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Attorney for Defendants
CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS;
CEDARVILLE RANCHERIA TRIBAL COURT; and
TRIBAL COURT JUDGE PATRICIA R. LENZI

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

SACRAMENTO DIVISION

DUANNA KNIGHTON, Plaintiff, v. CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS, CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS TRIBAL COURT; and TRIBAL COURT JUDGE PATRICIA LENZI, Defendants	Case No. 2:16-cv-02438-WHO **DEFENDANTS' REPLY BRIEF TO OPPOSITION TO MOTION TO DISMISS** Fed. R. Civ. P. 12(b)(1), (6) Date: February 8, 2017 Time: 1:30 pm Courtroom: 2-17th Floor Judge: Hon. W.H. Orrick

I. INTRODUCTION

Plaintiff Knighton's opposition makes seven arguments as to why this case should not be dismissed: 1) this Court does have jurisdiction over her; 2) she exhausted her tribal court remedies; 3) sovereign immunity does not apply; 4) she can bring this suit because Defendant Tribal Court exceeded its jurisdiction; 5) Defendants' notice of motion is defective; 6) the Tribal

Court and tribal judge Lenzi are necessary parties in this case; and 7) non-party R.I.S.E. is an indispensable party. As explained below, these arguments fail. The motion to dismiss should be granted. This case should be dismissed.

II. ARGUMENT

A. The Tribal Court Has Jurisdiction—Not This Court

1. The Tribal and Appellate Courts Held Tribal Jurisdiction Exists over Plaintiff Under *Montana's* First Prong, "Consensual Relations"

Montana v. United States, 450 U.S. 544 (1981) is clear. Tribal employment is a form of consent to tribal jurisdiction—one of two prongs that recognizes tribal jurisdiction. *Montana* did not differentiate between whether the employment was on or off the reservation; it establishes that employment with the Tribe equals a *consensual* relationship such that jurisdiction is not deemed offensive. *Montana*, 450 U.S. at 565. Where Tribal Court jurisdiction exists, federal court jurisdiction cannot also exist. Id at 564-566.

Here, Plaintiff cannot avoid the fact that she was a tribal employee for more than 15 years. During this time, she obviously worked for an Indian tribal nation. The Tribe's Executive Committee, to whom she reported, made decisions and imposed discipline, including termination of employment. The Tribe fined its members and imposed sanctions upon its employees, including disenrollment (ejection) and banishment from the Tribe. Although the Tribe did not have a court during her employment, the Tribe's Council and Executive Committee, at times, acted like one.

Plaintiff herself acted as judge and jury when she terminated Tribal employees including when she terminated the Tribe's auditor, who had discovered serious internal control issues needing immediate attention. These control issues, however, were never resolved—allowing Plaintiff to continue to embezzle funds from the Tribe. Finally, Plaintiff prepared and implemented tribal policies and procedures which conferred *exclusive* jurisdiction over

employment matters to the Tribe. As such, the Tribe's trial and appellate courts found that the Tribe's consensual relationship with Plaintiff warranted Tribal Court jurisdiction versus jurisdiction before this Court.

2. The Tribal and Appellate Courts Found Jurisdiction Under the Second Prong of Montana, "Special Effects"

Tribal jurisdiction also exists over Plaintiff under *Montana's* second prong, "special effects." *Montana* held that in addition to "consensual relations," jurisdiction is proper when the conduct affects the health, safety or security of the Tribe. The Tribal Court, as affirmed by a three-judge Appellate Panel, after briefing and oral argument, ruled that Plaintiff's conduct rose to the level conferring jurisdiction under the "special effects" prong.

Specifically, Plaintiff's long-term theft and mismanagement of tribal funds, including children's education and federal grant funds, imperiled the Tribe. It had a "special effect" on the Tribe conferring Tribal Court jurisdiction. The financial effects of Plaintiff's conduct were devastating and will reverberate for years to come. Plaintiff's argument that her acts are distinguishable from the acts conferring *Montana* "special effects" jurisdiction in the *Attorneys Process and Investigative Services* case is not well-taken. The only real distinction between *Attorneys Process* and this case is the defendants in *Attorneys Process* used a gun while Plaintiff used a computer and a pen. The consequences of Plaintiff's actions in stealing and mismanaging Tribal funds, and the consequences of the defendants' actions in *Attorneys Process*, are largely the same. Since the Tribal Court found it had jurisdiction, jurisdiction should remain there, and not here.

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3. Plaintiff's Retroactive Tribal Court Argument is Misplaced Because the Tribal Court is the Apparatus the Tribe Decided to Adjudicate This Dispute

Next, Plaintiff argues the Court has no jurisdiction over her because at the time the Tribe filed its complaint, Plaintiff was no longer working for the Tribe. For this theory to prevail, the Court would have to completely ignore the 18 years of "consensual, systematic and continuous" contacts between the Tribe and Plaintiff during her tenure as a tribal employee – the very basis of the Court's jurisdictional finding under *Montana*.

Further, it is not the date the Tribal Court began that dictates the analysis. Even if the Tribal Court had never existed, the Tribe could *still* adjudicate this matter, but in a different forum. The Tribal Court disagreed with this argument twice. In granting non-party R.I.S.E.'s motion to dismiss in the underlying Tribal Court case, the Court stated: "The date the Tribal Court was established is immaterial to determining whether or not the *Tribe* has civil jurisdiction over the parties and the controversy. The forum through which the Tribe elects to exercise its jurisdiction is immaterial to determining whether or not the Tribe has jurisdiction over a person, entity, or dispute. Had the Tribe not created a court to hear disputes such as this, the full adult voting member of the Tribe would be the forum that would hear this dispute. However, in this case, the Tribe has formed a court for this purpose." (Plaintiff's Exhibit 1, pp.1-17.)

Additionally, the Court explained that jurisdiction under *Montana* is not decided by the forum the Tribe chooses to adjudicate matters. (Pla. Exhibit 10, pp. 52-56.) The Tribe has the authority under its Judicial Code to establish and hear disputes and prior to the existence of the Tribal Court, i.e, its "community council" could have decided this matter. (*Id*.) The Tribal Court is simply the forum the Tribe chose. That it chose a Court instead of a community council does not divest the Tribal Court of jurisdiction over this dispute.

B. The Tribal Court Did Not Exceed Its Jurisdiction

The United States Supreme Court in *Iowa Mutual v. La Plante*, 480 U.S. 9, pp.14-16 (1987), held that Tribal courts are an expression of Tribal sovereignty and self-determination. The U.S. Supreme Court has a long-established history of rejecting attacks on a Tribe's Court as a means of acquiring federal court jurisdiction. In particular, the U.S. Supreme Court has rejected the argument that a Tribal Court should be divested of jurisdiction because it is biased toward the Tribe and Tribal members. In *Iowa Mutual Inc., supra*, the High Court specifically rejected this line of argument as a means of obtaining federal court jurisdiction. In *Iowa Mutual,* as here, petitioner insurance company challenged the Tribal Court's finding of jurisdiction in federal district court. One of the arguments made by the insurance company in pursuit of diversity federal court jurisdiction was to protect petitioner from local (e.g., tribal) bias and incompetence. The Supreme Court rejected this line of argument, specifically stating:

> "[P]etitioner also contends that the policies underlying the grant of …jurisdiction, protection against local bias and incompetence—justify the exercise of federal jurisdiction. The alleged incompetence of Tribal Courts is not among the exceptions to the exhaustion requirement established in *National Farmers Union*, 471 U.S. at 471 U.S. 856, n.21 and would be contrary to congressional policy promoting the development of tribal courts. Moreover, the Indian Civil Rights Act, 25 U.S.C. § 1302 provides non-Indians with various protections against unfair treatment in tribal Courts. Although, petitioner must exhaust available tribal remedies before instituting suit in federal court, the . . . . . Court's determination of tribal jurisdiction is ultimately subject to review."
>
> *Iowa Mutual*, 480 U.S. at 19.

Here, analogous to petitioner's claims of bias and incompetence in *Iowa Mutual* that were rejected, Plaintiff's allegations of perceived Tribal Court bias is not a basis for federal court relief.

Plaintiff also claims this Court has jurisdiction under *Plains Commerce Bank v. Long Family Land & Cattle Co*., 554 U.S. 316, 324 (2008). *Plains Commerce* is easily distinguishable because in *Plains* a tribal member was trying to assert Tribal Court jurisdiction over a party (Plains Commerce Bank) that had *no relations*, consensual or otherwise, to the Tribe either on or off the reservation. Here, it is the Tribe asserting jurisdiction over Knighton, a former tribal employee, who had a fifteen plus year employment relationship with the Tribe. This is completely opposite of the facts in *Plains Commerce*, thus *Plains* is not the law here.

Plaintiff's attempt to bootstrap federal jurisdiction over this matter by claiming lack of Tribal Court jurisdiction, Tribal bias, and Tribal Court incompetence are unpersuasive. As such, Defendants' motion to dismiss should be granted.

C. Defendants Do Enjoy Sovereign Immunity

Plaintiff unconvincingly attempts to distinguish *Cal. ex. Rel. Cal. Dep't of Fish & Game v. Quechan Tribe of Indians*, 595 F.2d 1153 (9th Cir. 1979). Defendants simply re-assert that under *Quechan Tribe* sovereign immunity is a complete bar to this declaratory relief action. In *Cal Dept. of Fish and Game v. Quechan*, the State of California argued that it could assert its fish and game laws against non-members who the Tribe authorized to fish on reservation land without having a State license. The Court held that the Tribe, as a sovereign, was completely immunized from the State suit against it because of sovereign immunity.

Plaintiff also relies on *Nat'l Farmers Union v. Crow Tribe of Indians*, 471 U.S. 845, 852 (1985) to argue sovereign immunity is not dispositive. In *National Farmers*, the court was asked whether an Indian tribal court had exceeded its authority to assert jurisdiction over a non-Indian. The court did not rely on sovereign immunity in its decision or find that immunity did not apply.

It merely stated that a federal court may look at the facts of case involving a non-Indian and the application of tribal jurisdiction to determine whether tribal jurisdiction comports with due process.

Lastly, Plaintiff cites but does not discuss *Atkinson Trading Co. v. Manygoats*, 2004 U.S. Dist. LEXIS 31789, at *32 (D. Ariz. 2004), *Adkinson* provides Plaintiff no help. This case is inapplicable because the case concerned the Crow Tribe attempting to assert a tribal occupancy tax over a non-tribal business, not located on tribal land. The lower court held that the Tribe's application of the tax was applicable under *Montana's* first prong "consensual relations", but the Supreme Court held these relations were too attenuated and because not applying the tribal tax did not imperil the Tribe. No holding related to sovereign immunity was made by the Supreme Court in *Atkinson*. Further, *Atkinson* helps defendants because its holding specifically stated that **"**The consensual relationship must stem from "commercial dealing, contracts, leases, or other arrangements," *Montana*, 450 U.S., at 565. Here Plaintiff's 15 year employment with the Tribe is the basis of the consensual relationship, which is consistent with *Atkinson's* holding.

C. Plaintiff Has Not Exhausted Her Tribal Court Remedies Because Sovereign Immunity Is Dispositive

In the absence of a waiver of sovereign immunity, Plaintiff cannot exhaust her Tribal Court remedies. *Michigan v Bay Mills Indian Community*, United States Supreme Court, Docket No. 12-515 (2014) citing *Puyallup Tribe, Inc. v. Department of Game of Wash.,* 433 U. S. 165 (1977); *Kiowa Tribe of Okla.v. Manufacturing Technologies, Inc*., 523 U. S. 751 (1998); *C & L Enterprises, Inc. v. Citizen Band Potawatomi Tribe of Okla*., 532 U. S. 411, 418 (2001).

Plaintiff has not argued such a waiver exists because it does not. Hence, the sovereign immunity analysis presented above and in Defendants' motion to dismiss applies. Sovereign immunity is a complete defense to this action. The motion to dismiss should be granted.

D. Defendants' Notice As To The Tribal Court and Tribal Judge Is Not Defective

Plaintiff argues that Defendants' notice of motion is defective as to Defendant Tribal Court and Defendant Tribal Court Judge Lenzi. The notice, however, states that these two defendants are not "necessary or indispensable parties to the Court's review of the Tribal Court's finding of jurisdiction." On pages 9 through 11 of Defendants' motion, this very argument is presented and discussed. The notice of motion and motion are both procedurally sound.

E. A Finding that Rise is an Indispensable Party Does not Affect the Outcome of this Motion to Dismiss

Whether non-party R.I.S.E. is an indispensable party has no bearing on Defendants' motion to dismiss. Further, Plaintiff cites no precedence holding that a non-party's *indispensability* supersedes tribal *jurisdiction*. If Tribal Court jurisdiction is proper, this case should be remanded to the Tribal Court for adjudication. Given that the Tribal Court already has determined that R.I.S.E. was not indispensable—this is a non-issue. The threshold question of this motion is whether Tribal Court jurisdiction exists over Plaintiff. This Court need not address the indispensability question if Tribal Court jurisdiction is proper.

1. Naming R.I.S.E. In The Complaint Did Not Make It Indispensable

In the Tribal Court action, the Tribe sued R.I.S.E. The Tribal Court, however, dismissed R.I.S.E. Plaintiff then unsuccessfully argued that R.I.S.E. was indispensable, warranting dismissal of the entire Tribal Court action. That argument ignored that the Tribe brought eight causes of action against Plaintiff in the underlying Tribal Court case, and named R.I.S.E as a

defendant in four of those – aiding and abetting Plaintiff's breach of fiduciary duty; unjust enrichment; and two common count claims for accounts stated and money had and received. The Tribe also sued Plaintiff alone for fraud and deceit, recovery of an excessive pension, recovery of unauthorized investment losses, and breach of fiduciary duty.

The Tribe controlled its Tribal Court complaint. As pled, the Tribe could obtain complete relief from Plaintiff alone. It sued her for general damages and punitive damages. Moreover, at trial, the Tribal Court can apportion damages according to Plaintiff's participation in the torts alleged against her, whether the Tribe sued R.I.S.E. as well, and whether R.I.S.E. is in the case or not. In sum, the Tribe's naming of R.I.S.E. as a defendant in the Tribal Court case did not make it a "necessary party."

2. A Stipulation to Stay The Tribal Court Case Did Not Convert R.I.S.E. into an Indispensable Party

In the Tribal Court case, the parties entered into a stipulation, signed by the Tribe's counsel, but prepared by Plaintiff's counsel. (Plaintiff's Exhibit 7.) Plaintiff Knighton claims this stipulation was somehow *an admission* as to R.I.S.E.'s indispensability. The stipulation was innocuous. The stipulation was executed as a courtesy to counsel. The Tribe executed the stipulation for a temporary stay of Plaintiff's requirement to answer the Tribal Court complaint or seek appellate review, so as to provide R.I.S.E. and Plaintiff time, if necessary, to seek federal court review jointly and to save time and resources. The stipulation was drafted by Plaintiff's counsel and states in passing, "*the issues, are to a certain extent, intertwined*" and depend upon the outcome of R.I.S.E's motion to dismiss. This is hardly an admission that R.I.S.E. is an indispensable party.

Issues being "intertwined" does not mean a party is "indispensable." Further, Plaintiff has failed to explain how claims against Plaintiff in her capacity as the Tribe's Administrator, have anything to do with, or include R.I.S.E:

- Plaintiff Knighton is alleged to have stolen money from the Tribe by unilaterally increasing her salary and benefits;
- Plaintiff Knighton is alleged to have established and unilaterally increased her pension without the permission of the Tribe;
- Plaintiff Knighton is alleged to have failed to protect the Tribe's financial investments;
- Plaintiff Knighton is alleged to have performed her Tribal duties poorly breaching her duty to the Tribe;
- Plaintiff Knighton is alleged to be in a conflict of interest in the Tribe's purchase of the Tribe's administrative building; and
- Plaintiff Knighton is alleged to have cashed out in excess of $29,000 in sick pay and vacation against Tribal policy.

All of the above are allegations made against Plaintiff. None involve R.I.S.E. The fact that Plaintiff was working both for the Tribe and R.I.S.E., does not, by any stretch of the imagination, "intertwine" Plaintiff and R.I.S.E. The Court should disregard Plaintiff's indispensable party argument.

3. The Tribal Court's Finding of Jurisdiction over Plaintiff, Independent of R.I.S.E., Supports the Tribe's Position that R.I.S.E. is not an Indispensable Party

The Tribal Court held jurisdiction over Plaintiff independent of R.I.S.E. (SeePlaintiff's Ex. 11). The Tribal Court of Appeal affirmed that conclusion. Both Courts' decisions held that jurisdiction was found independently of R.I.S.E. The Courts found that Plaintiff had pervasive, significant and long term, tribal contacts. Specifically, the Courts noted that Plaintiff had long-

term employment with the Tribe. Her employment touched literally every economic aspect of the Tribe's government and its membership. Her employment was inherently tribal in nature and related to both the Tribe's administration (located on fee lands), its business and reservation operations (located on trust lands), and required intimate contact with the Tribe's government, departments, records, personnel, policies and procedures. Both Courts' decisions did not even mention R.I.S.E. or R.I.S.E.-related activity. Hence, the allegations against Plaintiff in the Tribal Court are wholly separate from allegations made against R.I.S.E.

4. Even If R.I.S.E. Is Determined to be an Indispensable Party, the Tribal Court Case May Still Proceed in the Tribal Court

In *Paiute Shoshone Tribe of the Bishop Colony v City of Los Angeles* 637 F.3rd 993, 1000 (9th Cir. 2001), the Ninth Circuit Court of Appeals determined that the United States was an "indispensable party" to the Tribe's litigation with Los Angeles for having transferred Owens Valley acreage to the Tribe years earlier. Although the Court held the United States was a necessary party, it did so utilizing an equities test as held in *Provident Tradesmens Bank & Trust Co. v. Patterson*, 390 U.S. 102, 110 (1968). Based on this test, the equities tilt in favor of finding that this case can continue even if R.I.S.E. is not a defendant in the dispute.

In *Patterson* the Supreme Court applied a four part "equities" test to interpret Federal Rule of Civil Procedure 19(b), and when it was appropriate to proceed with the case in *equity and good conscience* without a defendant. The Supreme Court has interpreted Rule 19(b) as requiring the Court to consider at least four interests: (1) the plaintiff's interest in having a forum; (2) the defendant's interest in not proceeding without the required party; (3) the interest of the non-party by examining "the extent to which the judgment may as a practical matter impair or impede[its] ability to protect [its] interest in the matter"; and (4) the interests of the courts and

the public in "complete, consistent, and efficient settlement of controversies." *Patterson*, 390 U.S. at 109-11 (internal quotation marks omitted). That list is not exclusive of other considerations, however. Rule 19(b) requires the Court undertake a "practical examination of [the] circumstances" to determine whether an action may proceed "in equity and good conscience" without the absent party. *Id*. at 119 n.16.

Here, the equities overwhelmingly favor the Tribe and its pursuit of justice in its own forum. This means this case can move forward without R.I.S.E. in the Tribe's Tribal Court.

i. Tribe's Interest

It is unquestionable that the Tribe has an interest in pursuing this dispute before its own tribal forum. Its injuries by Plaintiff Knighton were against the Tribe and its membership. The Tribe as a sovereign nation chose its own forum and the Tribal Court found jurisdiction over Plaintiff in that forum.

ii. Knighton's Interest in Proceeding without R.I.S.E.

The Tribe has demonstrated that R.I.S.E. does not have an interest in any of the claims it has against Plaintiff Knighton due to her employment relationship with the Tribe. Concerning the employment claims, Plaintiff has no interest in R.I.S.E. remaining a party because R.I.S.E. is not responsible for any damages award. While Plaintiff Knighton may have an interest in having R.I.S.E included in the litigation for purposes of the fraud and benefits claims (the alleged fraudulent sale of the administration office and the $29,000 in benefits taken by Knighton), these interests are financial only and the Tribal Court can easily fashion relief specific to Plaintiff Knighton that will expose only her to damages she caused.

iii. Non-Party R.I.S.E.'s Interest

Again, R.I.S.E has no interest in any judgment against Plaintiff for employment and breach of fiduciary duty claims. As the Tribal Court could fashion complete relief against Plaintiff Knighton, R.I.S.E. would face no harm in being omitted from the Tribal Court case.

iv. The Tribe's Interest in Obtaining Complete, Consistent and Efficient Settlement of its dispute with Knighton

The Tribe has a substantial interest in obtaining "complete, consistent and an efficient settlement" of its controversy against Plaintiff Knighton. The Tribe, as a sovereign nation, should be permitted to seek complete relief against Plaintiff in the forum of its choice—its own Tribal Court. That Court can fashion such relief in a manner that does not abridge R.I.S.E.'s interests.

In sum, R.I.S.E. is not an indispensable party. However, even if it is, that designation has no bearing on the jurisdictional arguments presented in Defendants' motion to dismiss and herein. Their motion should be granted.

III. CONCLUSION

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

Respectfully submitted this January 25, 2017

/S/JACK DURAN
JACK DURAN
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