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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

SHINGLE SPRINGS BAND OF MIWOK INDIANS,

Plaintiff,

v.

UNITE HERE INTERNATIONAL UNION, DOES 1-100;

Defendant.

Case No. 2:16-cv-01057-TLN-EFB

UNITE HERE'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

Date: August 25, 2016
Time: 2:00 p.m.
Dept: Courtroom 2, 15th Floor

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Introduction

The Shingle Springs Band of Miwok Indians ("Tribe") seeks three declarations about a labor dispute it has with UNITE HERE International Union ("Union"). That dispute arises under a Memorandum of Agreement that contains an unlimited arbitration clause. The Tribe refuses to arbitrate, so months before the Tribe filed this case, the Union sued the Tribe to compel arbitration. This case is duplicative, and the two cases have been deemed related by the Court. There are three alternative reasons why this case should be dismissed.

First, the Tribe has not exhausted nonjudicial remedies by submitting the dispute to arbitration. Since it is clear from the face of the Tribe's complaint that this dispute is arbitrable, dismissal under Rule 12(b)(6) is proper.

Second, the Tribe's second and third claims for relief are not ripe, so there is not a case or controversy which is necessary for federal jurisdiction. The Tribe wants declarations that the Union's interpretation of the parties' agreement (as prohibiting the Tribe from discharging employees for supporting the Union) and ordering a joint-meeting between the Union and the Tribe as a remedy for other violations would violate the National Labor Relations Act. Since the arbitrator has not interpreted the agreement or awarded a remedy, these claims are premature.

Third, declaratory relief is always subject to the Court's discretion. There is no reason to hear the Tribe's claims because the Tribe has already raised the same issues in response to the Union's first-filed petition to compel arbitration. Moreover, federal labor policy favors speedy submission of labor disputes to arbitration. Allowing this case to proceed will lead to delay.

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Statement of the Case

A. The Union and Tribe have a dispute about whether the Tribe violated an agreement with the Union when it discharged two employees.

This case involves a labor dispute. The Union is a labor organization, and the Tribe owns and operates the Red Hawk Casino. Complaint, ¶¶ 1-2. The Union and the Tribe entered into a Memorandum of Agreement ("MOA") that establishes procedures for the Union to organize Red Hawk Casino employees. Complaint, ¶ 7 & Exh. A. Section 5 of the MOA requires the Tribe to remain neutral. The Tribe must "advise Bargaining Unit Employees that it is neutral to their selection of the Union as their exclusive representative" and refrain from "directly or indirectly stat[ing] or imply[ing] opposition to the selection by Bargaining Unit Employees of the Union as their exclusive representative." Complaint, Exh. A. The MOA contains a dispute-resolution procedure which culminates in arbitration. It states:

> The Parties agree that any disputes over the interpretation or application of this Agreement shall be submitted first to mediation arranged through a mutually agreeable mediator such as, by way of illustration only, the American Arbitration Association. If after a minimum of 30 business days after submission of the dispute to a mediator, a mutually satisfactory resolution is not produced by mediation, or if after a maximum of 15 business days a mutually agreeable mediator is not chosen after impasse over any dispute, then either the Tribe or the Union may submit the dispute(s) to expedited and binding arbitration before an arbitrator selected from the TLP. The arbitrator shall not modify, add to or subtract from this Agreement.

Complaint, ¶¶ 7-8 & Exh. A (¶ 10).[1]

On about November 18, 2015, the Union notified the Tribe by letter of a dispute about the interpretation or application of the MOA. In that letter, the Union asserted that the Tribe violated Section 5 of the MOA multiple times, including by terminating employee Christopher Garrigues

[1] The Tribe inaccurately characterizes this provision as "limited." No disputes under the MOA are excluded from coverage.

because Garrigues "solicited support for the union during his break time." Complaint, ¶ 12; Martin Dec., Exh. A.[2] The Union invoked the MOA's dispute-resolution procedures, and on January 7, 2016 a mediation was held. Complaint, ¶ 13. As a remedy for some of the Tribe's neutrality violations, the Union requested that "meetings be held with employees, at which union representatives and managers are present and explain the terms of the parties' agreement, including by reaffirming management's commitment to neutrality." Complaint, ¶ 17; Martin Dec., Exh. B. Since February 4, 2016, the Tribe has refused to arbitrate the parties' dispute about whether the Tribe's discharge of two employees violated the MOA. Complaint, ¶¶ 14-19.

B. The case overlaps with the Union's petition to compel arbitration.

On February 22, 2016, the Union filed a petition to compel arbitration of its dispute with the Tribe about the employee discharges. While that case was pending, the Tribe filed this action. On June 28, 2016, the Court issued a Notice of Related Case Order, deeming the cases "related" because both cases "involve the same parties, are based on the same claims, the same events, the same questions of fact and the same questions of law."

On March 21, the Tribe moved to dismiss the Union's petition to compel arbitration. According to the Tribe, a petition to compel arbitration under a labor contract does not state a claim for relief and the Union's dispute with the Tribe does not arise under the MOA. (Docket No. 6). The Union opposed the motion, explaining that § 301 of the Labor Management Relations Act (29 U.S.C. § 185) authorizes courts to compel arbitration of labor disputes and that whether the Tribe violated the MOA by discharging the employees is a question for the arbitrator. (ECF No. 7). In its reply brief, the Tribe made a new argument: arbitrating the dispute would violate § 8(a)(2) of the National Labor Relations

[2] The documents attached to the Declaration of Kristin Martin may be considered in connection with this motion to dismiss because they are referenced in the complaint and their authenticity is unquestioned. *No. 84 Employer-Teamster Joint Council Pension Trust Fund v. America West Holding Corp.*, 320 F.3d 920, 925 n.2 (9th Cir. 2003).

Act ("NLRA"). (ECF No. 9). This Court has not yet decided the Tribe's motion to dismiss.

C. The Tribe seeks three declaratory judgments regarding the MOA.

As the Court stated in the Notice of Related Case Order, this case involves precisely the same issues as the Union's petition to compel arbitration. The Tribe seeks declaratory relief that that it does not have to arbitrate its dispute with the Union, and advances three overlapping theories.

First, the Union's dispute with the Tribe over employee terminations is not covered by the MOA's arbitration provision:

> The Tribe further contends that Section 10 of the MOA is limited to disputes over the interpretation or application of the MOA, and the Tribe's intramural personnel decisions do not fall within the gambit of Section 10. To be sure, the MOA contains no provisions regarding employee discipline and/or termination and is further silent on any employee remedies such as back pay and/or reinstatement. Moreover, employees of the Tribe are not parties to the MOA and do not have standing to seek relief under the MOA. Accordingly, the Tribe refuses to arbitrate any employee termination and/or disciplinary action under the MOA as proceeding with such arbitration is tantamount to treating the MOA like a collective bargaining agreement, which it certainly is not.

Complaint, ¶ 20. In its first claim for relief, the Tribe seeks a declaration that it cannot be required to arbitrate this dispute. Complaint, ¶¶ 22-31.

Second, arbitrating the dispute over employee terminations would violate the NLRA:

> The Tribe contends that any arbitration over an intramural personnel decision prior to the Union establishing majority status is unlawful and violates § 8(a)(2) of the National Labor Relations Act . . . .

Complaint, ¶ 19. In its second claim for relief, the Tribe seeks a declaration that arbitrating this dispute would violate federal law. Complaint, ¶¶ 32-40.

Third, an arbitrator cannot lawfully order the Tribe and Union to engage in joint activities:

> The Tribe further contends that the MOA does not authorize joint activities of any nature between the Tribe and the Union. The Tribe contends that joint activities are reserved for organizations the Tribe supports, and any showing of Union support by the Tribe violates Section 8(a)(2) of the NLRA, as well as similar provisions under the MOA and the TLRO.

Complaint, ¶ 21. In its third claim for relief, the Tribe seeks a declaration that an arbitral remedy requiring the Tribe to participate in joint meetings with the Union would violate the NLRA and the MOA. Complaint, ¶¶ 41-47.

Argument

A. The Complaint should be dismissed because it presents an arbitrable dispute.

A complaint may be dismissed under Rule 12(b)(6) when it clear from the face of the complaint that the complaint asks the court to resolve an arbitrable dispute. Indeed, "a failure to exhaust non-judicial remedies must be raised in a motion to dismiss." *Inlandboatmens' Union of the Pacific v Dutra Group*, 279 F.3d 1075, 1084 (9th Cir. 2002) (dismissing complaint brought under § 301 of the Labor Management Relations Act because plaintiff failed to exhaust nonjudicial remedies); *see also Albino v. Baca*, 747 F.3d 1162 1166 (9th Cir. 2014) (en banc) ("In the rare event that a failure to exhaust is clear on the face of the complaint, a defendant may move for dismissal under Rule 12(b)(6)."); *Carter v. Rent-A-Ctr., Inc.*, 2015 WL 4773547, at *3 (D. Nev. Aug. 13, 2015); *Columbia Cas. Co. v. Cottage Health Sys.*, 2015 WL 4497730, at *2 (C.D. Cal. July 17, 2015). Here, it is clear from the Complaint's face that the Tribe seeks declarations about matters that are for the arbitrator to decide.[3]

1. Federal labor policy favors the resolution of labor disputes through private arbitration.

Longstanding Supreme Court precedent encourages the use of arbitration to resolve labor disputes. Section 301 "expresses a federal policy that federal courts should enforce [arbitration] agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way." *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 455 (1957). The Court has adopted a presumption of arbitrability to "further[] the national labor policy of peaceful resolution of labor disputes." *AT&T Technologies v. Communication Workers*, 475 U.S. 643, 649-50 (1986); *see also*

[3] The argument in this section is virtually identical to the argument in Section C of the Union's opposition to the Tribe's motion to dismiss the related petition to compel arbitration.

Boys Markets, Inc. v. Retail Clerks, 398 U.S. 235, 242-43 (1970) ("[I]n the *Steelworkers Trilogy* we emphasized the importance of arbitration as an instrument of federal policy for resolving disputes between labor and management and cautioned the lower courts against usurping the functions of the arbitrator."); *Dutra*, 279 F.3d at 1078 ("[F]ederal labor policy as declared by the Supreme Court provides a strong preference for the arbitration of labor-management disputes."). This policy applies equally to disputes between employers and unions that do not represent the employers' employees. *Service Employees Int'l Union v. St. Vincent Medical Ctr.*, 344 F.3d 977, 985-86 (9th Cir. 2003) *Hotel & Restaurant Employees Union Local 217 v. J.P. Morgan Hotel*, 996 F.2d 561, 567-68 (2d Cir. 1993). It also applies when conduct regulated by the NLRA is at issue. *Carey v. Westinghouse Elec. Corp.*, 375 U.S. 261, 270-72 (1964); *Smith v. Evening News Assn.*, 371 U.S. 195, 197-200 (1962); *see also Motor Coach Employees v. Lockridge*, 403 U.S. 274, 311-13 (1971) (dissenting opinion of J. White).

2. The arbitrator must decide whether the discharges violated the MOA.

When a labor contract includes an agreement to arbitrate disputes about whether one party violated the contract, the question how to interpret the contract must be left to the arbitrator. Courts may not usurp that function. The Supreme Court made this clear in one of the cases that comprise the *Steelworkers Trilogy*:

> The function of the court is very limited when the parties have agreed to submit all questions of contract interpretation to the arbitrator. It is confined to ascertaining whether the party seeking arbitration is making a claim which on its face is governed by the contract. Whether the moving party is right or wrong is a question of contract interpretation for the arbitrator. In these circumstances the moving party should not be deprived of the arbitrator's judgment, when it was his judgment and all that it connotes that was bargained for. The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim.

Steelworkers v. American Mfg. Co., 363 U.S. 564, 567-68 (1960). This rule applies no matter how the court might view the merits of the dispute: "[A] court is not to rule on the potential merits of the

underlying claims. Whether 'arguable' or not, indeed even it appears to the court to be frivolous, the union's claim that the employer has violated the collective-bargaining agreement is to be decided, not by the court asked to order arbitration, but as the parties have agreed, but the arbitrator." *AT&T Technologies*, 475 U.S. at 649-50.

In *American Manufacturing*, the Court succinctly explained why arbitration should have been ordered in that case: "The union claimed in this case that the company had violated a specific provision of the contract. The company took the position that it had not violated that clause. There was, therefore, a dispute between the parties as to 'the meaning, interpretation and application' of the collective bargaining agreement. Arbitration should have been ordered." 363 U.S. at 569. This dispute can be summarized in exactly the same way. The Union seeks to compel arbitration of the question whether the Tribe violated the MOA's neutrality provision when it discharged two employees. Complaint, ¶¶ 12, 19. The Tribe disagrees with the Union's interpretation of paragraph 5 of the MOA. Complaint, ¶ 23. In fact, federal jurisdiction exists only because the Union claims that the Tribe breached the MOA. *See Textron Lycoming Reciprocating Engine Div. v. UAW*, 523 U.S. 653, 658 (1998) (when plaintiff seeks declaratory judgment that a labor contract is void or voidable, § 301 jurisdiction exists only if there is a claim that the contract has been breached).[4]

In any event, deciding whether the Union or the Tribe is correct – that is, whether the MOA prohibits the Tribe from terminating employees because of union activity -- requires interpreting the MOA. The Tribe does not really dispute this. The Tribe alleges that what the Union seeks – arbitration of the employee discharges and remedies for those discharges – violates the MOA itself. Complaint, ¶¶

[4] The Tribe alleges that jurisdiction exists pursuant to 28 U.S.C. §§ 1331 and 1362. Both provisions require a federal question. *See* 28 U.S.C. § 1331 (actions arising under the Constitution, treaties and federal law); 28 U.S.C. § 1362 (actions brought by Indian tribes if the matter in controversy arises under the Constitution, treaties, or federal law). Section 301 is the federal law under which this action arises.

19, 21, 23. The Tribe can argue to the arbitrator why the MOA should not be construed as the Union contends. It is not the Court's function to interpret the MOA.

3. The arbitrator must also decide whether the parties' dispute is arbitrable.

Parties to an arbitration agreement may empower an arbitrator to decide whether a dispute is one that the parties agreed to arbitrate. *Granite Rock v. Int'l Bhd. of Teamsters*, 130 S.Ct. 2847, 2859 (2010). But even if the arbitrability determination is not expressly committed to an arbitrator, courts interpret the agreement to arbitrate by applying a "presumption of arbitrability." *Id.*; *AT&T Technologies*, 475 U.S. at 650. This presumption imposes a heavy burden on the party resisting arbitration to identify an "express provision excluding a particular grievance from arbitration" or "forceful evidence of a purpose to exclude the claim from arbitration." *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 584-85 (1960); *see also Phoenix Newspapers, Inc. v. Phoenix Mailers Union Local 752*, 989 F.2d 1077, 1080 (9th Cir. 1993) ("The party contesting arbitrability bears the burden of demonstrating how the language in the collective bargaining agreement excludes a particular dispute from arbitration."). As a result, "[a]n order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is *not* susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." *Warrior & Gulf Navigation*, 363 U.S. at 584. This presumption ensures that courts do not "become entangled in the construction of the substantive provisions of a labor agreement, even through the back door of interpreting the arbitration clause, when the alternative is to utilize the services of an arbitrator." *Id.* at 585.

Here, the Tribe and the Union agreed broadly to arbitrate "any disputes over the interpretation or application" of the MOA. Complaint, ¶ 8. They did not exclude any provisions or subjects from this promise. The Ninth Circuit has held repeatedly that arbitration clauses containing identical language --

encompassing "all disputes regarding the interpretation or application" of the agreement – empower the arbitrator to decide whether a dispute is one the parties agreed to arbitrate. *Pacesetter Construction Co. v. Carpenters*, 116 F.3d 436, 439 (9th Cir. 1997); *see also Local 1780 v. Desert Palace*, 94 F.3d 1308, 1310 (9th Cir. 1996); *New England Mechanical, Inc. v. Laborers Local Union 294*, 909 F.2d 1339, 1354 (9th Cir. 1990). The Tribe must make its arguments to the arbitrator.

B. The second and third claims for relief will not be ripe until the arbitrator issues his decision.

Article III courts' "[j]urisdiction to award declaratory relief exists only in an actual case or controversy." *Aydin Corp. v. Union of India*, 940 F.2d 527, 527 (9th Cir. 1991). When claims are not ripe for review, there is not an "actual case or controversy." *Principal Life Ins. Co. v. Robinson*, 394 F.3d 665, 669 (9th Cir. 2005); *Aydin Corp.*, 940 F.2d at 528. A declaratory judgment plaintiff has the burden of proving that its claim is ripe. *Cardinal Chem. Co. v. Morton Int'l, Inc.*, 508 U.S. 83, 95 (1993).

The Tribe seeks a declaration that how the Union wants the arbitrator to interpret the MOA (as prohibiting discharges of employees for engaging in pro-union activity) and a remedy the Union will ask the arbitrator to award (requiring the Tribe to hold a joint meeting with the Union to reaffirm its commitment to the MOA) – would violate the NLRA. These claims are not ripe because the arbitrator has not yet interpreted the MOA or issued a remedy. *Cf. Aydin Corp.*, 940 F.2d at 528 (claim for declaratory judgment ab out enforceability of arbitral award not ripe because award had not yet issued).

Courts will not compel arbitration under a labor contract if the "contract clause *on its face* violates federal labor law or is contrary to federal labor policy," *United Food & Commercial Workers Int'l Union v. Alpha Beta Co.*, 736 F.2d 1371, 1376 (9th Cir. 1984) (emphasis added); but a contract is facially unlawful "[o]nly if all possible interpretations of the contract provision" would conflict with labor law. *Id.* at 1377. Here, the Tribe does not allege that any provision of the MOA is unlawful on

its face. Such a claim would be frivolous. Section 5 of the MOA – which the Union contends the Tribe violated when it discharged two employees – is a standard neutrality clause. It requires the Tribe to "advise Bargaining Unit Employees that it is neutral to their selection of the Union as their exclusive representative" and prohibits the Tribe from "directly or indirectly stat[ing] or imply[ing] opposition to the selection by Bargaining Unit Employees of the Union as their exclusive representative." Complaint, Exh. A (¶ 5(a)). The Ninth Circuit has already held that an employer's promise of neutrality does not violate the NLRA: "Nothing in the relevant statutes or NLRB decisions suggests that employers may not agree to remain silent during a union's organization campaign." *Hotel Employees & Restaurant Employees Local 2 v. Marriott Corp.*, 961 F.2d 1464, 1470 (9th Cir. 1992); *see also Int'l Union v. Dana Corp.*, 278 F.3d 548, 558-59 (6th Cir. 2002) (arbitrator's broad interpretation of neutrality clause is consistent with public policy). Other courts have also enforced such promises. *See, e.g., St. Vincent Medical Ctr.*, 344 F.3d at 984; *J.P. Morgan Hotel*, 996 F.2d at 563; *ACTWU v. Facetglas, Inc.*, 845 F.2d 1250, 1251 (4th Cir. 1988).

Instead of mounting a facial challenge to the MOA's neutrality provision, the Tribe attacks the Union's interpretation of that provision and a remedy that the Union seeks for the Tribe's violation. The Tribe says that it will violate § 8(a)(2) of the NLRA (29 U.S.C. §158(a)(2)) if an arbitrator either orders it to hold a joint meeting with the Union or interprets the neutrality provision as requiring the Tribe to refrain from terminating employees for engaging in pro-union activity. There is no support for these contentions.

Joint meetings between a union and employer are lawful, even when the union does not represent the employees. *See Tecumseh Corrugated Box Co.*, 333 NLRB 1, 8 (2001) (no § 8(a)(2) violation where employer told employees that he "liked working with unions" before introducing union representatives and allowing them to address employees on company property and during worktime);

Coamo Knitting Mills, Inc., 150 NLRB 579, 580-81, 584 (1964) (no § 8(a)(2) violation when, at meeting with union representatives present, employer urged workers to join the union). *NLRB v. Southwest Regional Council of Carpenters*, __ F.3d __, 2016 WL 3407723, at *4 (D.C. Cir. June 21, 2016) (upholding *Coamo Knitting* rule). The Tribe's reasoning – that is it illegal for an employer to express any support for a union – also lacks support. "An employer is also permitted to express to employees a desire to enter into a bargaining relationship with a particular union." *Dana Corp.*, 356 NLRB 256, 259 (2010), *enfd. sub nom. Montague v. NLRB*, 698 F.3d 307, 309 (6th Cir. 2012) (pre-recognition agreement between union and employer did not violate § 8(a)(2)); *see also Marriott Corp.*, 961 F.2d at 1467 n.6 (enforcing contract provision requiring employer to prefer union employees in hiring).

Nor will it violate the NLRA if the arbitrator interprets the MOA's neutrality provision as restricting the employer's ability to discharge employees for supporting the Union. The Tribe's theory is that it cannot agree with the Union to *change* employees' terms and conditions of employment since the Union is not the bargaining representative. But the NLRA prohibits the Tribe from discharging employees for supporting a union, *see* 29 U.S.C. § 158(a)(1), (3); *Burnup & Sims*, 379 U.S. 21, 22 (1964); so interpreting the MOA as the Union advocates would not give employees rights that they do not already have. It would simply provide an arbitral remedy for violation of those rights. *Facetglas*, 845 F.2d at 1253 (enforcing labor contract that prohibited discriminatory discharges even though union did not represent employees). Doing so is consistent with the federal policy favoring labor arbitration. *Carey*, 375 U.S. at 268 (existence of a remedy before the Board does not bar remedy though enforcement of a § 301 contract); *IATSE v. InSync Show Prods., Inc.*, 801 F.3d 1033, 1041 n.6 (9th Cir. 2015).

But deciding these issues would be premature. Once the court "determine[s] that the disputed

provision is susceptible to a lawful interpretation," the court must allow the arbitrator to issue an award. *Alpha Beta Co.*, 736 F.2d at 1380. A challenge to the opposing party's interpretation of the contact or requested remedy as unlawful is not ripe until the arbitrator adopts that interpretation or grants the requested remedy:

> [A] conflict between an arbitrator's decision and federal labor law is necessarily speculative when the arbitrator has yet to rule. Such conflicts can be resolved when they become manifest in an action to enforce the award. The mere possibility of conflict, however, is no barrier to arbitration.

Id. at 1366; *see also Building Materials & Constr. Teamsters Local No. 216 v. Granite Rock Co.*, 851 F.2d 1190, 1197 (9th Cir. 1988) (compelling arbitration and "declin[ing] to render an advisory opinion on the validity" of contract clause); *R.B. Elec., Inc. v. Local 569, IBEW*, 781 F.2d 1440, 1442 (9th Cir. 1986) (refraining from issuing declaratory judgment that contract clause unlawful before dispute arbitrated); *Hosp. & Institutional Workers Union Local 250 v. Marshal Hale Mem'l Hosp.*, 647 F.2d 38, 42 (9th Cir. 1981) (compelling arbitration because "[c]onflicts between the arbitrator and the NLRB can be resolved when they become manifest in an action to enforce the award. The mere possibility of conflict, however, is no barrier to arbitration").

Until an arbitrator adopts the Union's interpretation or orders joint meetings, it is premature for the Court to decide whether the Tribe or Union is correct.[5]

C. The Court can decline to hear the Tribe's claims for declaratory relief because the same issues can be addressed more efficiently through the Union's petition to compel arbitration.

Even when a claim is ripe, there is not an automatic right to declaratory relief. "[D]istrict courts possess discretion in determining whether and when to entertain an action under the Declaratory

[5] Of course, if the Tribe genuinely believes that by arbitrating this dispute with the Union, it will violate the NLRA, the Tribe can file an unfair labor practice charge with the National Labor Relations Board now. Of course, the pendency of such a charge would not impair the Court's authority to compel arbitration. *Carey*, 375 U.S. at 268.

Judgment Act, even when the suit otherwise satisfies subject matter jurisdictional prerequisites." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 282 (1995); *Huth v. Hartford Ins. Co. of the Midwest*, 298 F. 3d 800, 802 (9th Cir. 2002) ("The exercise of jurisdiction under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201(a), is committed to the sound discretion of the federal district courts. . . . Even if the district court has subject matter jurisdiction, it is not required to exercise its authority to hear the case.").[6]

"In the declaratory judgment context, the normal principle that federal courts should adjudicate claims within their jurisdiction yields to considerations of practicality and wise judicial administration." *Wilton*, 515 U.S. at 288. One circumstance in which a court may decline to hear a declaratory relief claim is when the litigation is duplicative. *RR Street & Co. Inc. v. Transport Ins. Co.*, 656 F.3d 966, 975 (9th Cir. 2011); *Harford Ins. Co.*, 298 F.3d at 803. Also relevant to the Court's determination is "whether the declaratory action will settle all aspects of the controversy"; "whether the declaratory action is being sought merely for the purposes of procedural fencing"; and "the availability and relative convenience of other remedies." *Principal Life Ins.*, 394 F.3d at 672. "It should go without saying that a declaratory judgment action must serve some purpose in resolving a dispute. If the relief serves no purpose, or an illegitimate one, then the district court should not grant it." *Exxon Shipping Co. v. Airport Depot Diner, Inc.*, 120 F. 3d 166, 168-69 (9th Cir. 1997).

The Court should decline to hear the Tribe's claims because doing so will serve no purpose. Before the Tribe filed this case, the Union had sued to compel arbitration. In the context of that case, the Court can decide whether there is any reason that the arbitration should not occur. Issuing a declaratory judgment would be duplicative. That is not the only reason that declining jurisdiction will benefit judicial economy. If the arbitrator rules in favor of the Tribe or does not grant the joint-meeting

[6] When a court declines to exercise jurisdiction over a claim for declaratory relief, the court must specifically state its reasons for doing so. *Hartford Ins. Co.*, 298 F.3d at 803.

remedy, then this case will be moot. *Cf. Univ. of Chicago v. Faculty Assn.*, 2011 WL 13470, at *4 (N.D. Ill. Jan. 4, 2011) (declining to exercise jurisdiction over claim for declaratory judgment that dispute was not arbitrable because arbitration had not yet occurred).

It is also possible that the Tribe brought this case to delay the ultimate arbitration. That would be an improper purpose, particularly because federal labor policy favors the speedy resolution of labor disputes. *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 558 (1964) (delay of "speedy arbitrated settlement" of labor dispute is "contrary to the aims of national labor policy"); *SEIU United Healthcare Workers-W. v. Los Robles Reg'l Med. Ctr.*, 812 F.3d 725, 733 (9th Cir. 2015) (delaying labor arbitration is a breach of the duty of good faith); *Phoenix Newspapers, Inc. v. Phoenix Mailers Union Local 752, Int'l Bhd. of Teamsters*, 989 F.2d 1077, 1084 (9th Cir. 1993) ("One of the central purposes of arbitration proceedings is to achieve speedy and fair resolutions of disputes."); *Camping Const. Co. v. Dist. Council of Iron Workers*, 915 F.2d 1333, 1345 (9th Cir. 1990) (value of arbitration lost if delayed); *see also* Cox, *Reflections upon Labor Arbitration*, 72 Harv.L.Rev. 1482, 1517–18 (1959) (recognizing that one of the greatest advantages of arbitration is speedy resolution of labor disputes).

There is no reason the Court should hear the Tribe's claims for declaratory relief now.

Conclusion

For all of the foregoing reasons, the Tribe's Complaint for Declaratory Relief should be dismissed.

Dated: July 18, 2016

Respectfully submitted,

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PROOF OF SERVICE

The undersigned hereby certifies that on July 18, 2016, the foregoing **NOTICE OF MOTION AND MOTION TO DISMISS THE COMPLAINT [FED. R. CIV. P. 12(B)(1) AND (6)]; UNITE HERE'S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS** having been filed through the Electronic Court Filing "ECF" system and I am informed that it will be sent electronically to the following registered participants as identified on the Court's Notice of Electronic Filing.

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[X] All parties are registered participants as identified on the Court's Notice of Electronic Filing.

/s/ Lesley E. Phillips
Lesley E. Phillips