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9 **UNITED STATES DISTRICT COURT**
10 **EASTERN DISTRICT OF CALIFORNIA**
11 **SACRAMENTO DIVISION**

12
13 DUANNA KNIGHTON,

CASE NO.: 2:16-CV-02438-WHO

14 Plaintiff,

**PLAINTIFF DUANNA KNIGHTON'S
OPPOSITION TO DEFENDANTS
CEDARVILLE, ET AL.'S MOTION TO
DISMISS COMPLAINT UNDER FRCP
12(b)(1) and 12(b)(6)**

15 vs.

16 CEDARVILLE RANCHERIA OF
17 NORTHERN PAIUTE INDIANS,
18 CEDARVILLE RANCHERIA TRIBAL
COURT,
19 PATRICIA R. LENZI, in her capacity
as Chief Judge of the
20 CEDARVILLE RANCHERIA TRIBAL
21 COURT, and DOES 1-50, inclusive,

DATE : February 8, 2017
TIME : 1:30 p.m.
COURTROOM : 2, 17th Floor
JUDGE : Hon. William H. Orrick

22 Defendants.
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I. INTRODUCTION

Plaintiff Duanna Knighton (hereinafter “Knighton”) hereby opposes Defendants Cedarville Rancheria of Northern Paiute Indians; Cedarville Rancheria Tribal Court; and Tribal Court Judge Patricia R. Lenzi’s (hereinafter collectively referred to as “Cedarville, et al.”) Motion to Dismiss her Complaint for the following reasons: (1) the federal court has subject matter jurisdiction over this action because Knighton has properly alleged that the tribal court has exceeded its legal authority over her; (2) Knighton fully exhausted tribal court remedies prior to invoking federal court jurisdiction; (3) tribal sovereign immunity does not shield Cedarville, et al. from suit where the tribe seeks to unlawfully assert jurisdiction over a non-member; (4) Knighton has properly stated a claim for relief because whether Cedarville, et al. have exceeded the bounds of tribal court jurisdiction is a federal question under 28 U.S.C. § 1331; (5) Cedarville, et al. have failed to properly notice a motion to dismiss the tribal court and tribal court judge from the present action; (6) Knighton has provided sufficient facts to support her claim that the tribal court and tribal court judge are necessary parties to this action; and (7) the motion to dismiss fails to address Knighton’s claim that Resources for Indian Student Education is an indispensable party. Knighton respectfully requests that Defendants’ Motion to Dismiss be denied in full and Defendants required to answer the complaint.

II. FACTS AND PROCEDURAL HISTORY

Knighton is cognizant that the court has in its possession the complaint at issue in this matter and will not simply repeat the contents of the same herein. Said complaint lays out the factual and procedural history of this matter. In summary thereof, Knighton is a non-Indian former employee of Defendant Cedarville Rancheria of Northern Paiute Indians (hereinafter “Tribe”). (Cmp. ¶¶ 9 &10) Knighton’s employment with Tribe ended in March 2013. (Cmp. ¶ 9) Knighton was also an employee of Resources for Indian Student Education (hereinafter “RISE”). (Cmp. ¶ 14)

Tribe enacted its judicial code in December 2013, well after Knighton’s employment ended with Tribe. Pursuant to its judicial code, a Tribal Court was established thereafter. (Cmp. ¶ 15 & 16) Knighton never consented to Tribal Court jurisdiction nor the new remedies, penalties, nor procedures adopted thereof. (Cmp. ¶ 50 to 52)

1 On October 2, 2014, Tribe initiated a complaint within its Tribal Court against Knighton.
2 (Cmp. ¶ 27) Knighton challenged the Tribal Court jurisdiction and has exhausted Tribal Court
3 procedures in this regard. (Cmp. ¶ 32 through 39)

4 **III. ARGUMENT**

5 **A. Federal Court Has Subject Matter Jurisdiction Over This Action Because**
6 **Tribal Court Has Exceeded its Legal Authority.**

7 Cedarville, et al. allege that Knighton's Complaint "fails to establish grounds for federal
8 subject matter jurisdiction as a matter of fact" because "there is no evidence to support tribal
9 jurisdiction in the underlying matter." As a rule, Indian tribes do not exercise jurisdiction over
10 nonmembers. *Mont. v. United States*, 450 U.S. 544, 564-565 (1981). "[E]xercise of tribal power
11 beyond what is necessary to protect tribal self-government or to control internal relations is
12 inconsistent with the dependent status of tribes." *Id.* at 564. Whether an Indian tribe can compel
13 a non-Indian to submit to tribal court jurisdiction "must be answered by reference to federal law
14 and is a 'federal question' under § 1331." *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of*
15 *Indians*, 471 U.S. 845, 852 (1985).

16 In *Montana v. United States*, the Supreme Court held that there are two limited
17 circumstances in which a tribal court may regulate nonmember conduct: first, a "tribe may
18 regulate, through taxation, licensing, or other means, the activities of nonmembers who enter
19 consensual relationship with the tribe or its members, through commercial dealing, contracts,
20 leases, or other arrangements;" and second, where the conduct of the nonmember "within its
21 reservation . . . threatens or has some direct effect on the political integrity, the economic
22 security, or the health or welfare of the tribe." *Mont.*, 450 U.S. at 566. The exceptions under
23 *Montana* are "limited ones" and "cannot be construed in a manner that would swallow the rule
24 or severely shrink it." *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316,
25 330 (2008).

26 Even where courts have found that one or both *Montana* exceptions applies, a tribe's
27 judicial authority over nonmembers cannot exceed its regulatory authority. *Strate v. A-1*
28 *Contractors*, 520 U.S. 438, 453 (1997). Tribal court jurisdiction therefore "turns upon whether
the actions at issue in the litigation are regulable by the tribe." *Nev. v. Hicks*, 533 U.S. 353, 367
n.8 (2001). Thus, tribal efforts to regulate nonmembers are presumed to be invalid and the tribe

1 seeking to enforce tribal jurisdiction over a nonmember bears the burden of proving that one or
2 more of the *Montana* exceptions applies. *Plains Commerce Bank*, 544 U.S. at 330.

3 An Indian tribe cannot compel a nonmember to submit to the jurisdiction of its tribal
4 court when no such court existed at time the events giving rise to the dispute occurred.
5 Jurisdiction is only found if traditional notions of fair play and substantial justice are met. *Lake*
6 *v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987); *Pac. Atl. Trading Co. v. M/V Main Express*, 758
7 F.2d 1325, 1329-1331 (9th Cir. 1985). Knighton has alleged repeatedly throughout her
8 Complaint that the basis for her challenge to the tribal court's jurisdiction is that because the
9 Tribal Court did not exist at the time of her employment, Tribe is exceeding its authority to
regulate her employment through *ex post facto* application of its tribal judicial system.

- 10 1. The first *Montana* exception does not apply because Knighton did not consent
11 to tribal court jurisdiction as a term of employment.

12 Under the first *Montana* exception, a tribe cannot regulate the activities of a nonmember
13 unless there is a consensual relationship. "A tribe may regulate, through taxation, licensing, or
14 other means, the activities of nonmembers who enter consensual relationships with the tribe or
15 its members, through commercial dealing, contracts, leases, or other arrangements." *Mont. v.*
16 *United States*, 450 U.S. at 565. The Supreme Court has held that because nonmembers "have no
17 say in the law and regulations that govern tribal territory" those laws may be fairly imposed
18 "only if the nonmember has consented, either expressly or by his actions." *Plains Commerce*
Bank, 554 U.S. at 337 (emphasis added).

19 In *Atkinson Trading Co. v. Manygoats*, No. CIV 02-1556-PCT-SMM, 2004 U.S. Dist.
20 LEXIS 31789, at *24-25 (D. Ariz. Mar. 16, 2004), a federal district court held that in the
21 employment context, courts "may not simply use the plain meaning definition of the word
22 consensual," but must instead "determine whether the relationship was consensual as
23 contemplated by the Supreme Court when it created the *Montana* exceptions." Consent under
24 *Montana* "requires much more" than an employer's consent to hire an employee and that
25 employee's consent to work for the employer. *Id.* "*Montana* requires consent to jurisdiction,
26 either expressed, or implied by the parties' behavior . . . Jurisdiction may not be assumed." *Id.*

27 Furthermore, there must be a nexus between the regulation the tribe seeks to enforce and
28 the consensual relationship itself. "A nonmember's consensual relationship in one area thus does
not trigger tribal civil authority in another—it is not in for a penny, in for a Pound." *Atkinson*

1 *Trading Co. v. Shirley*, 532 U.S. 645, 656 (2001) (citation omitted). At the core of the scope of
2 consent analysis, then, is the “proper balancing of state and tribal interests.” *Smith v. Salish*
3 *Kootenai College*, 434 F.3d 1127, 1138 (9th Cir. Mont. 2006). Put another way, regulation that
4 goes beyond a tribe’s sovereign powers risks “subjecting nonmembers to tribal regulatory
5 authority without commensurate consent.” *Plains Commerce Bank*, 554 U.S. at 337. Thus, it
6 threatens to impede upon the nonmember’s right to due process protections.

7 The Ninth Circuit Court of Appeals has likened "consensual relationship" analysis under
8 *Montana* to Due Process Clause analysis in the context of personal jurisdiction. *Smith v. Salish*
9 *Kootenai Coll.*, 434 F.3d at 1138. The Supreme Court’s Due Process analysis in regards to
10 personal jurisdiction has “emphasized the need for predictability to the legal system so that a
11 defendant can reasonably anticipate being hauled into court.” *Id.*, quoting *World-Wide*
12 *Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (internal quotation marks omitted).
13 Similarly, the Court echoed that same need for “predictability to the legal system” in the context
14 of tribal jurisdiction in *Plains Commerce Bank*, 554 U.S. at 337, where it held that a nonmember
15 can only meaningfully consent to the “jurisdictional consequences” of a consensual relationship
16 that are reasonably foreseeable.

17 As alleged in the Complaint, Knighton neither did, or could, consent to a tribal judicial
18 system as a term of employment, including its increased penalties, remedies, and punishment
19 against employees, because such a system did not exist during the time of her employment with
20 Tribe. (Cmp., ¶¶ 15-16 and 24-25) Tribe did not create the Tribal Court or enact a judicial code
21 until **after** Plaintiff’s employment ended. (Cmp. ¶ 15) Any dispute between Knighton and Tribe
22 as governed by Tribe would be subject to the regulatory procedures that existed at the time of
23 employment, *to wit.*: the disciplinary and grievance procedures enumerated in Tribe’s Personnel
24 Policy and Procedure Manual. (Cmp. ¶ 51) Because Knighton had no notice of the current
25 regulations as codified in the Judicial Code, she could not have agreed to or bargained for such.
26 Accordingly, no true consensual relationship existed which would confer jurisdiction to a court
27 which did not previously exist. Tribe should not be permitted to create new regulations and
28 impose them on Knighton *ex post facto*. To allow such runs the risk of violating Knighton’s Due
Process rights.

1 2. The second *Montana* exception does not apply because the allegations
2 regarding Knighton's conduct are too attenuated and general to "directly
3 imperil" the tribe's economic security and did not occur on tribal land.

4 Under the second *Montana* exception, "a tribe may exercise civil authority over the
5 conduct of non-members... when that conduct threatens or has some direct effect on the political
6 integrity, the economic security, or the health or welfare of the tribe." *Plains Commerce Bank*,
7 554 U.S. at 320, citing *Montana v. U.S.* at 566. Despite its broad phrasing, the second *Montana*
8 exception has been narrowly construed by the courts.

9 Read in isolation, the *Montana* rule's second exception can be misperceived. Key
10 to its proper application, however, is the Court's preface: Indian tribes retain their
11 inherent power [to punish tribal offenders,] to determine tribal membership, to
12 regulate domestic relations among members, and to prescribe rules of inheritance
13 for members. . . . But [a tribe's inherent power does not reach] beyond what is
14 necessary to protect tribal self-government or to control internal relations.

15 *Strate v. A-1 Contrs.*, 520 U.S. 438, 459 (1997), citing *Montana v. U.S.* at 564 (internal
16 quotation marks omitted). Jurisdictional analysis requires an examination of the specific conduct
17 a tribe's legal claims seek to regulate. "Each claim must be analyzed individually in terms of the
18 *Montana* principles to determine whether the tribal court has subject matter jurisdiction over it."
19 *Attorney's Process & Investigation Servs. v. Sac & Fox Tribe*, 609 F.3d 927, 930 (8th Cir. 2010).

20 Tribal ownership of land is also factor in determining whether the second *Montana*
21 exception applies. *Strate*, 520 U.S. at 454. "A tribe may also retain inherent power to exercise
22 civil authority over the conduct of non-Indians *on fee lands within its reservation* when that
23 conduct threatens or has some direct effect on the political integrity, the economic security, or
24 the health or welfare of the tribe." *Mont. v. United States*, 450 U.S. at 566 (emphasis added). Put
25 another way, "*Montana* and its progeny permit tribal regulation of nonmember conduct inside
26 the reservation." *Plains Commerce Bank*, 554 U.S. at 332.

27 Courts have refused to apply the second exception where general allegations of tribal
28 safety are alleged as the sole basis for tribal jurisdiction. In *Cty. of Lewis v. Allen*, the court
29 disagreed with a tribe's assertion that the second *Montana* exception applied where the tribe had
30 only a general interest in the safety of its members and held that finding otherwise would run the
31 risk of the exception swallowing the rule "because virtually every act that occurs on the

1 reservation could be argued to have some political, economic, health or welfare ramification to
2 the tribe.” *Cty. of Lewis v. Allen*, 163 F.3d 509, 515 (9th Cir. 1998).

3 The *Plains Commerce Bank* Court found that the second exception did not apply to the
4 sale of Indian-owned fee land to a third party because it did not produce “catastrophic
5 consequences” to the tribe. *Plains Commerce Bank*, 554 U.S. at 320. The Court noted that for
6 the second exception to apply, the conduct “must do more than injure the tribe, it must imperil
7 the subsistence of the tribal community.” *Id.* at 341 (internal quotation marks omitted).

8 At least one court has found that employment matters do not fall under the second
9 *Montana* exception. In *Atkinson Trading Co. v. Manygoats*, No. CIV 02-1556-PCT-SMM, 2004
10 U.S. Dist. LEXIS 31789, at *31 (D. Ariz. Mar. 16, 2004), the court held that “while employment
11 matters concerning tribal members are certainly related to the economic security and welfare of
12 the tribe, they do not have a substantial impact on the tribe as a whole.”

13 Cedarville Rancheria, et al. argue that Knighton’s activities as alleged in Tribe’s tribal
14 court complaint “directly imperiled the Tribe” (Mtn. to Dismiss, p. 7) and cite to *Attorney’s*
15 *Process & Investigation Servs. v. Sac & Fox Tribe*, 609 F.3d 927 (8th Cir. 2010) in support.
16 They further assert that the *Sac & Fox Tribe* court “found direct effects *Montana* jurisdiction
17 where a Tribe was imperiled by the alleged conversion of tribal funds if said conversion flowed
18 directly from the defendant’s conduct.” (Mtn. to Dismiss, p. 7)

19 Cedarville Rancheria, et al. misconstrue the *Sac & Fox Tribe* court’s holding. There, the
20 “alleged conversion of tribal funds,” which Cedarville Rancheria, et al. reference, pertained to
21 Attorney Process & Investigation Services’ unauthorized possession of over \$1 million in tribal
22 funds. While the Eighth Circuit Court of Appeals found that a tribal court had jurisdiction to
23 hear tort claims related to a raid on a tribe’s casino and government offices by a nonmember
24 business, where the purpose of such was to seize control during an intratribal governance
25 dispute, it held that allegations regarding the nonmember business’s receipt and retention of
26 tribal funds were “materially different” from the other alleged torts because they did not appear
27 to have arisen directly out of the raid but rather from payment of tribal funds to the business
28 pursuant to contract. Furthermore, because *Sac & Fox Tribe* did not allege that the conduct at
issue occurred on tribal land, it failed to carry its burden to show that tribal adjudicative
jurisdiction over the nonmember’s unauthorized receipt and retention of tribal funds. As such,

1 the appellate court declined to find that the nonmember's receipt of more than \$1 million in
2 tribal funds had a direct effect on the political integrity or economic security of the tribe.

3 At its core, the immediate case is nothing more than an employment dispute between a
4 tribe and a nonmember former employee. Tribe's complaint alleges that Knighton was overpaid
5 and that poor financial decisions made in the course of her employment as Tribal Administrator
6 caused Tribe to lose money. Yet, Tribe's allegations ignore the key fact that Knighton served as
7 Tribal Administrator *at the behest of* the Tribal Board, who oversaw and had ultimate decision-
8 making authority over all decisions involving Tribe's finances. Tribe's allegations as stated in its
9 Complaint evidence no more than (1) a disagreement over compensation to a former employee;
10 (2) losses to Tribe's financial investments in 2007-08, a time during which the global economy
11 faced arguably the worst financial crisis since the Great Depression; and (3) a claim that Tribe
12 paid too much for the purchase of an office building. Like the conversion claim in *Sac & Fox*
13 *Tribe*, Tribe's allegations arise from contractual agreements, as opposed to the type of conduct
14 that would produce "catastrophic consequences" or "imperil the subsistence of the tribal
15 community."

16 The *Sac & Fox Tribe* court declined to apply the second *Montana* exception where it was
17 unclear whether the alleged conversion occurred on tribal land. *Attorney's Process &*
18 *Investigation Servs. v. Sac & Fox Tribe*, 609 F.3d at 941 ("That some of the funds likely relate to
19 the October 1 raid is not enough to sustain jurisdiction over the claim as a whole"). Because
20 Knighton's place of employment was outside the Reservation, we cannot assume that the
21 conduct regulated by Tribe's claims occurred on tribal land. Knighton worked at Tribe's
22 administrative offices in Alturas, approximately 30 miles away from the Reservation. While the
23 office building was owned in fee by Tribe, it was not on trust land. Although the Indian
24 Reorganization Act gives tribes the authority to extend tribal jurisdiction over new lands that it
25 acquires, Tribe's judicial code, which defines the territorial jurisdiction of the Tribal Court to
26 include "fee patent lands," was not enacted until approximately nine months after Knighton's
27 employment ended. Furthermore, to the extent that Tribe's allegations involve Knighton in her
28 capacity as an employee of R.I.S.E., such conduct similarly cannot be assumed to have occurred
on tribal land.

Because Knighton's actions and the harm claimed are too attenuated and general to find
that her conduct "directly imperiled" the economic well-being of Tribe and did not occur on

1 tribal land as defined at the time of Knighton's employment, Cedarville et al., cannot establish
2 tribal jurisdiction under the second *Montana* exception.

3 **B. Federal Court Has Subject Matter Jurisdiction Over This Action Because**
4 **Knighton Properly Exhausted Tribal Court Remedies Prior to Invoking Federal**
5 **Court Jurisdiction.**

6 Cedarville Rancheria, et al. argue that "this case will NEVER be ripe for Court
7 adjudication" because Cedarville Rancheria has sovereign immunity, Knighton has failed to
8 show that said immunity was waived, and "the claims against Plaintiff Knighton in the
9 underlying Tribal Court are not federal questions." (Mtn. to Dismiss, p. 16 (emphasis in
10 original)) Cedarville Rancheria, et al. misunderstand the legal basis for this federal court action
11 and misapply the ripeness doctrine. A non-Indian seeking to challenge tribal court jurisdiction
12 may invoke federal court jurisdiction after exhausting the remedies available at the tribal court
13 level. *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. at 847. As discussed at
14 length above, a federal action is the proper mechanism by which to challenge a tribal court's
15 jurisdiction over a non-Indian once tribal court remedies have been exhausted.

16 Knighton filed the immediate lawsuit in federal court to challenge the tribal court's
17 jurisdiction over an action filed against her by the Tribe. She did so after fully exhausting all
18 available tribal court remedies. As shown in Section III of Knighton's complaint, Knighton first
19 filed a motion to dismiss the tribal court complaint pursuant to Federal Rule of Civil Procedure
20 12(b)(2) for lack of jurisdiction. (Cmp. ¶ 32) When that motion was denied by the tribal court,
21 the parties stipulated that Knighton had exhausted the procedures necessary to challenge
22 jurisdiction at the tribal court level. (Cmp. ¶ 33) Because the tribal court subsequently found that
23 its order denying Knighton's motion to dismiss was not ripe for federal review, it ordered her to
24 first appeal the decision to the tribe's appellate court. (Cmp. ¶ 34) The tribal appellate court
25 upheld the tribal court's denial of Knighton's motion to dismiss. (Cmp. ¶ 36) Because the tribal
26 court had also denied Knighton's motion to dismiss pursuant to Federal Rule of Civil Procedure
27 19 to challenge the tribal court's failure to include RISE as an indispensable party, the parties
28 *again* stipulated that Knighton had exhausted her tribal court remedies and agreed to stay the
tribal court action pending Knighton's jurisdictional challenge in federal court.

As such, Cedarville, et al. fail to show that Knighton did not fully exhaust tribal court
remedies before presenting the issue of tribal jurisdiction to the federal court for review,

1 particularly considering their repeated stipulations to such. Therefore, Cedarville, et al.'s
2 argument that Knighton's claims are not "ripe" for adjudication by the federal court fails.

3 **C. Federal Court Has Subject Matter Jurisdiction Over This Action Because**
4 **Tribal Sovereign Immunity Does Not Shield Cedarville, et al. from Suit Where**
5 **the Tribe Seeks to Unlawfully Assert Jurisdiction Over a Nonmember.**

6 Cedarville Rancheria, et al. argue that the Tribe is entitled to sovereign immunity
7 "against unconsented suit" and cite to *Cal. ex rel. Cal. Dep't of Fish & Game v. Quechan Tribe*
8 *of Indians*, 595 F.2d 1153 (9th Cir. 1979) to support their position that said immunity applies
9 equally to suits for declaratory and injunctive relief. In *Cal. Dep't of Fish & Game*, the court
10 held that tribal sovereign immunity barred a declaratory relief action brought by the State of
11 California against an Indian tribe regarding the State's right to enforce fish and game laws
12 against non-Indians on tribal reservation land and authorizing government personnel to enter
13 tribal land to enforce those laws. *Id.* at 1154.

14 Because the scope of Knighton's federal action is limited to allegations regarding tribal
15 court jurisdiction, sovereign immunity does not shield Cedarville, et al. from the present suit and
16 the determination of sovereign immunity in *Cal. Dep't of Fish & Game* is not applicable. Unlike
17 in *Cal. Dep't of Fish & Game*, Knighton filed a federal court action *after exhausting all*
18 *available tribal court remedies* to challenge the Tribal Court's finding that it exercised
19 jurisdiction over the complaint filed by Tribe against her. (Cmp. ¶¶ 32-39) Where a non-Indian
20 alleges that "federal law has divested the Tribe of its power to compel a non-Indian . . . to submit
21 to the civil jurisdiction of the Tribal Court," federal law forms the basis for the asserted right of
22 "freedom from Tribal Court interference." *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of*
23 *Indians*, 471 U.S. at 847. Because the basis for Knighton's federal court action is that Cedarville,
24 et al. are violating federal law by unlawfully asserting jurisdiction over her as a nonmember of
25 Tribe, sovereign immunity does not shield them from Knighton's assertion of her federal right to
26 "freedom from tribal court interference."

27 Furthermore, suit against the Tribal Court and Tribal Court Judge Patricia R. Lenzi is
28 proper and necessary because Knighton alleged that the Tribal Court's finding that Tribe has
jurisdiction over her in this matter exceeds Tribe's legal authority. Tribal sovereign immunity
does not bar a suit against tribal officers alleged to act in violation of federal law. *Atkinson*

1 *Trading Co. v. Manygoats*, No. CIV 02-1556-PCT-SMM, 2004 U.S. Dist. LEXIS 31789, at *32
2 (D. Ariz. Mar. 16, 2004).

3 **D. Knighton Properly Stated a Claim for Relief Because Whether the Tribal Court**
4 **is Acting Beyond the Tribe’s Legal Authority is a Federal Question.**

5 In their Motion to Dismiss, Cedarville Rancheria, et al. contend that Knighton has failed
6 to state a claim because (1) she has not identified the federal statutory basis for her claims and
7 (2) she has not “proffered any facts indicating or suggesting that the Tribe is responsible for the
8 finding of jurisdiction or issued the order or intends to act against Plaintiff.” (Mtn. to Dismiss, p.
9 12) Both contentions are misplaced and evidence a misunderstanding by Cedarville Rancheria,
et al. regarding the legal basis for this federal action.

10 28 U.S.C. § 1331 states that a federal district court “shall have original jurisdiction of all
11 civil actions arising under the Constitution, laws, or treaties of the United States.” In *Nat’l*
12 *Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. at 850, the Supreme Court held that
13 “to invoke a federal district court’s jurisdiction under § 1331, it was not essential that the
14 petitioners base their claim on a federal statute or a provision of the Constitution,” so long as the
15 claim arose under federal law. “The question whether an Indian tribe retains the power to compel
16 a non-Indian property owner to submit to the civil jurisdiction of a tribal court is one that must
17 be answered by reference to federal law and is a ‘federal question’ under § 1331.” *Id.* at 852; *see*
Plains Commerce Bank, 554 U.S. at 324.

18 When nonmembers invoke the jurisdiction of a federal court under § 1331, “they must
19 contend that federal law has curtailed the powers of the Tribe, and thus afforded them the basis
20 for the relief they seek in a federal forum.” *Nat’l Farmers Union Ins. Cos. v. Crow Tribe of*
21 *Indians*, 471 U.S. at 852. Here, Knighton’s Complaint alleges that the federal court has
22 jurisdiction over her claim as follows:

23 Pursuant to 28 U.S.C. § 1331, the court has original subject matter jurisdiction
24 over this claim because it involves claims arising under the Constitution, laws, or
25 treaties of the United States. The claims require the Court to analyze whether an
26 Indian Tribe may compel a non-Indian party to submit to the jurisdiction of its
27 Tribal Court where said Tribal Court did not exist at the time the events giving
28 rise to the dispute occurred. *See Plains Commerce Bank v. Long Family Land &*
Cattle Co., 554 U.S. 316, 324 (2008) (“[W]hether a tribal court has adjudicative
authority over nonmembers is a federal question.”); *Nat’l Farmers Union Ins.*
Cos. v. Crow Tribe of Indians, 471 U.S. 845, 853 (1985) (“[A] federal court may

1 determine under § 1331 whether a tribal court has exceeded the lawful limits of
2 its jurisdiction”).

3 (Cmp. ¶ 5) In addition to establishing the federal authority in support of her claims, Knighton’s
4 complaint alleges that the “Tribal Court is acting beyond its legal authority in adjudicating the
5 Tribal Court Action against Knighton” (Cmp. ¶ 44) and provides detailed facts in support
6 thereof. (Cmp., ¶¶ 9-25 and 42-54) As such, Knighton has properly stated a claim challenging
7 Cedarville, et al.’s judicial authority over her with regards to the Tribal Court complaint.

8 In further support of their argument that Knighton has failed to state a claim, Cedarville,
9 et al. assert that Knighton has not stated “any facts indicating or suggesting that the Tribe is
10 responsible for the finding of jurisdiction or issued the order or intends to act against Plaintiff.”
11 (Mtn. to Dismiss, p. 12) As evidenced through Tribe’s judicial code, the Tribal Court is a
12 creation of Tribe and an extension of its judicial power. (Cmp., Exh. 1) “This Code of the
13 Cedarville Rancheria is enacted for the purpose of . . . providing for the judicial needs of the
14 Cedarville Rancheria.” Knighton alleged as much when she stated in her Complaint that the
15 “Tribal Court was established pursuant to Cedarville Rancheria Judicial code § 101 *et seq.*”
16 (Cmp. ¶ 15) and “[i]n enacting its Judicial Code and thereby establishing a Tribal Court, the
17 Tribe created its adjudicative authority.” (Cmp. ¶ 25)

18 In a last-ditch effort to avoid federal court review of this matter, Cedarville, et al. argue
19 that because Tribe is not a party to any controversy related to the federal court’s review of tribal
20 court jurisdiction, it “cannot provide relief because it did not issue the order against Plaintiff.”
21 (Mtn. to Dismiss, p. 12) Again, this argument fails to account for the fact that Tribe created its
22 Tribal Court to “provid[e] for the judicial needs” of the Tribe. While it was technically the Tribal
23 Court through its judicial officers that denied and upheld the denial of Knighton’s motion to
24 dismiss Tribe’s complaint against her for lack of jurisdiction, neither the Tribal Court nor its
25 judicial officers would exist if not for Tribe’s creation of such. Thus, Cedarville, et al.’s
26 arguments that Knighton has failed to state a claim based on their allegations that Tribe is not a
27 party to a federal court’s review of tribal jurisdiction must fail.

28 **E. Cedarville, et al. Have Failed to Properly Notice a Motion to Dismiss the Tribal
Court and Tribal Court Judge from the Present Action.**

Cedarville, et al. argue that the Tribal Court and Tribal Court Judge Patricia Lenzi
“should be dismissed from this action because they are not ‘necessary or indispensable’ to the

1 post-exhaustion review of tribal court jurisdiction.” Cedarville, et al.’s argument as to why the
 2 Tribal Court and Tribal Court Judge should be dismissed from the present action centers on
 3 when Rule 19 *does not* require a joinder of a party. Yet, Defendants brought this Motion to
 4 Dismiss pursuant to Federal Rules of Civil Procedure 12(b)(1) (lack of subject-matter
 5 jurisdiction) and 12(b)(6) (failure to state a claim upon which relief can be granted), neither of
 6 which discuss dismissal of “unnecessary or indispensable” parties. Cedarville, et al. has provided
 7 no authority to the contrary in support of their position. As such, Cedarville, et al. have failed to
 8 properly notice their motion to dismiss the Tribal Court and Tribal Court Judge Lenzi and are
 therefore barred from presenting arguments in support herein.

9 **F. Knighton Has Provided Sufficient Facts to Support Her Claim that the Tribal**
 10 **Court and Tribal Court Judge are Necessary Parties to this Action.**

11 Cedarville, et al. allege that the Tribal Court and Judge Lenzi should be dismissed from
 12 the federal action because their interest is limited to “future Court venue, e.g. whether the
 13 Knighton case remains in Tribal Court or is ordered to state court.” (Mtn. to Dismiss, p. 10) Yet,
 14 as discussed above, Defendants also allege that “the Tribe is not a party to any controversy
 15 related to the Court’s review of the Tribal Court’s jurisdictional finding” and “cannot provide
 relief because it did not issue the order against Plaintiff.” (Mtn. to Dismiss, p. 12)

16 Defendants cannot have it both ways. If, as they allege, neither the Tribal Court nor
 17 Tribal Court Judge has a present interest in the case at hand, and Tribe itself cannot provide
 18 relief, then Knighton would be left without recourse in challenging Tribe’s assertion of
 19 jurisdiction over her in this matter. The evidence as alleged in Knighton’s Complaint, supporting
 20 documents, and clear legal authorities do not support such a result. Knighton has alleged that the
 21 Tribal Court “is a specially created court of the Cedarville [Tribe]” (Cmp. ¶ 3) against whom suit
 22 is necessary because “whether a tribal court has adjudicative authority over nonmembers is a
 23 federal question.” (Cmp. ¶ 5) The Complaint similarly alleges that suit against Tribal Court
 24 Judge Lenzi “in her official capacity as Chief Judge of the Tribal Court” is required because “her
 25 actions in this matter exceeded the Tribe’s legal authority. (Cmp. ¶ 6) Both allegations are
 supported by cited legal authority.

26 Furthermore, as discussed above in regard to Cedarville, et al.’s allegation that Tribe is
 27 not a party to the present controversy, Tribe’s own judicial code establishes that the tribal court
 28 and its judicial officers are extensions of the tribe’s judicial power, not separate and distinct from

1 it, as Cedarville Rancheria, et al. would now argue. By arguing on the one hand that Knighton
2 has failed to state a claim because no controversy exists where Tribe can provide relief,
3 Cedarville cannot simultaneously allege that neither the Tribal Court nor Judge Patricia Lenzi
4 are necessary parties as defined by Federal Rule of Civil Procedure 19.

5 **G. The Motion to Dismiss Fails to Address Knighton's Claim that RISE is an**
6 **Indispensable Party.**

7 Knighton's Complaint seeks declaratory and injunctive relief on two bases: (1) the tribal
8 court cannot compel civil jurisdiction over Knighton in regards to the Tribal Court complaint;
9 and (2) because the Tribal Court dismissed RISE from the Tribal Court action, and RISE is an
10 indispensable party, joinder of RISE is now infeasible and the Tribal Court complaint against
11 Knighton must be dismissed. However, the arguments in Cedarville, et al.'s Motion to Dismiss
12 are limited to the former issue of subject-matter jurisdiction and do not address the latter issue of
13 joinder of RISE in any manner. As such, even were the Court to find that tribal jurisdiction
14 applies under one or more of the *Montana* exceptions, Cedarville, et al. have failed to show why
15 this Court lacks authority to review Knighton's challenge to the Tribal Court's authority to
16 proceed in the Tribal Court action after dismissing an indispensable party.

17 **IV. CONCLUSION**

18 Federal court has subject matter jurisdiction to determine whether Tribe, through its
19 Tribal Court and judicial officers, exceeded its regulatory powers over a non-Indian by forcing
20 Knighton to submit to the civil jurisdiction of its Tribal Court. Defendants have not provided any
21 controlling factual nor legal authority to the contrary. Accordingly, it is respectfully requested that
22 Defendants' Motion to Dismiss be denied in its entirety and Defendants be required to answer
23 the complaint.

24 Dated: January 18, 2017

MAIRE & DEEDON

25 /s/ Patrick L. Deedon

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