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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DUANNA KNIGHTON.,
Plaintiff,
v.
CEDARVILLE RANCHERIA of
NORTHERN PAIUTE INDIANS, et al.
Defendants.

Case No. [16-cv-02438-WHO](#)

**ORDER GRANTING MOTION TO
DISMISS**

Re: Dkt. No. 10

INTRODUCTION

Plaintiff Duanna Knighton, the former Tribal Administrator for defendant Cedarville Rancheria of Northern Paiute Indians (“the Tribe”), seeks declaratory and injunctive relief against the Tribe, Cedarville Rancheria Tribal Court (“Tribal Court”), and Tribal Court Judge Patricia R. Lenzi (“Tribal Judge Lenzi”) (collectively “defendants”) to avoid Tribal Court jurisdiction over claims that she defrauded the Tribe and breached her fiduciary duties to it. Defendants move to dismiss Knighton’s complaint because the Tribal Court has jurisdiction. I agree that it has both regulatory and adjudicative authority over its former employee under the facts alleged; accordingly, it has subject matter jurisdiction. Defendants’ motion is GRANTED WITH PREJUDICE.

United States District Court
Eastern District of California

1 **BACKGROUND**

2 **I. FACTUAL BACKGROUND¹**

3 **A. The Cedarville Rancheria Tribe**

4 Cedarville Rancheria of Northern Paiute Indians (“the Tribe”) is a federally recognized
 5 Indian tribe located in Medoc County, California. *Id.* ¶ 2; Duran Decl. ¶ 3 (Dkt. No. 10-2). It has
 6 approximately 12 voting members² and operates a 17-acre Rancheria in Cedarville, California.
 7 Compl. ¶ 2; Tribal Court Compl. ¶1 (Dkt. No. 1-3 at 2). The Rancheria land is held in trust for the
 8 Tribe by the United States government; it contains tribal housing, a recreation center, travel center,
 9 convenience store, and gas station. Duran Decl. ¶ 3. The Tribe’s headquarters building is located
 10 approximately 30 miles west of the Rancheria in Alturas, California, on land owned in fee by the
 11 Tribe.³ Compl. ¶ 2; Duran Decl. ¶ 4.

12 In February 2011, the Tribe’s voting membership adopted by election the Constitution and
 13 Bylaws of the Cedarville Rancheria, which was approved in March 2011 by the Regional Director

14
 15 ¹ The following facts are alleged in Knighton’s complaint and attached exhibits (Dkt. No. 1),
 16 defendants’ motion to dismiss (Dkt. No. 10), Knighton’s opposition (Dkt. No. 14), and
 17 defendants’ reply (Dkt. No. 15). Knighton attached the following exhibits to her complaint: (1)
 18 Cedarville Rancheria Judicial Code, *see* Compl. ¶ 15; Ex. 1 (Dkt. No. 1-2 at 1); (2) Cedarville
 19 Rancheria Policies, *see* Compl. ¶ 18; Ex. 2 (Dkt. No. 1-2 at 19); (3) Cedarville Rancheria
 20 Constitution and Bylaws, *see* Compl. ¶ 24; Ex. 3 (Dkt. No. 1-2 at 42); (4) Tribal Court Complaint,
 21 *see* Compl. ¶ 27; Ex. 4 (Dkt. No. 1-3 at 1); (5) Tribal Court Order regarding TRO and Injunction,
 22 *see* Compl. ¶ 31; Ex. 5 (Dkt. No. 1-3 at 19); (6) Tribal Court Order Denying Knighton’s Motion to
 23 Dismiss, *see* Compl. ¶ 32; Ex. 6 (Dkt. No. 1-3 at 23); (7) Stipulation Regarding Temporary Stay,
 24 *see* Compl. ¶ 33; Ex. 7 (Dkt. No. 1-3 at 32); (8) Tribal Court Order Granting Temporary Stay, *see*
 25 Compl. ¶ 34; Ex. 8 (Dkt. No. 1-3 at 39); (9) Tribal Court Order Granting RISE’s Motion to
 26 Dismiss, *see* Compl. ¶ 35; Ex. 9 (Dkt. No. 1-3 at 41); (10) Tribal Court of Appeals Order
 27 Regarding Knighton’s Motion to Dismiss, *see* Compl. ¶ 36; Ex. 10 (Dkt. No. 1-3 at 51); (11)
 28 Tribal Court Order Denying Knighton’s Motion to Dismiss Under Rule 19, *see* Compl. ¶ 37, Ex.
 11 (Dkt. No. 1-3 at 58); (12) Stay and Stipulation Vacating the Appeal, *see* Compl. ¶ 38, Ex. 12
 (Dkt. No. 1-3 at 64); (13) Cedarville Rancheria’s Complaint in an unrelated action, *see* Compl. ¶
 60; Ex. 13 (Dkt. No. 1-3 at 68). Citations to exhibits attached to Knighton’s complaint are to page
 numbers corresponding to the ECF docket number.

² This figure was extracted from the Tribe’s complaint against Knighton, filed in October 2014.
 Tribal Court Compl. ¶ 1 (Dkt. No. 1-3 at 2).

³ The Tribe is currently “in the process of seeking fee-to-trust status of the land on which the
 Tribal headquarters sit.” Tribal Court Order Denying Knighton’s Motion to Dismiss Under Rule
 19 ¶ 7 (Dkt. No. 1-3 at 61). The Tribal Court Order, dated June 29, 2016, indicates that “[t]his
 process will conclude within the next 20 months, at most, and may conclude within 14 months of
 the date of this hearing.” *Id.*

1 of the United States Department of the Interior, Bureau of Indian Affairs. Compl. ¶ 24; *see*
2 Cedarville Rancheria Constitution and Bylaws (Dkt. No. 1-2 at 43). Article II of the Tribe’s
3 constitution provides that the “jurisdiction of [the Tribe] shall extend to the land now within the
4 confines of the Cedarville Rancheria and to such other lands as may hereafter be added thereto.”
5 Cedarville Rancheria Constitution and Bylaws (Dkt. No. 1-2 at 45).

6 The Tribe’s governing body is the Community Council composed of all qualified voters of
7 the Rancheria who are 18 years of age or older. *Id.* (Dkt. No. 1-2 at 46). Every three years the
8 Community Council elects three of its members to serve on the Executive Committee—the Tribal
9 Chairperson, Vice Chairperson, and Secretary. *Id.* (Dkt. No. 1-2 at 46-47). The Executive
10 Committee is empowered to enforce the Community Council’s ordinances, resolutions, and other
11 enactments, and represents the Tribe in all negotiations with tribal, federal, state, and local
12 governments. *Id.* The Tribal Chairperson functions as the “chief executive officer” of the Tribe,
13 oversees all Rancheria matters including signing checks on behalf of the Tribe for tribal expenses,
14 and is the “authorized point-of-contact, along with the Tribal Secretary or Tribal Administrator, to
15 sign Tribal documentation, including grant applications, MOUs [memoranda of understanding],
16 supply orders, trip requests, etc.” *Id.* (Dkt. No. 1-2 at 50).

17 **B. Plaintiff Duanna Knighton’s Employment with the Tribe**

18 Duanna Knighton is a non-Indian California resident who was employed by the Tribe from
19 July 1996 until she resigned in March 2013. Compl. ¶¶ 1, 9. She is not a member of the Tribe and
20 has never resided on nor owned tribal land. *Id.* ¶¶ 10–11. The Tribe hired her in 1996 as a part-
21 time office assistant. Tribal Compl. ¶ 10 (Dkt. No. 1-3 at 4). In 1999, she became a salaried tribal
22 employee eligible for employment benefits, and she was later promoted to Tribal Administrator—
23 the position she held at the time of her resignation. Compl. ¶ 9; Tribal Compl. ¶¶ 13–15 (Dkt. No.
24 1-3 at 4). As Tribal Administrator, Knighton was “responsible for over-all supervision and
25 management of the Cedarville Rancheria,” and oversaw the Tribe’s “payroll, taxes, and expenses,
26 financial statements/reports for audit, expenditures, and ledgers under direct supervision of the
27 Chairperson.” Compl. ¶ 18; Cedarville Rancheria Constitution and Bylaws (Dkt. No. 1-2 at 26).

28 From 2009 until at least October 2016, Knighton was also employed by Resources for

1 Indian Student Education (“RISE”), a California nonprofit that provides education services and
2 programs to Indian children.⁴ Compl. ¶ 14; Tribal Court Order Granting RISE Mot. to Dismiss
3 (Dkt. No. 1-3 at 43). RISE is not a tribally-created or licensed business entity; it receives the
4 majority of its funding from state and federal grants and private donations. Tribal Court Compl. ¶
5 3 (Dkt. No. 1-3 at 3), Tribal Court Order Granting RISE Mot. to Dismiss (Dkt. No. 1-3 at 43).

6 During Knighton’s employment, the Tribe regulated its employees pursuant to the
7 Cedarville Rancheria Personnel Policies and Procedures Manual (“Personnel Manual”). It set
8 forth disciplinary and grievance procedures for tribal employees prior to the creation of the Tribal
9 Court, which will be discussed later. Compl. ¶¶ 18–23. Under the Personnel Manual—which
10 Knighton helped develop when she was Tribal Administrator—all tribal employees subjected to
11 disciplinary action were entitled to file a grievance with the Tribal Administrator and could appeal
12 certain disciplinary actions after exhausting available administrative remedies. *Id.* ¶¶ 20–23;
13 Personnel Manual (Dkt. Nos. 1-2 at 26, 39). Where the Tribal Administrator was the subject of
14 disciplinary action, the Tribal Council, composed of the Tribe’s adult voting membership, directly
15 oversaw the disciplinary and grievance procedures. Personnel Manual (Dkt. No. 1-2 at 40).
16 Appeal hearings were subject to the control of the Tribal Council, and were “presided over as
17 other council meetings and the general format [would] be followed unless the council decide[d]
18 [t]o vary the procedure.” *Id.* (Dkt. No. 1-2 at 40–41). The Tribal Council’s decision following an
19 appeal hearing was final. *Id.*

20 **C. The Tribe’s Purchase of the RISE Property**

21 In mid-2009,⁵ Knighton recommended that the Tribe purchase from RISE an
22 administrative building located in Alturas, California, for a “below market rate” of \$350,000. *Id.*
23 ¶¶ 29–30; Tribal Court Compl. ¶ 18 (Dkt. No. 1-3 at 5–6). Acting in her capacity as Tribal
24

25 ⁴ Presumably, Knighton is no longer employed by RISE, as the parties’ January 17, 2017 joint
26 case management statement refers to RISE as Knighton’s “former employer.” Case Management
27 Statement (Dkt. No. 12 at 3).

28 ⁵ During this time, former Tribal Chairperson Cherie Lash Rhoades supervised Knighton’s
activities as Tribal Administrator. Compl. ¶ 26. *See infra* section I.F.

1 Administrator, Knighton negotiated the purchase on behalf of the Tribe. Tribal Court Compl. ¶ 49
 2 (Dkt. No. 1-3 at 12). She represented that the loan could be paid off within 5 years, that RISE
 3 would remain a tenant in the building and that the Tribe could use that rental income to pay off the
 4 mortgage. *Id.* ¶¶ 49–50 (Dkt. No. 1-3 at 12). In June 2009, the Tribe—relying on Knighton’s
 5 representations—submitted a counter-offer of \$300,000, which RISE accepted.⁶ *Id.* The property
 6 currently serves as the tribal headquarters, and the title to the building and land is owned in fee by
 7 the Tribe.⁷ Tribal Court Order Granting RISE Mot. to Dismiss (Dkt. No. 1-3 at 44).

8 Within 12 months of the sale, RISE moved its business operations out of the building,
 9 contrary to Knighton’s representation that it would remain a rent-paying tenant. Tribal Court
 10 Compl. ¶¶ 18, 49 (Dkt. No. 1-3 at 6, 12). At the time of the purchase, Knighton failed to disclose
 11 to the Tribe that: (1) she was an officer or agent of RISE; (2) RISE was close to insolvency; (3)
 12 she and RISE would split the proceeds of the sale after paying off the building loan; and (4) the
 13 building’s actual market value was \$150,000, not \$300,000. Tribal Court Compl. ¶¶ 49–55 (Dkt.
 14 No. 1-3 at 12). The Tribe did not learn about her conflict of interest and other omissions
 15 regarding the purchase of the RISE building until after she resigned in March 2013. Tribal Court
 16 Compl. ¶ 19 (Dkt. No. 1-3 at 6).

17 **D. Knighton’s Resignation**

18 In March 2013, Knighton resigned from her position as Tribal Administrator. Compl. ¶ 9;
 19 Tribal Court Compl. ¶ 19 (Dkt. No. 1-3 at 6). Immediately before she resigned, Knighton cashed-
 20 out \$29,925⁸ in vacation and sick pay⁹ in violation of the Tribe’s policies and procedures. Tribal
 21 Court Compl. ¶ 20 (Dkt. No. 1-3 at 6). The Tribal Vice Chairperson signed off on Knighton’s

22 _____
 23 ⁶ The Tribal Court noted that there is no document in existence that sets forth the terms of the sale
 24 between RISE and the Tribe for the building. Tribal Court Order Granting RISE’s Mot. to
 Dismiss (Dkt. No. 1-3 at 44).

25 ⁷ *See supra* note 3.

26 ⁸ The Tribe’s complaint lists the amount as \$29,995, *see* Tribal Court Compl. ¶ 22, but the
 attached exhibit states \$29,925, *see* Tribal Court Compl., Ex. A.

27 ⁹ Exhibit A attached to the Tribe’s complaint says this was for sick pay, not vacation pay, but the
 28 complaint alleges vacation pay. Tribal Court Compl. ¶ 20.

1 request to cash out based on her representation that Tribal Chairperson Cherie Lash Rhoades had
2 approved it. *Id.* The Tribe issued a check in the amount of \$29,925, payable to RISE on
3 Knighton’s behalf. *Id.* In late 2013, upon learning that Knighton had inflated her vacation and
4 sick pay, the Tribe sent a letter to her and RISE demanding the return of the \$29,925 improperly
5 paid to her—both RISE and Knighton declined through their counsel to return the funds. *Id.* ¶ 22.

6 **E. Creation of Tribal Judicial Code and Tribal Court**

7 In December 2013, nine months after Knighton’s resignation, the Tribe enacted the
8 Cedarville Rancheria Judicial Code and established the Cedarville Rancheria Tribal Court (“Tribal
9 Court”). Compl. ¶¶ 15–16. The Tribal Court, including a trial and appellate division, was created
10 “for the purpose of protecting and promoting tribal sovereignty, strengthening tribal self-
11 government, [and] providing for the judicial needs of the Cedarville Rancheria.” Cedarville
12 Rancheria Judicial Code (Dkt. No. 1-2 at 2). Tribal Court proceedings are governed by the
13 Federal Rules of Civil Procedure and Rules of Evidence, and the court can apply tribal, federal,
14 and state laws, issue orders and judgments, and award monetary damages and injunctive relief.
15 Compl. ¶ 25; Cedarville Rancheria Judicial Code (Dkt. No. 1-2 at 15).

16 Pursuant to Section 201 of the Tribe’s Judicial Code, the Tribal Court has subject matter
17 jurisdiction over “[a]ll persons outside the exterior boundaries of the Cedarville Rancheria
18 Reservation . . . within the jurisdiction of the Rancheria pursuant to federal or tribal law, including
19 all persons whose activity on or off reservation threatens the Rancheria, government or its
20 membership,” and to “[a]ll other persons whose actions involve or affect the Rancheria, or its
21 members, through commercial dealings, contracts, leases or other arrangements.” Cedarville
22 Rancheria Judicial Code (Dkt. No. 1-2 at 3–4). The Code further provides that the Tribal Court’s
23 judicial power extends to “[a]ll civil causes of action arising at common law including, without
24 limitation, all contract claims (whether the contract at issue is written or oral or existing at law), all
25 tort claims (regardless of the nature), all property claims (regardless of the nature), all insurance
26 claims, and all claims based on commercial dealing with the Band, its agencies, sub-entities, and
27 corporations chartered pursuant to its laws, and all nuisance claims.” Cedarville Rancheria
28 Judicial Code (Dkt. No. 1-2 at 4).

F. Cedarville Shooting

1 On February 20, 2014, during the first hearing in the first case before the Tribal Court,
2 former Tribal Chairperson Cherie Lash Rhoades (Knighton’s former boss) opened fire and killed
3 four Tribe members. Compl. ¶ 26; Tribal Court Compl. ¶ 23 (Dkt. No. 1-3 at 7). Rhoades and the
4 victims were all linked to the underlying dispute between Knighton and the Tribe. Compl. ¶ 26.
5 Among those murdered were the Tribal Administrator and Rhoades’ brother, who was Tribal
6 Chairman and an outspoken critic of Knighton’s handling of the Tribe’s finances. Tribal Court
7 Compl. ¶ 23 (Dkt. No. 1-3 at 7).

8 In the aftermath of this tragic shooting, the Tribe conducted a forensic accounting of its
9 finances. Tribal Court Compl. ¶ 24 (Dkt. No. 1-3 at 7). The investigation revealed that during
10 Knighton’s tribal employment, she made various unauthorized high-risk investment decisions on
11 behalf of the Tribe, which resulted in the loss of \$1.2 million in tribal investments between 2007
12 and 2008. Tribal Court Compl. ¶¶ 16–17 (Dkt. No. 1-3 at 5). The Tribe was unaware of its high
13 risk investment portfolio and \$1.2 million in investment losses because Knighton concealed the
14 annual audit reports and investment documents from the Tribe during her employment. Tribal
15 Court Compl. ¶¶ 17, 24, 39–41 (Dkt. No. 1-3 at 5, 7, 9–10). The Tribe also discovered that
16 Knighton opened a tribally funded trust without authorization, fraudulently inflated her salary and
17 benefits, and manipulated the Tribe’s policies to provide herself fringe benefits, including a
18 pension and excess sick and vacation days. Tribal Court Compl. ¶ 26–31 (Dkt. No. 1-3 at 7–8).
19 After discovering Knighton’s mismanagement of tribal finances and unauthorized investments, the
20 Tribe filed suit against her in Tribal Court.

21 **II. PROCEDURAL BACKGROUND**

22 **A. The Underlying Tribal Court Action**

23 On September 25, 2014,¹⁰ the Tribe lodged a complaint in Tribal Court against Knighton,
24 RISE, and Oppenheimer Funds, Inc.¹¹ Compl. ¶¶ 27, 29–30; *see* Tribal Court Compl. (Dkt. No. 1-
25

26 ¹⁰ The complaint is dated September 25, 2014, but stamped as filed on October 2, 2014.

27 ¹¹ Oppenheimer Funds, Inc. is a New York based financial fund manager that held funds at issue
28 in this matter, on deposit from the Tribe for the benefit of Knighton. Tribal Court Compl. ¶ 4
(Dkt. No. 1-3 at 3).

1 3 at 1–18).¹² The Tribe’s complaint asserts eight claims against Knighton: (1) fraud and deceit;
2 (2) recovery of unauthorized and excessive pension payments; (3) recovery of unauthorized
3 investment losses; (4) breach of fiduciary duty; (5) aiding and abetting breach of fiduciary duty;
4 (6) unjust enrichment; (7) common count-account stated; and (8) common count-money had and
5 received. *Id.* Claims five through eight are brought against Knighton and RISE. Compl. ¶ 30.

6 On October 1, 2014, the Tribal Court issued a temporary restraining order against
7 Knighton, RISE, and Oppenheimer, freezing all funds on deposit with Oppenheimer held in
8 Knighton’s name. *Id.* ¶ 31; Compl. Ex. 5, Tribal Court Order Re TRO (Dkt. No. 1-3 at 20).

9 On October 28, 2014, Knighton filed a Rule 12(b)(6) motion to dismiss the complaint, and
10 the Tribal Court heard argument on January 8, 2015. Compl. ¶ 32. The Tribal Court, Chief Judge
11 Lenzi presiding, ruled that it had authority to adjudicate the case and denied Knighton’s motion to
12 dismiss on March 11, 2015. *Id.* ¶ 32; Compl. Ex. 6, Tribal Court Order Denying Knighton’s Mot.
13 to Dismiss (Dkt. No. 1-3 at 24). On February 24, 2015, RISE filed a separate Rule 12(b)(2)
14 motion challenging the Tribal Court’s jurisdiction. Compl. Ex. 9, Order Granting Mot. to Dismiss
15 as to RISE (Dkt. No. 1-3 at 42). On April 21, 2015, the parties¹³ stipulated to stay the action
16 against Knighton pending a ruling on RISE’s motion to dismiss. Compl. ¶¶ 33–34. The Tribal
17 Court granted the stay on April 23, 2015, and noted that its jurisdictional ruling was not ripe for
18 federal review but was ripe for review in the Cedarville Rancheria Court of Appeals (“Tribal
19 Court of Appeals”). *Id.* ¶ 34; Order Granting Temporary Stay ¶¶ 1–2 (Dkt. No. 1-3 at 40). On
20 June 30, 2015, the Tribal Court granted RISE’s motion to dismiss for lack of personal jurisdiction.
21 Compl. ¶ 35; Order Granting Mot. to Dismiss as to RISE (Dkt. No. 1-3 at 42).

22 Knighton filed a notice of appeal on July 20, 2015, asserting that the Tribal Court lacks
23 jurisdiction over her, and that the tribal complaint must be dismissed because RISE is an
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26 ¹² The underlying tribal court action is titled *Cedarville Rancheria of Northern Paiute Indians v.*
27 *Duanna Knighton, et al.*, Case No. CED-CI-2014-00002. Compl. Ex. 4, Tribal Court Compl.
(Dkt. No. 1-3 at 1).

28 ¹³ The Tribal Court dismissed Oppenheimer from the action sometime before April 21, 2015.
Stipulation Regarding Temporary Stay (Dkt. No. 1-3 at 33).

1 indispensable party whose joinder is not feasible. Compl. ¶ 36. On March 7, 2016, the Tribal
2 Court of Appeals affirmed the Tribal Court’s denial of Knighton’s motion to dismiss but
3 remanded the issue of whether RISE was an indispensable party—raised for the first time on
4 appeal—to the Tribal Court to develop the factual record and make the necessary findings. *Id.*;
5 Tribal Court of Appeals Order Regarding Knighton’s Motion to Dismiss (Dkt. No. 1-3 at 52).
6 Knighton subsequently filed a motion to dismiss under Rule 12(b)(7) for failure to join
7 indispensable party RISE under Rule 19. Compl. ¶ 37. The Tribal Court heard argument on June
8 13, 2016, and denied the motion in its entirety on June 29, 2016. *Id.*; Tribal Court Order Denying
9 Knighton’s Motion to Dismiss Under Rule 19 (Dkt. No. 1-3 at 59). Knighton appealed the
10 decision to the Tribal Court of Appeals. Compl. ¶ 38. On September 26, 2016, pursuant to a
11 stipulation between the parties, the Tribal Court vacated the appeal and stayed the case to allow
12 Knighton to challenge the Tribal Court’s jurisdiction over her in federal court. Compl. ¶ 38.

13 **B. The Present Action**

14 On October 12, 2016, Knighton filed this action against the Tribe, Tribal Court, and Tribal
15 Judge Lenzi.¹⁴ Knighton seeks (1) a declaratory judgment that the Tribal Court lacks jurisdiction
16 over her, (2) a declaration that RISE is an indispensable party to the tribal action and therefore she
17 must be dismissed from the suit, and (3) a permanent injunction against further proceedings in
18 Tribal Court. Compl. ¶¶ 67–69.

19 On December 16, 2016, defendants moved to dismiss Knighton’s complaint pursuant to
20 Rule 12(b)(1) and (6), on the following grounds: (1) the complaint fails to establish federal
21 subject matter jurisdiction; (2) the Tribal Court has jurisdiction over Knighton under *Montana v.*
22 *United States*, 540 U.S. 544 (1981); (3) sovereign immunity shields defendants from suit; (4)
23 Knighton’s complaint fails to state a claim upon which relief can be granted; (5) defendants are
24 not necessary parties to federal review of Tribal Court jurisdiction; and (6) this case will never be
25 ripe for federal review. Mot. (Dkt. No. 10).

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¹⁴ Defendant Patricia R. Lenzi is chief judge of the Tribal Court, and she is included in Knighton’s
suit in her official capacity only. Compl. ¶¶ 4, 6.

1 **DISCUSSION**

2 “[A] federal court may determine under § 1331 whether a tribal court has exceeded the
3 lawful limits of its jurisdiction” over a nonmember. *Nat’l Farmers Union Ins. Companies v. Crow*
4 *Tribe of Indians*, 471 U.S. 845, 852-53 (1985). “Non-Indians may bring a federal common law
5 cause of action under 28 U.S.C. § 1331 to challenge tribal court jurisdiction.” *Boozer v. Wilder*,
6 381 F.3d 931, 934 (9th Cir. 2004). However, as a matter of comity, a plaintiff must first exhaust
7 tribal court remedies before seeking relief in federal court.¹⁵ *Atwood v. Fort Peck Tribal Court*
8 *Assiniboine*, 513 F.3d 943, 948 (9th Cir. 2008). “At a minimum, exhaustion of tribal remedies
9 means that tribal appellate courts must have the opportunity to review the determinations of the
10 lower tribal courts.” *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 17 (1987). Because Knighton is
11 non-Indian and it is undisputed that she has exhausted her tribal remedies with respect to the
12 question of tribal jurisdiction over her, subject matter jurisdiction exists pursuant to § 1331.¹⁶

13 **I. TRIBAL JURISDICTION**

14 “Tribes maintain considerable authority over the conduct of both tribal members and
15 nonmembers on Indian land, or land held in trust for a tribe by the United States.” *McDonald v.*
16 *Means*, 309 F.3d 530, 536 (9th Cir. 2002). “To exercise its inherent civil authority over a
17 [nonmember] defendant, a tribal court must have both subject matter jurisdiction—consisting of
18 regulatory and adjudicative jurisdiction—and personal jurisdiction.” *Water Wheel Camp*
19 *Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 809 (9th Cir. 2011). A tribe’s regulatory
20 authority concerns its power to regulate nonmember conduct while adjudicative authority relates

21 _____
22 ¹⁵ The Supreme Court recognizes four exceptions to the exhaustion rule: “(1) when an assertion of
23 tribal court jurisdiction is motivated by a desire to harass or is conducted in bad faith; (2) when the
24 tribal court action is patently violative of express jurisdictional prohibitions; (3) when exhaustion
25 would be futile because of the lack of an adequate opportunity to challenge the tribal court’s
26 jurisdiction; and (4) when it is plain that tribal court jurisdiction is lacking, so that the exhaustion
27 requirement would serve no purpose other than delay.” *Elliott v. White Mountain Apache Tribal*
28 *Court*, 566 F.3d 842, 847 (9th Cir. 2009) (internal quotation marks, citations, and modifications
omitted). Because the parties agree that Knighton has exhausted tribal remedies with respect to
her jurisdictional challenge, I do not consider whether these exceptions apply.

¹⁶ In reviewing the Tribal Court’s ruling on jurisdiction “the district court’s review is akin to
appellate review of the tribal court record.” *Water Wheel Camp Recreational Area, Inc. v.*
LaRance, 642 F.3d 802, 817 n.9 (9th Cir. 2011) (citation omitted).

1 to the tribal court’s jurisdictional power to adjudicate certain disputes. *See Strate v. A-1*
 2 *Contractors*, 520 U.S. 438, 442 (1997). The Supreme Court has made clear, however, that a
 3 tribe’s adjudicative authority over nonmembers is confined by the bounds of its regulatory
 4 authority. *Id.*

5 **A. Subject Matter Jurisdiction**

6 *Montana v. United States* is “the pathmarking case concerning tribal civil authority over
 7 nonmembers.” *Strate*, 520 U.S. at 445. The *Montana* Court announced “the general proposition
 8 that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers
 9 of the tribe[,]” while simultaneously recognizing that “Indian tribes retain inherent sovereign
 10 power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on
 11 non-Indian fee lands.” *Montana v. United States*, 450 U.S. 544, 565 (1981). The Court identified
 12 two circumstances, known as the *Montana* exceptions, in which the exercise of jurisdiction over a
 13 non-Indian might be appropriate. *Id.* First, “[a] tribe may regulate, through taxation, licensing, or
 14 other means, the activities of nonmembers who enter consensual relationships with the tribe or its
 15 members, through commercial dealing, contracts, leases, or other arrangements.” *Id.* And second,
 16 “[a] tribe may also retain inherent power to exercise civil authority over the conduct of non-
 17 Indians on fee lands within its reservation when that conduct threatens or has some direct effect on
 18 the political integrity, the economic security, or the health or welfare of the tribe.” *Id.* at 566.

19 In the Ninth Circuit, *Montana*’s exceptions “do[] not apply to jurisdictional questions”
 20 over nonmembers for claims arising on tribal land within a reservation, except “where a state has a
 21 competing interest in executing a warrant for an off-reservation crime.” *Water Wheel*, 642 F.3d at
 22 813 (citing *Nevada v. Hicks*, 533 U.S. 353 (2001)).¹⁷ In *Water Wheel*, the Ninth Circuit explained

24 ¹⁷ In *Nevada v. Hicks*, the Court held that a state’s considerable interest in executing criminal
 25 warrants for off-reservation crimes outweighed the tribe’s authority to regulate the on-reservation
 26 activities of state officers, and thus *Montana* applied. 533 U.S. 353 (2001). The *Water Wheel*
 27 court acknowledged *Hicks*, but determined it “is best understood as the narrow decision it
 28 explicitly claims to be[,]” concluding, for jurisdictional questions arising on Indian land, *Montana*
 “appl[ies] only when the specific concerns at issue in [*Hicks*] exist.” *Water Wheel*, 642 F.3d at
 813. The *Water Wheel* court arrived at this conclusion, even though *Hicks* found that *Montana*’s
 reasoning “clearly impl[ies] that the general rule of *Montana* applies to both Indian and non-Indian
 land.” *Hicks*, 533 U.S. at 360. In this vein, other circuits have recognized *Water Wheel*’s seeming
 divergence from Supreme Court precedent. *See, e.g., Stifel, Nicolaus & Co. v. Lac du Flambeau*

1 that applying *Montana* to cases arising on reservation trust land “would impermissibly broaden
 2 *Montana*’s scope beyond what any precedent requires and restrain tribal sovereign authority
 3 despite Congress’s clearly stated federal interest in promoting tribal self-government.” *Id.* The
 4 threshold question then, is whether it is even necessary to apply *Montana*’s exceptions to this case.

5 **1. Applicability of *Montana***

6 Both parties focused exclusively on *Montana*, while neither party addressed *Water Wheel*’s
 7 explicit direction not to apply *Montana* to jurisdictional questions over nonmembers for claims
 8 arising on Indian land. Neither party argues that Knighton’s activities occurred on non-Indian fee
 9 land within the reservation, which would justify *Montana*’s application. Rather, the parties
 10 acknowledge that the conduct at issue occurred on trust land within the reservation and at the tribal
 11 headquarters building,¹⁸ which is currently undergoing a process of fee-to-trust conversion. Tribal
 12 Court Order Denying Knighton’s Motion to Dismiss Under Rule 19 ¶ 7 (Dkt. No. 1-3 at 61).

14 *Band of Lake Superior Chippewa Indians*, 807 F.3d 184, 214 (7th Cir. 2015)(“We do not believe
 15 that [*Water Wheel*’s] conclusions can be reconciled with the language that the Court employed in
 16 *Hicks* and *Plains Commerce Bank*.”). Another district court in this circuit recognized this
 17 deviation, and invoked the Supremacy Clause to apply *Montana* on Indian land, notwithstanding
 18 *Water Wheel*’s instruction to the contrary. *Rolling Frito–Lay Sales LP v. Stover*, 2012 WL
 19 252938, at *3 (D. Ariz. 2012) (“To the extent that the *per curiam* opinion in *Water Wheel* departs
 20 from Supreme Court jurisprudence in the area of Federal Indian Law, we are constrained by the
 21 Supremacy Clause, Art. VI, and Article III (‘one supreme Court’) to follow the Supreme Court.
 22 *See Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, 460 U.S. 533, 535, 103 S.Ct. 1343, 75
 L.Ed.2d 260 (1983). We thus apply *Montana* to this case.”) Another court avoided the analysis
 altogether. *See Salt River Project Agr. Imp. & Power Dist. v. Lee*, 2013 WL 321884, at *12 (D.
 Ariz. 2013)(deciding that issue of whether *Montana* applies is irrelevant because the result would
 be the same whether foregoing application of *Montana* or applying it and finding an exception
 applies—the tribe would have the sovereign authority to regulate employment). While my
 conclusion is the same as the court in *Salt River*, I address this issue because it was important to
 the parties’ arguments and the Tribal Court’s determination.

23 ¹⁸ The headquarters is located outside of the reservation, where the Tribe lacks the authority to
 24 regulate a non-Indian. *Water Wheel*, 642 F.3d at 815. While the underlying complaint does not
 25 allege precisely where the conduct at issue occurred, Knighton must concede that all pre-2009
 26 conduct occurred on the reservation. This pre-2009 conduct underlies many of the claims in the
 27 Tribal Court Complaint, including unjustified salary increases, unwarranted fringe benefits,
 28 unauthorized investment losses, and various misrepresentations and omissions. *See* Tribal Court
 Compl. (Dkt. No. 1-3). Even post-2009 conduct that *may* have taken place off of the reservation is
 undoubtedly related to tribal land. *See Smith v. Salish Kootenai Coll.*, 434 F.3d 1127, 1132 (9th
 Cir. 2006)(“[W]hether tribal courts may exercise jurisdiction over a nonmember defendant may
 turn on how the claims are related to tribal lands.”) Accordingly, I find the location of the Tribal
 headquarters building immaterial to an analysis of subject matter jurisdiction.

1 Accordingly, under Ninth Circuit precedent, *Montana* does not apply at all. *Water Wheel*, 642
2 F.3d at 812 (collecting cases confirming that *Montana* does not apply to a Tribe’s jurisdiction over
3 non-Indians on Indian land).

4 The Tribal Court and Tribal Court of Appeals, however, proceeded to apply *Montana* and
5 determined that subject matter jurisdiction exists under both *Montana* exceptions, as Knighton had
6 a longstanding consensual employment relationship with the Tribe and her activities in question
7 directly harmed the Tribe’s economic security. Tribal Court of Appeals Order Re Knighton’s
8 Mot. to Dismiss (Dkt. No. 1-3 at 55). In reaching this conclusion, the Tribal Court of Appeals
9 relied on the lower court’s factual findings that “[s]ome of [] Knighton’s duties and actions at
10 issue in this case were carried out on the [Tribe’s] trust lands,” and “some were carried out at the
11 fee-owned tribal headquarters building of the tribe in the town of Alturas, CA, and not on trust
12 lands of the tribe.” *Id.* The Tribal Court also noted that “some of [Knighton’s] duties carried out
13 at Tribal Headquarters in Alturas involved actions and effects on the Tribal trust lands in
14 Cedarville.” *Id.*

15 In regards to RISE, the Tribal Court described the ownership status of the lands at issue
16 and presented a detailed analysis of why the Tribe does not have jurisdiction under *Montana*:

17 It is undisputed that the Cedarville Rancheria Tribal Building is not on land held in
18 trust for the benefit of the Tribe. Therefore it is not “Indian country” over which
19 the Tribe can exercise civil jurisdiction under [§] 18 USC 1551. Since Congress
20 has not ratified the Cedarville Rancheria’s Constitution, the Tribal Administrative
21 Building and the land on which it sits is not only *not* in Indian country, the building
22 is also not “*fee lands within its reservation*” under *Bugenig* or *Montana*. The initial
23 assumption under *Montana* is that a tribe may exercise jurisdiction over a non-
24 Indian on fee lands within the tribe’s reservation – the lands in question must be
25 located within a reservation’s boundaries. Therefore, the federal standard set forth
26 in *Montana* for exercising jurisdiction over a non-Indian has not been met because
27 under federal legal analysis, the [RISE] building and the land it sits on do not meet
28 any federal definition of reservation lands. The two prongs of the *Montana* test
cannot even be reached for application until the [Tribal] Court has found that the
land in question where the alleged contract [for sale of the RISE building] was “fee
land within the reservation.” There is no evidence submitted with the complaint
pleading, nor is it alleged in the complaint, that the contract was entered into by the
parties [i.e., the Tribe, Knighton and RISE] within the reservation, or on fee lands
within the reservation. Under federal law, the Cedarville Rancheria Tribal
Administration building is fee land outside the reservation at present, and is now
owned by the Tribe.

1 Tribal Court Order Granting RISE’s Mot. to Dismiss (Dkt. No. 1-3 at 48). The Tribal
 2 Court went on to note that, with respect to RISE, the Tribe’s complaint “fails to allege the
 3 condition precedent of the location of [RISE’s tortious] activity within the boundaries of
 4 the reservation, and the timing of the same activity being concurrent with R.I.S.E.’s
 5 alleged tortious conduct.” *Id.* (Dkt. No. 1-3 at 49). It subsequently confirmed the fee
 6 status of the tribal headquarters land in June 2016, noting that the Tribe “is in the process
 7 of seeking fee-to-trust status of the land on which the Tribal headquarters sit.” Tribal
 8 Court Order Denying Knighton’s Mot. to Dismiss Under Rule 19 (Dkt. No. 1-3 at 61).

9 This record demonstrates that Knighton’s activities in question did not occur on non-Indian
 10 fee lands within the Tribe’s reservation, and thus under *Water Wheel*, the *Montana* exceptions do
 11 not apply.¹⁹ *See Water Wheel*, 642 F.3d at 810. Rather, I must return to the basic jurisdictional
 12 analysis and assess whether the Tribe has authority to regulate Knighton’s activities during her
 13 tribal employment—all of which occurred on land owned by the Tribe, whether on the reservation
 14 or at the fee-owned Tribal Headquarters building.

15 2. Tribal Regulatory Authority

16 A tribe’s regulatory authority over nonmembers must derive “from the tribe’s inherent
 17 sovereign authority to set conditions on entry, preserve self-government, or control internal
 18 relations.” *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008). A
 19 “tribe is able fully to vindicate its sovereign interests in protecting its members and preserving
 20 tribal self-government by regulating nonmember activity on the land, within the limits set forth in
 21 [Supreme Court] cases.” *Id.* at 336 (emphasis omitted); *see Merrion v. Jicarilla Apache Tribe*,
 22 455 U.S. 130, 144 (1982) (finding that the power to exclude nonmembers from reservation trust
 23 lands “necessarily includes the lesser power to place conditions on entry, on continued presence,

24
 25 _____
 26 ¹⁹ Although the Ninth Circuit has made clear that *Montana* does not govern the circumstances in
 27 this case, *see Water Wheel*, 642 F.3d 802, if *Montana* did apply, I agree with the Tribal Court that
 28 the Tribe would have subject matter jurisdiction under both exceptions. *See, e.g., Salt River
 Project Agr. Imp. & Power Dist. v. Lee*, 2013 WL 321884, at *12–15 (D. Ariz. Jan. 28,
 2013)(finding Tribe had jurisdiction over nonmember defendant on Tribal land).

1 or on reservation conduct.”). To the extent a nonmember’s activities “may intrude on the internal
2 relations of the tribe or threaten tribal self-rule,” such activities may be regulated. *Plains*
3 *Commerce*, 554 U.S. at 335.

4 Knighton explicitly acknowledges in her complaint that the Tribe has regulatory authority
5 over its employees and their conduct: “At the time of Knighton’s employment, the Tribe regulated
6 its employees” and “[Knighton] is subject to the regulatory procedures that existed at the time of
7 her employment.” Compl. ¶¶ 18–19, 51. These admissions alone establish the Tribe’s regulatory
8 authority over Knighton’s employment.

9 Furthermore, as Tribal Administrator, Knighton directly immersed herself in, and had
10 considerable oversight of, nearly all aspects of the Tribe’s day-to-day government. She was
11 “responsible for over-all supervision and management of the Cedarville Rancheria, including
12 contract negotiations, wages, and compliance; and supervision of employees according to the
13 salaried job description.” *Id.* ¶ 18; Cedarville Rancheria Policies (Dkt. No. 1-2 at 26). Her other
14 job duties included “[p]lanning, development, management, and supervision of all projects
15 contracted by Cedarville Rancheria;” meeting with government agencies and other tribal offices
16 on behalf of the Tribe; “[r]eporting to the Tribal Council (Board) and all funding agencies on a
17 timely and regular basis”; and managing “payroll, taxes, and expenses, financial statements/reports
18 for audit, expenditures, and ledgers under direct supervision of the Chairperson.” *Id.* She also had
19 significant discretion in hiring, disciplining, and terminating tribal employees, both members and
20 nonmembers. *Id.* Knighton’s employment activities directly affected the Tribe’s inherent powers
21 to protect the welfare of its members and preserve the integrity of its government.

22 The Tribe’s sovereign interest in ensuring its economic survival further supports its
23 regulatory jurisdiction here. During her tenure as Tribal Administrator, Knighton was extensively
24 involved in the Tribe’s finances and was responsible for the Tribe’s “payroll, taxes, and expenses,
25 financial statements/reports for audit, expenditures, and ledgers under direct supervision of the
26 Chairperson.” *Id.* The Tribe alleges that Knighton’s actions as Tribal Administrator had a
27 devastating effect on the Tribe’s economic wellbeing. Considering the small size of the Tribe’s
28 membership, her conduct threatened the Tribe’s very economic survival.

1 The Tribe’s regulatory jurisdiction over Knighton’s on-reservation activities as Tribal
 2 Administrator is unassailable. Not only does Knighton concede that the Tribe has authority to
 3 regulate her employment, but her alleged activities on the Rancheria directly interfered with the
 4 Tribe’s sovereign powers to control internal relations and protect the welfare of its members.

5 **3. Tribal Adjudicative Authority**

6 “Where tribes possess authority to regulate the activities of nonmembers, civil jurisdiction
 7 over disputes arising out of such activities presumptively lies in the tribal courts.” *Strate*, 520
 8 U.S. at 453 (citation and brackets omitted). However, a tribe’s adjudicative authority over
 9 nonmembers may not exceed its regulatory authority. *Id.* at 438. In *Water Wheel*, after
 10 concluding that the tribe had regulatory jurisdiction over nonmembers for trespass on reservation
 11 trust land, the Ninth Circuit determined that adjudicative authority also existed. 642 F.3d at 816.
 12 Factors that supported a finding of adjudicative jurisdiction included “the important sovereign
 13 interests at stake [i.e., inherent power to exclude nonmembers and manage reservations lands], the
 14 existence of regulatory jurisdiction, and long-standing Indian law principles recognizing tribal
 15 sovereignty.” *Id.* The circumstances here present an even more compelling basis for adjudicative
 16 jurisdiction than those in *Water Wheel*—Knighton was a longtime employee of the Tribe who was
 17 entrusted with the responsibility of overseeing all aspects of tribal operations.

18 Knighton’s due process argument, that “because the Tribal Court did not exist at the time
 19 of her employment, [the] Tribe is exceeding its authority to regulate her employment through ex
 20 post facto application of its tribal judicial system,” is unconvincing. Opp’n at 8 (Dkt. No. 14).
 21 The Tribe is not attempting to “create new regulations and impose them on Knighton ex post
 22 facto” as she alleges; Knighton’s alleged conduct violated the Tribe’s regulations that were in
 23 place—and that she wrote—during her employment with the Tribe. *Id.* at 9; *see* Compl. ¶¶ 20–22.
 24 The Tribe is simply seeking to adjudicate its claims against her in its chosen forum—the Tribal
 25 Court. Knighton’s assertion that “any dispute between [her] and the Tribe is subject to the
 26 regulatory procedures that existed at the time of employment, *to wit.*: the disciplinary and
 27 grievance procedures enumerated in ... the Tribe’s Personnel Policy and Procedure Manual” is
 28 similarly unpersuasive. Compl. ¶ 51. Defendants correctly note that the “Tribe’s Administrative

1 Policies and Procedures confer jurisdiction not only to the Tribe, but more importantly, to the
2 Tribal Council [which is comprised of the Tribe’s adult voting membership] in cases where the
3 Tribal Administrator is the focus of discipline.” Mot. at 8 (Dkt. No. 10). Even if the Tribal Court
4 did not presently exist, then the Tribal Council would have jurisdiction over the claims at issue.²⁰
5 Cedarville Rancheria Policies (Dkt. No. 1-2 at 40). Moreover, the Tribe’s constitution, adopted in
6 2011, provides that the “jurisdiction of [the Tribe] shall extend to the land now within the confines
7 of the Cedarville Rancheria and to such other lands as may hereafter be added thereto.” Cedarville
8 Rancheria Constitution and Bylaws (Dkt. No. 1-2 at 45).

9 Because the Tribe has both regulatory and adjudicative jurisdiction over Knighton, the
10 Tribal Court has subject matter jurisdiction over the underlying action.

11 **II. FAILURE TO JOIN INDISPENSABLE PARTY**

12 Defendants argue that “[w]hether non-party R.I.S.E. is an indispensable party has no
13 bearing on Defendants’ motion to dismiss,” because “the threshold question” is whether the Tribal
14 Court has jurisdiction over the underlying action. Reply at 8 (Dkt. No. 15). I agree. And
15 Knighton seemingly concedes that the two issues are unrelated: “ the arguments in [defendants’]
16 Motion to Dismiss are limited to the former issue of subject-matter jurisdiction and do not address
17 the latter issue of joinder of RISE... .” Opp’n at 13. But my precise task must be limited to the
18 question of the Tribal Court’s jurisdiction. Knighton has submitted no authority establishing that
19 the Tribal Court’s lack of jurisdiction over *RISE* divests it of jurisdiction over the *action*. Because
20 the Tribal Court has jurisdiction over the underlying action pending against Knighton, I do not
21 address Knighton’s indispensable party argument.

22 As a separate and independent reason for denying Knighton’s indispensable party
23 argument, she has failed to exhaust her tribal remedies. Although the Tribal Court certified as ripe
24

25 ²⁰ An appeal hearing would be “subject to the control of the [Tribal] Council,” which had the
26 power to “vary the procedure” of an appeal hearing, and the Tribal Council’s decision following
27 an appeal hearing would be final. Dkt. No. 1-2 at 40-41. The Personnel Manual also provides that
28 “[t]he specific type and degree of disciplinary action will be determined by the nature of the
offense,” which leaves the door open for additional disciplinary actions to be utilized. Dkt. No. 1-
2 at 33.

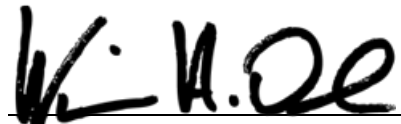
1 for federal review “the question of jurisdiction over Defendant Knighton, as this question has
2 already been appealed to the Cedarville Rancheria Court of Appeals,” it expressly noted that
3 “tribal processes as to only [the jurisdiction] issue, *and no other issues*, have been exhausted by
4 the parties.” Dkt. No. 1-3 at 62. *See Nat’l Farmers Union*, 471 U.S. at 856 (“[T]he orderly
5 administration of justice in the federal court will be served by allowing a full record to be
6 developed in the Tribal Court before either the merits or any question concerning appropriate
7 relief is addressed.”).

8 **CONCLUSION**

9 Given the Tribal Court’s jurisdiction over the underlying action, defendants’ motion to
10 dismiss is GRANTED WITH PREJUDICE.

11 **IT IS SO ORDERED.**

12 Dated: February 15, 2017

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15 William H. Orrick
16 United States District Judge
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