CASE NO. 17-15515

In The
UNITED STATES COURT OF APPEALS
For the Ninth Circuit

DUANNA KNIGHTON,

Plaintiff-Appellant

v.

CEDARVILLE RANCHERIA OF NORTHERN PAIUTE INDIANS, CEDARVILLE RANCHERIA TRIBAL COURT, PATRICIA R. LENZI, in her capacity as Chief Judge of the CEDARVILLE RANCHERIA TRIBAL COURT,

Defendants-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF EASTERN CALIFORNIA AT SACRAMENTO
Case No. 2:16-cv-02438-WHO
The Honorable William H. Orrick III

REPLY BRIEF OF APPELLANT

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I. REPLY BRIEF

Appellees proffer arguments which eviscerate due process guaranteed to United States citizens, including Appellant. Neither Appellant nor any other non-Indian surrender their due process rights when interacting with Indian Tribes; non-Indians are still guaranteed fundamental fairness, justice, and liberty, which is exactly why Federal Courts are the ultimate decision-maker as to Tribal Court jurisdiction. Tribal Court jurisdiction should not be permitted in this matter.

Essentially, Appellees argue that Indian Tribes have unfettered regulatory and adjudicative authority over non-Indians (despite this notion being rejected by the United States Supreme Court) by arguing it could *ex post facto* create a judicial system with remedies and procedures that did not exist within its regulatory system during Appellant's employment with the Tribe. Appellee argues that "The Tribal Court forum does not violate Knighton's due process rights since the Tribal Council would have the same authority over Knighton whether it formed a Tribal Court or not." (ECF 19, page 11, second paragraph). This statement is not supported within the record, and is patently false. As pointed out in the moving brief, the Tribe's Judicial Code created an entirely new process and remedies which precludes a trial by jury, is confidential, which increased remedies (including damages, injunctive

relief, and punitive damages), and ability to enter Court orders which could be binding in other jurisdictions; the Tribe previously had no such authority. Because such authority did not exist, it would have been impossible to for Appellant to foresee and consent to the same.

If Appellees' argument is accepted, it would open Pandora's Box of due process elimination for non-Indians. If the argument is accepted, Indian Tribes would be granted unfettered discretion to change the rules, expand its regulatory authority, and eviscerate the rights of non-Indians as the Tribe sees fit, at any time. The Tribe could continually expand its regulatory authority *ex post facto* to serve its own interests. Accepting this argument, then Appellees could *sua sponte* create additional remedies or procedures within its judicial system, such as double and/or treble damages (or more), seize control of personal or real property, or even move more to the extreme with remedies of debtor's prison; the possibilities are endless. These extreme measures would absolutely be unacceptable within the United States. Tribes could conceivably shift the burdens of proof upon defendants and establish procedures akin of "guilty until proven innocent". These examples are not provided to mock or in way disrespect Indian Tribes nor Tribal Courts, but are intended to demonstrate the slippery slope of permitting application of new laws and procedures to conduct which predate the enactments; such application eviscerates due process guaranteed to non-Indians.

Appellees' argument concerning the creation of the United States District Court, Eastern District for California in 1966 is completely missing the point. (ECF 19, page 32, third paragraph) Well prior to 1966, the United States had laws and procedures in place that created the federal judicial system. Neither the Eastern District nor any other American Court is permitted to create new laws, remedies, or punishments and apply them *ex post facto*. Similarly, Appellees' citation to California's Tribal Court Civil Money Judgment Act is a red-herring. Code of Civil Procedure, Section 1731(c), referring to the Act, states, "Nothing in this title shall be deemed or construed to expand or limit the jurisdiction of either the state or any Indian tribe."

During Appellant's tenure with the Tribe, the Tribe had absolutely no judicial system in place in which it now attempts to force Appellant into. The Tribe had absolutely no remedies which permitted injunctions or legal orders against employees or non-Indians to seek recovery of tort damages. The Tribe's regulatory authority was greatly limited during Appellant's employment and the Tribe cannot now seek to expand on and exceed that authority. Appellant is not on Tribal land nor an employee of the Tribe since the Tribe filed its complaint in Tribal Court. Accordingly, Tribal Court jurisdiction should not be permitted in this matter.

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Dated: January 9, 2018

Respectfully submitted,

MAIRE & DEEDON

/s/ Patrick L. Deedon
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Attorney for Appellant

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P32(a)(7)(B) because:

This brief contains 659 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14pt Times Roman.

Dated: January 9, 2018

MAIRE & DEEDON

/s/ Patrick L. Deedon
PATRICK L. DEEDON
Attorney for Appellant

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 10th day of January 2018, I caused this Reply Brief of Appellant to be filed electronically with the Clerk of the Court using the EM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

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