the Tribal Court action was that Plaintiff Knighton was  
20 a 15-year employee of the Tribe whose employment responsibilities occurred both on the Tribe’s  
21 fee land and federal trust lands. The Tribal Court complaint makes allegations of employment  
22 fraud, inflation of Plaintiff Knighton’s salary, over \$2 million in tribal investment losses, a  
23 negotiation and real estate purchase, negotiated by Plaintiff Knighton that was rife with conflicts

1 of interest resulting in the Tribe's alleged overpayment for the building. (See Request for  
2 Judicial Notice, Ex. 1, and Tribe's Tribal Court Complaint.)

3 The Tribal Court complaint also alleges Plaintiff Knighton implemented an unauthorized  
4 retirement fund, funded by the Tribe without proper authorization, into which she placed her  
5 inflated salary and other converted tribal funds, in excess of the federal limits and tribal policy  
6 for retirement accounts. The Tribal Court complaint alleged Plaintiff Knighton refused to return  
7 \$29,000.00 plus in tribal funds that did not belong to her. She did all these things while in the  
8 employ of the Tribe, and within the jurisdiction of the Tribe's federal trust and fee lands.  
9

10 **II. PROCEDURAL SUMMARY OF THE UNDERLYING TRIBAL COURT CASE**  
11 **AGAINST PLAINTIFF KNIGHTON**  
12

13 On March 11, 2015, the Tribal Court found jurisdiction over Plaintiff pursuant to both  
14 Tribal law and pursuant to federal law, *Montana v United States*, 450 U.S. 544 (1981). (See Ex.  
15 6, attached to Complaint).

16 On March 7, 2016, after Plaintiff Knighton appealed the Tribal Court's finding of  
17 jurisdiction to the Tribe's Appellate Division, the Tribal Appellate Court upheld the Court's  
18 jurisdiction and returned the case back to the Tribal Court. (See Ex. 10, attached to Complaint).

19 On or about April 29, 2016 under Federal Rule of Civil Procedure 19, Plaintiff Knighton  
20 filed a Motion to Dismiss with the Tribal Court, on the issue of failing to join a necessary or  
21 indispensable party in defendant RISE, Inc., whom the Tribal Court had previously dismissed.  
22 The Tribal Court, again, dismissed Plaintiff Knighton's motion, finding that defendant Rise was  
23 not indispensable or a necessary party to the Tribal Court litigation. (See Ex. 11, attached to  
24 Complaint).  
25  
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27

1 On September 15, 2016, the Tribe and Plaintiff Knighton stipulated to bypass the Tribe's  
2 appellate division in order for Plaintiff to seek post exhaustion review request of Tribal Court  
3 jurisdiction. (See Ex. 12, attached to Complaint).

4 On October 20, 2016, Plaintiff Knighton filed the instant action for declaratory and  
5 injunctive relief naming the Tribe, Tribal Court and Tribal Court Chief Judge, Patricia Lenzi, as  
6 defendants.

7 Plaintiff's exhibits to the complaint do not constitute the complete records in this case.  
8 Further, Plaintiff Knighton has included documents, such as Cedarville Rancheria's  
9 Administrative Policies and Procedures that were never presented to the Tribal Court for review.  
10 (See Ex. 2, attached to Complaint). These documents, however, further substantiate the Tribe's  
11 jurisdictional bases over Plaintiff Knighton.

12 Plaintiff Knighton alleges that because the current Tribal Court was not in existence at  
13 the time she was in the employ of the Tribe, the Tribal Court lacks jurisdiction over her.  
14 However, Defendant Tribe's Administrative Policies and Procedures confer jurisdiction not only  
15 to the Tribe, but more importantly, to the Tribal Council in cases where the Tribal Administrator  
16 is the focus of discipline. (See Ex.2, attached to Complaint, Cedarville Administrative Policies  
17 and Procedures at Section 1. B Grievance Steps, sub. (d).). Further, the Tribal Council is final  
18 arbiter of decisions concerning discipline pursuant to the Policies and Procedures. (*Id.* at E.  
19 Appeal Hearings (L)). Hence, even if no court was in existence at the time of Plaintiff  
20 Knighton's tenure as Tribal Administrator, the Tribal Council retained not only inherent tribal  
21 authority to discipline Plaintiff as a tribal employee, but authority enumerated within the Tribe's  
22 Administrative Policies and Procedures. In sum, Plaintiff Knighton's argument that she did not  
23 consent to tribal discipline is false because the administrative policies and procedures, of which  
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1 she developed while Tribal Administrator, confer jurisdiction to the Tribe over employee  
2 discipline and or grievances.

3 **III. ARGUMENT—SUBJECT MATTER JURISDICTION**

4 **A. Sovereign Immunity shields Defendants from Suit**

5 A motion to dismiss on tribal sovereign immunity grounds is properly brought under  
6 Rule 12(b)(1). *Breakthrough Mgmt. Group, Inc. v. Chukchansi Gold Casino & Resort* 629 F.3d  
7 1173, 1177 (10th Cir. 2010); *Lewis v. Norton* 424 F.3d 959, 961 (9th Cir. 2005).

8 Federal courts have long recognized that Indian Tribes possess the sovereign immunity  
9 from suit traditionally enjoyed by sovereign powers. *Santa Clara Pueblo v. Martinez*, 436 U.S.  
10 49, 58 (1978). This immunity applies to all federal suits for damages, declaratory relief, and  
11 injunctive relief unless there is an express tribal waiver or congressional abrogation. *Id.* at 58-59.  
12 *See Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269, 1271 (9th Cir. 1991).

13 Furthermore, the doctrine's ambit covers tribal officials and employees acting within the  
14 scope of their authority. *See Fletcher v. United States*, 116 F.3d 1315, 1324 (10th Cir. 1997);  
15 *Hardin v. White Mountain Apache Tribe*, 779 F.2d 476, 479 (9th Cir. 1985); *Romanella v.*  
16 *Hayward*, 933 F. Supp. 163, 167 (D. Conn. 1996); *Kizis v. Worse Diesel Int'l, Inc.*, 794 A.2d 498  
17 (Conn. 2002).

18 The January 29, 2014 Federal Register of Lists of Federally Recognized Tribes and  
19 Entities Eligible to Receive Federal Benefits supports the Defendants' claim of sovereign  
20 immunity. (See Exhibit 1, List of Federally recognized Indian Tribes, Federal Register attached  
21 to J. Duran declaration). Hence, as a recognized Indian Tribe, Defendant Tribe is entitled to  
22 sovereign immunity against unconsented civil suit, including the instant action seeking  
23 declaratory and injunctive relief. Tribal Sovereign Immunity applies to suits for declaratory and  
24

1 injunctive relief. *People v. Quechan Tribe of Indians*, 595 F.2d 1153 (1979). In that case the  
2 State of California, as plaintiff, sought declaratory relief against an Indian tribe. The Ninth  
3 Circuit held the tribe enjoyed sovereign immunity from unconsented suit absent a waiver by  
4 Congress, noting that the Courts have no choice but to recognize sovereign immunity. *Id.* at 57.  
5 See also *Santa Clara Pueblo v. Martinez*, 436 U.S. at 58-59 (1978); *Imperial Granite v Pala*  
6 *Band of Mission Indians*, 940 F.2<sup>nd</sup>, 1269, 1271 (9<sup>th</sup> Cir. 1991).

8         Similar to the Tribe, Defendant Tribal Court enjoys immunity from suit in these  
9 circumstances. This immunity applies to all federal suits for damages, declaratory relief, and  
10 injunctive relief unless there is an express tribal waiver or congressional abrogation. *Santa Clara*  
11 *Pueblo, supra*, at 58-59; see *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d  
12 1269, 1271 (9th Cir. 1991). Likewise, Judge Lenzi, who is sued in her official capacity only, is  
13 also immune from suit. If tribal officials are acting within the scope of their lawful authority and  
14 relief would run against the tribe itself, they share the tribe's immunity from suit. *Imperial*  
15 *Granite Co.*, 940 F.2d at 1269; *Fletcher*, 116 F.3d at 1324.

18         Here, the Tribal Court and Judge Lenzi acted within the scope of their authority granted  
19 by the Cedarville Rancheria Judicial Code, and plaintiff Knighton does not allege that they acted  
20 outside the scope of their lawful authority. Absent such allegations, tribal officials enjoy the  
21 same immunity from suit as the Defendant Tribe. *United States v. Oregon* (9th Cir. 1981) 657  
22 F.2d 1009, 1012, fn. 8.

24         Defendants have not consented to declaratory and injunctive relief. Defendants have not  
25 waived their sovereign immunity, despite the stipulation to federal court review. Congress has  
26 not abrogated Defendants' sovereign immunity in this matter.

27 ///

1           **B. This Court Lacks Subject Matter Jurisdiction to Hear this Action Because**  
2           **Plaintiff, as an Employee of The Tribe, Consented to Jurisdiction**

3           **1. Consensual Relationship Between Plaintiff and Defendant Tribe**

4           A Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction is properly  
5           made on the basis that the complaint fails to establish grounds for federal subject matter  
6           jurisdiction as a matter of fact. *Gould Electronics Inc. v. United States* 220 F.3d 169, 176 (3rd  
7           Cir. 2000). Although Plaintiff Knighton claims the Tribal Court has no jurisdiction to hear  
8           the underlying case, there is evidence to support tribal jurisdiction in the underlying matter.  
9           Although not mentioned in her complaint directly, only in attached Exhibits, the Tribe and  
10          Plaintiff Knighton were in a 15-year employment relationship. This undisputed fact triggers  
11          the first exception under *Montana v. United States*, 450 U.S. 544 (1981), which allows Tribes  
12          to regulate activities of nonmembers who enter consensual relationships with the Tribe, as by  
13          commercial dealings, including on fee lands.  
14

15  
16          Moreover, under Tribal Court Code section 201 *et seq.*, Plaintiff Knighton consented to  
17          Tribal Court jurisdiction when she entered into a consensual employment relationship with  
18          the Tribe. The Tribal Court is the exclusive venue for resolution of the Tribal Claims against  
19          Plaintiff Knighton under *Montana*. Even if *in arguendo*, the federal Court were to find the  
20          Tribe's Court Code inapplicable, or that the Tribal Court entity lacks jurisdiction over  
21          Plaintiff Knighton, Defendant Tribe would have jurisdiction over Plaintiff based upon its  
22          inherent tribal authority and the *custom and tradition* of the Tribe or its Council resolving past  
23          employment disputes, independent or absent a Tribal Court. (See Declaration of Melissa  
24          Davis, Cedarville Rancheria Tribal Chairperson at ¶¶4-5) Jurisdiction can also be  
25          demonstrated through the Tribe's Administrative Policies and Procedures. (See Ex. 2,  
26  
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1 attached to Complaint, Cedarville Administrative Policies and Procedures at Section 1. B  
2 Grievance steps, sub. (d)). These Procedures permit the Tribe’s Council to be the final arbiter  
3 over disciplinary and grievance issues related to Tribal employment. The Council specifically  
4 has jurisdiction over matters involving the Tribal Administrator, a post Plaintiff Knighton  
5 previously held while employed by the Tribe. (*Id.* at E. Appeal Hearings (L)).  
6

7 Since Tribal Court jurisdiction exists, jurisdiction here is improper.  
8

9 **2. Tribal Court Jurisdiction also Exists as to *Montana*’s Second Prong**  
10 **— “Direct Effects”**

11 Tribal Court jurisdiction also exists as to Plaintiff under *Montana*’s second prong —  
12 conduct that “has a direct effect or threatens or has some direct effect on the political integrity,  
13 the economic security, or the health or welfare of the tribe.” *Montana*, 450 U.S. at 566.  
14

15 As noted in Defendant Tribe’s Tribal Court complaint against Plaintiff Knighton, upon  
16 which The Tribal Court held jurisdiction existed, Knighton’s numerous alleged activities in  
17 defrauding the Tribe, directly imperiled the Tribe. In *Attorney Process and Investigative*  
18 *Services, Inc., v. Sac and Fox Tribe of Mississippi in Iowa*, 609 F.3rd 927 (8<sup>th</sup> Cir. 2010),  
19 the 8<sup>th</sup> Circuit found direct effects *Montana* jurisdiction where a Tribe was imperiled by the  
20 alleged conversion of tribal funds if said conversion flowed directly from the defendant’s  
21 conduct. Specifically, the Court held that the Sac and Fox Tribe in Iowa tribal court, which  
22 did not exist at the time the events giving rise to an intra-tribal dispute, had jurisdiction over  
23 Attorney Process under *Montana*’s second prong, “direct effects.” *Id.* at 927-28. The Court  
24 upheld a lower court finding that Attorney Processes’ actions, in storming the Tribe’s casino  
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1 and taking \$1,000,000 in cash, *directly imperiled* the Tribe’s government and economic  
2 affairs under *Montana*.

3 Here, the facts are eerily similar, save Plaintiff Knighton was a 15-year trusted employee  
4 of the Tribe. Plaintiff Knighton’s actions over those 15 years of employment, are alleged to have  
5 resulted in a massive fraud against the Tribe, including employment wage fraud, retirement fund  
6 fraud, conversion of tribal funds and mismanagement of \$2,000,000 in tribal investment funds,  
7 much of which were designated for tribal children’s education.

8 While not rising to the level of outrageousness related to Attorney Processes’ 30 agents  
9 storming a Tribal casino, Plaintiff Knighton’s actions of raiding the Tribe’s books and records to  
10 her financial benefit, were equally devastating to the Defendant Tribe. As the Tribe’s  
11 administrator, Plaintiff Knighton was a trusted employee and in complete control of the Tribe’s  
12 finances, books and records and could conceal her fraud. It was not until the Tribe authorized a  
13 forensic audit after Plaintiff left the Tribe’s employment, that the Tribe discovered the depth and  
14 extent of Plaintiff’s deception, and filed suit against her in Tribal Court to hold her accountable.  
15

16 Although the Eighth Circuit remanded to the lower court the issue related to conversion  
17 and whether *Montana*’s first prong applied, it held firm that jurisdiction under *Montana*’s “direct  
18 effects” test had been met to confer tribal court jurisdiction. Here, the Tribal Court found  
19 jurisdiction over Plaintiff under both prongs of *Montana*—consensual relations and direct  
20 effects. These findings were upheld by the Tribe’s Appellate Court.  
21

22 ///

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24 ///

1 Thus, Tribal Court jurisdiction, under the second *Montana* prong, is proper.<sup>1</sup> This  
2 means jurisdiction is not proper here.

3 **C. The Tribal Court And Judge Lenzi are Not Required or Necessary Parties**  
4 **For Post-Exhaustion Review of Court Jurisdiction Under Rule 19.**

5 The Tribal Court and Judge Lenzi should be dismissed from this action because they are  
6 not “necessary or indispensable” to the post-exhaustion review of tribal court jurisdiction.

7 **1. Party Joinder Analysis Under Rule 19**

8 To determine if the absent party is necessary to the suit, the court must undertake another  
9 two-part analysis. First, the court must decide if *complete relief* is possible among those already  
10 parties to the suit. This analysis is independent of the question of whether relief is available to  
11 the absent party. *Eldredge v. Carpenters 46 Northern California Counties Joint Apprenticeship*  
12 *and Training Committee*, 662 F.2d 534, 537 (9<sup>th</sup> Cir. 1981). Next, the court must determine  
13 whether the absent party has a *legally protected interest* in the suit. This interest must be more  
14 than a financial stake, *Northern Alaska Environmental Center v. Hodel*, 803 F.2d 466, 468 (9<sup>th</sup>  
15 Cir. 1986), and more than speculation about a future event. *Montana v. International Ass'n of*  
16 *Machinists*, 847 F.2d 620, 621 (9<sup>th</sup> Cir.1988).

17 **a. Complete Relief is Obtainable Against Plaintiff Knighton**

18 Rule 19(a) applies where joinder would have either of two effects. First, joinder must be  
19 ordered if complete relief cannot be accorded among the parties. Fed. R. Civ. P. 19(a)(1). There  
20 is no suggestion that the Tribal Court or Judge’s absence would preclude this Court from  
21 fashioning meaningful relief. *See Eldredge, supra*, 662 F.2d at 537 (while desirable to join all  
22  
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25

26  
27 <sup>1</sup> See *United States v. Janis*, 556 F.3d 894, 898 (8<sup>th</sup> Cir.2009) (defendant's “receipt and retention” of tribal funds  
28 transferred in violation of tribal policy was “conversion” under 18 U.S.C. § 1163).

1 4500 employees to eradicate sex discrimination, relief on plaintiff's claims against the defendant  
2 can be afforded by an injunction against that party alone).

3 A case from the 10<sup>th</sup> circuit also held that a Tribe was not a required or indispensable  
4 party to a case involving a tribal court order in *Thlopthlocco Tribal Town v Stidham*, 2014 WL  
5 434542? (Tenth Cir. 2014). Certainly, should this Court determine subject matter jurisdiction  
6 exits, the indispensable party status of RISE, Inc. can be decided without the Tribal Court and  
7 Judge Lenzi as defendants here.  
8

9 **b. Neither the Court nor Judge Lenzi have a Legally Protected**  
10 **Interest in the Post-Exhaustion Review Litigation**

11 Next, to determine if the Tribal Court and Judge are necessary parties, this Court should  
12 consider whether the absent party "claims an interest relating to the subject of the action." Fed.  
13 R. Civ. P. 19(a)(2). If the interest requirement is not satisfied, the Court need not reach the other  
14 factors in clauses (2)(i) and (ii) of Rule 19. Here, neither the Tribal Court nor Judge Lenzi  
15 possess the requisite legally protected interest in the subject matter. *See 3A Moore's Federal*  
16 *Practice* ¶ 19.07[2.-0], at 19-99 (2d ed. 1986) (must be legally protected interest, not merely  
17 financial interest or interest of convenience).  
18  
19  
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21

22 The "subject matter" of the instant case concerns a Tribal Court finding of jurisdiction.  
23 The only interest the Tribal Court or Judge Lenzi have to the review is *related to future Court*  
24 *venue, e.g. whether the Knighton case remains in Tribal Court or is ordered to state court.* The  
25 Tribal Court and Judge Lenzi might be "interested" from the perspective of whether they will be  
26  
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28

1 required to rule on the litigation in the future, but nothing more. Additionally, neither the Tribal  
2 Court nor Judge Lenzi are subject to damages under the doctrine of *Ex Parte Young*, 29 U.S.123  
3 (1908). Hence, no cognizable protectable interest exists as to the Tribal Court or Judge Lenzi.  
4

5 Finally, as noted previously, neither the Tribal Court nor Judge Lenzi are subject to  
6 injunctive relief due to their sovereign immunity. Thus, as no protectable tribal interest exists,  
7 the Court and Judge Lenzi should be dismissed from this declaratory and injunctive relief action.  
8  
9

10 **D. The Complaint Should Also be Dismissed Under the Ripeness**  
11 **Doctrine.**

12 Ripeness is designed to prevent a federal court from prematurely adjudicating matters by  
13 asking it to conduct a preliminary evaluation of: (1) the fitness of the issues for review, and (2)  
14 the hardship to the parties if consideration is withheld. *National Park Hospitality Ass'n v.*  
15 *Department of the Interior*, 538 U.S. 802, 807-08 (2003).  
16

17 Here, it is Black letter law that due to the Defendant Tribe's sovereign immunity and  
18 Plaintiff Knighton's failure to demonstrate a waiver of said immunity, this case will NEVER be  
19 ripe for Court adjudication. Further, as the claims against Plaintiff Knighton in the underlying  
20 Tribal Court are not federal questions, the Court, again, lacks jurisdiction to review the merits of  
21 the Defendant Tribe's claims against her.  
22

23 As such Plaintiff Knighton's complaint is unripe. It is premature and should be dismissed.  
24

25 ///

26 ///



1 **IV. ARGUMENT—FAILURE TO STATE A CLAIM**

2 **A. Standard for Rule for 12(b)(6) Motions.**

3 Dismissal under 12(b)(6) is proper where there is a “lack of cognizable legal theory” or  
4 “the absence of sufficient facts alleged under a cognizable legal theory.” *Balisteri v. Pacifica*  
5 *Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990). The Court may properly dismiss the case where  
6 “plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”  
7 *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).  
8

9 **B. Plaintiff Has Failed to State a Claim Upon Which Relief Can Be Granted.**

10 Plaintiff has advanced untenable legal theories to support jurisdiction: 28 U.S.C. § 1331,  
11 and 28 U.S.C § 2201. Section 1331, which grants jurisdiction over civil actions arising under the  
12 Constitution or federal law, is inapplicable because Plaintiff has not identified the federal  
13 statutory basis for her claims. *See Pit River Home & Agric. Coop. Ass'n v. United States*, 30 F.3d  
14 1088, 1097 (9th Cir. 1994). Although Plaintiff advances a claim for Post-Exhaustion review of  
15 the question of Tribal Court jurisdiction, it has not proffered any facts indicating or suggesting  
16 that the Tribe is responsible for the finding of jurisdiction or issued the order or intends to act  
17 against Plaintiff in any way, shape or form, requiring a declaratory relief finding or injunctive  
18 relief.  
19  
20

21 Other than the controversy between Plaintiff and Defendant Tribe that gives rise to the  
22 Tribe’s underlying complaint against Plaintiff, the Tribe is not a party to any controversy related  
23 to the Court’s review of the Tribal Court’s jurisdictional finding. Further, the Tribe cannot  
24 provide relief because it did not issue the order against Plaintiff. As the Tribe cannot provide  
25 Plaintiff relief, there exists no present controversy, and Plaintiff has failed to state a claim upon  
26  
27

1 which relief can be granted. Her complaint for declaratory and injunctive relief must be  
2 dismissed.

3 Further, as explained above, the Tribal Court has jurisdiction over this matter pursuant to  
4 *Montana v United States*, 540 U.S. 544 (1981) and its progeny. As such, since a proper Court  
5 exists to adjudicate the dispute between Plaintiff and the Defendant Tribe, this Court should  
6 dismiss the Tribe from this declaratory relief action, and also dismiss the action in its entirety as  
7 to all three defendants.  
8

9 **V. CONCLUSION**

10 For the foregoing reasons, Defendants ask that this Court grant their motion to dismiss.  
11

12 Respectfully Submitted this December 14, 2016.  
13

14 DURAN LAW OFFICE  
15

16 By:

17 /s/Jack Duran  
18

19 Jack Duran

20 Attorney for Defendants

21 CEDARVILLE RANCHERIA OF

22 NORTHERN PAIUTE INDIANS;

23 CEDARVILLE RANCHERIA TRIBAL

24 COURT; and TRIBAL COURT JUDGE

25 PATRICIA R.LENZI  
26  
27  
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