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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

NORTHERN DIVISION AT RENO

PETER J. MAGEE, PETE MAGEE CPA AND ASSOCIATES, PLLC, A LIMITED LIABILITY COMPANY, TSG SYSTEMS, INC., A PROFESSIONAL CORPORATION, AND ALICIA SKOLAK, Plaintiff, v. SHOSHONE PAIUTE TRIBES OF THE DUCK VALLEY RESERVATION, WILLIAM REYNOLDS, THEODORE HOWARD, BRIAN THOMAS, YVONNE HOWARD, COLIN THOMAS, ARNOLD THOMAS, Defendants.	Case No.: 3:19-cv-00697 DEFENDANTS' MOTION TO DISMISS AND MEMORANDUM IN SUPPORT

Defendants move to dismiss under Fed. R. Civ. Pro. 12(b)(1) and 12(b)(6). This case should be dismissed for three reasons. First, this action is a jurisdictional challenge

[1] Counsel will comply with LR IA 11-2 within 45 days, per LR IA 11-2(e).

in federal court to an on-going Tribal Court civil case brought by the Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada ("the Tribes") against several financial services contractors.[2] Plaintiffs have failed to exhaust their Tribal Court remedies, as they must before challenging that court's jurisdiction in federal court.[3]

Second, defendants are (a) a federally-recognized Indian Tribe and (b) the Chairman of the Tribes, several members of the Tribes' Business Council, and the Tribal Court Judge, sued in their official capacities as Tribal officials. The Tribes and the official defendants are not subject to unconsented suit in federal court. This case is barred by tribal sovereign immunity.[4]

Third, nothing in this case presents a federal question otherwise conferring jurisdiction on this Court under 28 U.S.C. § 1331. The Tribes' claims are based on Tribal law. Absent exhaustion, there are no federal questions presented.

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[2] Ex. 1, Compl., *Shoshone-Paiute Tribes of the Duck Valley Reservation v. Magee*, Case No. 2019-046 (Tribal Court of the Shoshone-Paiute Tribes, Mar. 14, 2019).

[3] *See* Ex. 2, Mem. Order Den. Mot. to Dismiss (Shoshone-Paiute Tribal Court, Sept. 16, 2019); Ex. 3, Order Rejecting Resp'ts' Notice of Appeal (Shoshone-Paiute Tribal Court, Oct. 3, 2019). *See generally Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 856-57 (1985); *Elliot v. White Mountain Apache Tribal Court*, 566 F.3d 842, 847 (9th Cir. 2009).

[4] *See* Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs, 84 Fed. Reg. 1200 (Feb. 1, 2019), https://www.federalregister.gov/documents/2019/02/01/2019-00897/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of (last visited Dec. 2, 2019). *N.b.*, in filing this motion, the Tribes do not waive, and expressly reserve, sovereign immunity and all attendant rights and defenses, as well as all other available immunities and jurisdictional defenses.

I. Background.

The Tribes filed suit in the Shoshone-Paiute Tribal Court ("Tribal Court") alleging that Peter J. Magee, Pete Magee CPA & Associates, PLLC, TSG Systems, Inc., Alicia Skolak and unnamed John Does ("plaintiffs")[5] "*individually*, collectively, and negligently provided professional services to the Tribes, defrauded the Tribes, breached contracts with the Tribes, converted Tribal and federal funds, and deprived the Tribes and their members of honest services."[6] These are straightforward contract and common law claims arising from plaintiffs' consensual contracts with the Tribes and plaintiffs' actions at the Tribes' headquarters on Tribal land within the Tribes' reservation.

In the Tribal Court, plaintiffs moved to dismiss pursuant to the Tribal Court's analogue of Federal Rule of Civil Procedure 12(b)(1). Plaintiffs argued, somewhat bizarrely, that the Tribal Court was deprived of subject matter jurisdiction because they were shielded by the Tribes' own sovereign immunity, even though (a) it was the Tribes who filed the suit, (b) plaintiffs were never Tribal employees or officials, and (c) all damages and remedies asked for in the Tribes' *Complaint* were directed at plaintiffs individually, not against the Tribes.[7]

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[5] In this action, although Magee, Skolak, and the two Nevada corporations are the plaintiffs, they refer to themselves collectively as the "Magee defendants." Since they are plaintiffs in this action, the Tribes refer to them as "plaintiffs."

[6] Ex. 1 at 4 (emphasis added).

[7] Ex. 4, Mem. of P. & A. in Supp. of Specially Appearing Def. Pete Magee et al.'s Notice of Mot. and Mot. to Dismiss (Shoshone Paiute Tribal Court, Apr. 5, 2019). Plaintiffs argued that they were entitled to legislative immunity, even though none of them are or ever have been a Tribal legislator or sued for any legislative act. Plaintiffs' various other arguments had nothing at all to do with the Tribal Court's subject matter jurisdiction. *Id.*

The parties briefed the jurisdictional issues extensively. The Tribes provided voluminous, unrebutted evidence of plaintiffs' contractual relationships with the Tribes, plaintiffs' conduct on and relating to the Tribes' land, and the damage plaintiffs caused to the political integrity and economic security of the Tribes.[8] Tribal Court Judge Reynolds made specific jurisdictional factual findings based on the Tribes' jurisdictional evidence, and denied the motion to dismiss. In doing so, Judge Reynolds applied straightforward Ninth Circuit and United States Supreme Court precedent to find that plaintiffs' supposed immunities were not applicable, in part because the Tribes had sued plaintiffs in their individual capacities.[9]

Plaintiffs then filed a "Notice of Appeal" to the Tribal Appellate Court. The Chief Judge of the Tribal Court rejected the notice of appeal, explaining that under the Tribal Code, "Judge Reynolds' Order is interlocutory and not final, and accordingly Respondents have no right to appeal at this time."[10]

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[8] Ex. 5, Opp. to Def.'s Mot. to Dismiss (Shoshone Paiute Tribal Court, May 9, 2019) (includes exhibits); Ex. 6, Tribes' Opening Suppl. Br. (Shoshone Paiute Tribal Court, July 26, 2019) (includes exhibits). During a hearing before the Tribal Court, plaintiffs clarified that their opposition to the Tribal Court's subject matter jurisdiction had nothing to do with the Supreme Court's decisions in *Montana v. United States*, 450 U.S. 544, 565 (1981) and other cases concerning tribal jurisdiction over non-members. Instead, they relied solely on their supposed immunities.

[9] Ex. 2 at 7-8.

[10] Ex. 3 at 1.

II. Standard of Review.

A. Fed. R. Civ. P. 12(b)(1). A defendant may seek dismissal of an action for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). When the motion is made, plaintiff has the burden of proving jurisdiction. *Chandler v. State Farm Mut. Auto. Ins. Co.*, 598 F.3d 1115, 1122 (9th Cir. 2010). If the defendant raises a factual challenge to a court's jurisdiction, a court may consider matters outside the pleadings in ruling on the motion. "[N]o presumptive truthfulness attaches to plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." *Kingman Reef Atoll Invs., L.L.C. v. United States*, 541 F.3d 1189, 1195 (9th Cir. 2008) (quoting *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987)).

B. Fed. R. Civ. P. 12(b)(6). When a party challenges a complaint under Fed. R. Civ. P. 12(b)(6), the court must determine whether the complaint bears "sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation omitted). But, while the court "accept[s] factual allegations in the complaint as true and construe[s] the pleadings in the light most favorable to the nonmoving party," *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008) (citation omitted), the court need "not assume the truth of legal conclusions merely because they are cast in the form of factual allegations." *Fayer v. Vaughn*, 649 F.3d 1061, 1064 (9th Cir. 2011) (per curiam) (internal quotation omitted).

III. Plaintiffs Have Not Exhausted Tribal Remedies.

Federal law has long been clear that tribal courts must be afforded the opportunity to determine their own jurisdiction in the first instance. *Grand Canyon Skywalk Dev., LLC v. 'Sa' Nyu Wa Inc.*, 715 F.3d 1196, 1200 (9th Cir. 2013). Plaintiffs contend that their remedies in Tribal Court "have been exhausted as the tribe has determined its own jurisdiction over Magee in the first instance." Compl. (Oct. 21, 2019) at 6. Plaintiffs are incorrect both factually and legally.

A. Tribal Remedies Have Not Been Exhausted. First, as a factual matter, plaintiffs have not exhausted their tribal court remedies. The Shoshone-Paiute Tribal Code does not provide for interlocutory appeals. The Tribal Appellate Court noted that the Tribal Court's decision denying plaintiffs' motion to dismiss was "interlocutory and not final."[11] The Appellate Court's ruling was not a decision on the merits. Until—and unless—a final judgment is entered against plaintiffs on the merits by the Tribal Court and that decision is upheld on appeal by the Tribal Appellate Court, plaintiffs have not exhausted their Tribal Court remedies. Neither has yet occurred.

B. Exhaustion is Required Before the District Court May Review the Tribal Court's Decision. The Supreme Court has held that as a general rule exhaustion of tribal court remedies "is required before such a claim may be entertained by a federal court." *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 857 (1985); *see also id.* at 856 (citing (1) a congressional policy of supporting tribal self-government and

[11] Ex. 3 at 1.

self-determination; (2) a policy of allowing the forum whose jurisdiction is being challenged "the first opportunity to evaluate the factual and legal bases for the challenge"; and (3) judicial economy being best served "by allowing a full record to be developed in the Tribal Court"); *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 17 (1987). This exhaustion requirement is founded upon long-recognized policies of promoting tribal self-government, self-determination, and the orderly administration of justice. *Nat'l Farmers*, 471 U.S. at 856-57. "[P]roper respect for tribal legal institutions[, therefore,] requires that they be given a full opportunity to consider the issues before them…" *LaPlante*, 480 U.S. at 16 (internal citation omitted); *see also Elliot v. White Mountain Apache Tribal Court*, 566 F.3d 842, 847 (9th Cir. 2009).[12]

A tribal court's opportunity to determine its own jurisdiction includes tribal court appellate review. *LaPlante*, 480 U.S. at 17 ("At a minimum, exhaustion of tribal remedies means that tribal appellate courts must have the opportunity to review the determinations of the lower tribal courts."); *Atwood v. Fort Peck Tribal Court Assiniboine and Sioux Tribes*, 513 F.3d 943, 948 (9th Cir. 2008) ("Under the doctrine of exhaustion of tribal court remedies, relief may not be sought in federal court until appellate review of a pending matter in a tribal court is complete.").[13]

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[12] *See also Crawford v. Genuine Parts Co.*, 947 F.2d 1405, 1407 (9th Cir. 1991), *cert. denied*, 502 U.S. 1096 (1992); *Window Rock Unified Sch. Dist. v. Reeves*, 861 F.3d 894, 897 (9th Cir. 2017) ("A tribal adjudicative body generally must have the first opportunity to evaluate its jurisdiction over a matter pending before it."); *Alvarez v. Tracy*, 773 F.3d 1011, 1016 (9th Cir. 2013) (exhaustion is a prerequisite to a federal court exercising jurisdiction); *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1228 (9th Cir. 1989) ("Therefore, under *National Farmers*, the federal courts *should not even make a ruling* on tribal court jurisdiction…until tribal remedies are exhausted.") (emphasis added).

[13] *See also Boozer v. Wilder*, 381 F.3d 931, 935 (9th Cir. 2004) ("A federal court *must* give

The relevant facts here are identical to those analyzed by the Supreme Court in *LaPlante* and the Ninth Circuit in *White Mountain*, and the outcome must be the same. Federal courts "should not intervene" until tribal "appellate review is complete" and "the [tribal courts] have … had a full opportunity to evaluate the claim." *LaPlante*, 480 U.S. at 17. That has not occurred in this matter.

C. Tribal Jurisdiction is Much More Than Colorable. "If Plaintiff's claim is directly tied to events that occurred on tribal land, then tribal jurisdiction is colorable and the exhaustion of tribal remedies is required." *Wilson v. Horton's Towing*, 906 F.3d 773, 779 (9th Cir. 2018), *cert. denied*, 139 S. Ct. 1603 (2019); *see also Walker v. Boy*, No. CV-19-43-GF-JTJ, 2019 WL 5700770, at *1 (D. Mont. Nov. 4, 2019). Indeed, as even plaintiffs' *Complaint* alleges, the actions giving rise to the underlying Tribal Court action happened on the Tribes' land within the Tribes' reservation. Plaintiffs were physically present on the reservation—within the Tribes' headquarters building—and had remote access to the Tribes' financial systems, located on the reservation. Compl. at 6-7. It is much more than "colorable" or "plausible" that the Tribal Court has jurisdiction. *See Atwood v. Fort Peck Tribal Court Assiniboine*, 513 F.3d 943, 948 (9th Cir. 2008) ("Here, tribal court jurisdiction almost certainly is proper and therefore unquestionably is 'plausible.'").

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the tribal court a full opportunity to determine its own jurisdiction, which includes exhausting opportunities for appellate review in tribal courts.") (emphasis added); *Selam v. Warm Springs Tribal Corr. Facility*, 134 F.3d 948, 954 (9th Cir. 1998) (federal district court properly required exhaustion in tribal court, including tribal appellate review, before entertaining plaintiff's complaint).

IV. This Case is Barred by Tribal Sovereign Immunity.

"[T]ribal immunity precludes subject matter jurisdiction in an action against an Indian tribe." *Alvarado v. Table Mountain Rancheria*, 509 F.3d 1008, 1015–16 (9th Cir. 2007). Absent express waiver, consent by the tribe, or congressional authorization for a particular suit, "a federal court is without jurisdiction to entertain claims advanced against [a] Tribe." *Evans v. McKay*, 869 F.2d 1341, 1345-46 (9th Cir. 1989); *see also Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998); *Kennerly v. United States*, 721 F.2d 1252, 1258-59 (9th Cir. 1983). Plaintiffs' *Complaint* does not allege express waiver or consent, nor any congressional authorization for their lawsuit.

The claims against the Chairman, the Business Council members, and the Tribal Court Judge in their official capacities must be dismissed. "Tribal sovereign immunity extends to tribal officers when acting in their official capacity and within the scope of their authority." *Cook v. AVI Casino Enters., Inc.*, 548 F.3d 718, 727 (9th Cir. 2008) (internal quotation omitted); *see also Linneen v. Gila River Indian Cmty.*, 276 F.3d 489, 492 (9th Cir. 2002). In such cases, it is the sovereign tribe which is the "real, substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individual officials are nominal defendants." *Cook*, 548 F.3d at 727 (internal quotation omitted); *see also Forsythe v. Reno-Sparks Indian Colony*, No. 2:16-cv-01867-GMN-VCF, 2017 WL 3814660, at *3-4 (D. Nev. Aug. 30, 2017).[14]

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[14] The issue of tribal sovereign immunity is "quasi-jurisdictional" in the sense that it "may be asserted at any time." *Pistor v. Garcia*, 791 F.3d 1104, 1111 (9th Cir. 2015) (quoting *Mitchell v. Franchise Tax Board (In re Mitchell)*, 209 F.3d 1111, 1117 (9th Cir. 2000), *abrogated on other grounds as recognized by Hibbs v. Dep't of Human Res.*,

The Ninth Circuit has permitted declaratory and injunctive lawsuits against tribal officials only where it is alleged that those officials clearly acted beyond their authority, in contravention of constitutional or federal statutory or common law. *Ariz. Pub. Serv. Co. v. Aspaas*, 77 F.3d 1128 (9th Cir. 1995); *Burlington N. R.R. Co. v. Blackfeet Tribe*, 924 F.2d 899 (9th Cir. 1991). Plaintiffs allege that the Tribal officials "exceeded their authority" by bringing the underlying Tribal Court suit "in the absence of proper legislative authority." Compl. at 4.

To the contrary, entering contracts with plaintiffs—and suing to recover contract damages—is squarely within the Business Council's Constitutional power "[t]o undertake and manage all economic affairs and enterprises of the tribes." Ex. 7, Shoshone-Paiute Tribes Constitution, Art. VI, Sec. (1)(f); *see also id.* (b) (authorizing the Business Council "[t]o employ legal counsel for the protection and advancement of the rights of the Shoshone-Paiute Tribes"). Moreover, this issue presents solely as a question of Tribal, rather than federal, law.

Plaintiffs also allege that the Tribal officials exceeded their authority under federal law. Those allegations are specious. First, plaintiffs allege that the Tribal officials have violated the Indian Civil Rights Act ("ICRA"). But,

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273 F.3d 844, 853 n.6 (9th Cir. 2001)). "Although sovereign immunity is only quasi-jurisdictional in nature, Rule 12(b)(1) is still a proper vehicle for invoking sovereign immunity from suit." *Pistor*, 791 F.3d at 1111. "In the context of a Rule 12(b)(1) motion to dismiss on the basis of tribal sovereign immunity, 'the party asserting subject matter jurisdiction has the burden of proving its existence,' i.e. that immunity does not bar the suit." *Id.* (quoting *Miller v. Wright*, 705 F.3d 919, 923 (9th Cir. 2013)). A court may "'hear evidence regarding jurisdiction' and 'resolv[e] factual disputes where necessary'" when determining such a motion. *Pistor*, 791 F.3d at 1111 (alteration in original) (quoting *Robinson v. United States*, 586 F.3d 683, 685 (9th Cir. 2009)). The Tribes are entitled to dismissal because they are immune from suit in this forum. The Tribes are a federally-recognized Indian tribe. Compl. at 4.

> Congress has created jurisdiction for only one type of claim under the ICRA: habeas corpus challenges to detention. Congress, aware of the intrusive effect of federal judicial review upon tribal self-government, intended to create only a limited mechanism for [review under the ICRA], namely, that provided for expressly in § 1303 [the provision of the ICRA providing for habeas relief].

Fields v. Salt River Pima-Maricopa Indian Cmty., 379 F. App'x 673, 674 (9th Cir. 2010) (internal quotation omitted) (alterations in original). Plaintiffs have not sued for habeas relief. The ICRA provides no basis for federal jurisdiction.

Similarly, plaintiffs' argument that the Tribal Court action is barred by federal law prohibiting criminal prosecution of non-members by tribes is wrong. In *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), the Supreme Court held that Indian tribes have not retained the inherent sovereign authority to prosecute "non-Indian citizens of the United States except in a manner acceptable to Congress." *Id.* at 210. Here, the Tribal Court action is purely civil.[15] To be clear, the Tribal Court *Complaint* does reference the Tribes' Criminal Code. Ex. 1. at 10. Under Ordinance 2013-SPO-01, the plaintiffs' conduct is against the law and public policy of the Tribes. However, that allegation is presented as evidence of plaintiffs' professional negligence and breach of contract. No criminal penalties are sought. *See* Ex. 2at 5 ("[I]t is abundantly clear … that this action is exclusively civil in nature."). Plaintiffs have not alleged any express waiver, consent by the Tribes, or Congressional authorization for their suit. This suit is barred by the Tribes' sovereign immunity.

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[15] Under Rule 1(3) of the Shoshone-Paiute Tribes Tribal Court Rules, the Tribal Court applies the Federal Rules of Civil Procedure and Federal Rules of Criminal Procedure where the Tribal Court Rules are silent. The complaint, summons, and judicial procedure in this matter all followed the civil, not criminal, forms of procedure.

V. Plaintiffs Have Not Raised a Federal Question.

Plaintiffs raise three possible bases for federal question jurisdiction under 28 U.S.C. § 1331: (1) the Indian Civil Rights Act, (2) "charging Magee under the Tribe's Criminal code in violation of United States Supreme Court precedent and federal law," and (3) a vague notion that "[t]he claims require the Court to analyze whether the Tribal Court properly considered Magee Defendants immunities such that is applicable would result in Defendant Tribal Court lacking subject matter jurisdiction over Magee Defendants." Compl. at 5. None of these are federal questions

As noted above, the Indian Civil Rights Act provides no basis for federal review outside of habeas relief, and no habeas relief is sought here. In addition, the Tribes have not "charg[ed]" plaintiffs with any sort of criminal penalty. And finally, plaintiffs' "immunity" claims are purely matters of Tribal law. No authority exists suggesting that federal law controls whether any individual, whether an employee or contractor, is considered a tribal official by the Tribe; nor whether that person or entity is considered a Tribal officer or "arm of the tribe" for sovereign immunity, "absolute immunity," or legislative immunity purposes.[16]

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[16] Ex. 8, Business Council Resolution 2019-SPR-070 (May 7, 2019). In *White v. University of California*, the Ninth Circuit set forth five factors to determine whether an entity is an "arm of the tribe" entitled to sovereign immunity from unconsented suit. 765 F.3d 1010, 1025 (9th Cir. 2014) (adopting approach of *Breakthrough Mgmt. Grp., Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173, 1187 (10th Cir. 2010)). The *White* factors are "(1) the method of creation of the economic entities; (2) their purpose; (3) their structure, ownership, and management, including the amount of control the tribe has over the entities; (4) the tribe's intent with respect to the sharing of its sovereign immunity; and (5) the financial relationship between the tribe and the entities." *Id.* Plaintiffs do not meet any of the *White* factors.

Even the precedent cited in plaintiffs' complaint stands for the opposite. For example, plaintiffs make much of *Davis v. Littell*, 398 F.2d 83 (9th Cir. 1968), *cert. denied*, 393 U.S. 1018 (1969). That case is cited for the entirely uncontroversial notion that sovereign immunity "extends to tribal officials when acting in their official capacity and within their scope of authority." *United States v. Oregon*, 657 F.2d 1009, 1012, n.8 (9th Cir. 1981) (citing *Davis*, 398 F.2d at 84-85). That scope of authority—and any applicable immunities—are a question of tribal law.

In *Davis,* the Ninth Circuit was called upon to determine whether the Navajo Nation conferred absolute executive immunity upon the General Counsel for the tribe. *Davis,* 398 F.2d at 84–85. The Circuit answered this question in the affirmative, noting that although the Navajo Nation had "not done so in its Tribal Code, nor, so far as we are informed, by any decision of its Tribal Court," the Navajo Code did include a provision suggesting that "under such circumstances [it would] be guided by federal or appropriate state law," which recognized executive immunity. *Id.* at 84. In other words, the immunity existed only because Navajo Tribal law incorporated Arizona State law, which provided for the immunity. *Id.* There was no federal question in that inquiry.

The Tribes recognize that if a Tribal Court's subject matter jurisdiction turns on a matter of federal law, and the Tribal Court has made a final jurisdictional determination (including appellate review), then there is federal question jurisdiction to review that determination—but only after exhaustion. *See Yellowstone Cty. v. Pease*, 96 F.3d 1169, 1172 (9th Cir. 1996), *cert. denied*, 520 U.S. 1209 (1997).

VI. This Case Should be Dismissed or, Alternatively, Stayed.

This Court "must defer to the Tribal Court so it can determine the existence and extent of its own jurisdiction in the first instance." *Landmark Golf Ltd. P'ship v. Las Vegas Paiute Tribe*, 49 F. Supp. 2d 1169, 1176 (D. Nev. 1999). This Court has discretion to determine whether this case should be stayed or dismissed while tribal remedies are exhausted. *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 857 (1985). Courts in the Ninth Circuit consider: (1) convenience and fairness to the parties, (2) the underlying issue of comity, and (3) judicial economy. *See, e.g., Clements v. Confederated Tribe of the Colville Reservation*, No. 2:19-CV-201-RMP, 2019 WL 6051104, at *4 (E.D. Wash. Nov. 15, 2019).

Here, all considerations favor dismissal. There are no issues of convenience or fairness to the parties that suggest staying the case rather than dismissal is appropriate. The underlying issue of comity is furthered by allowing the Tribal Court to go about its business without the presence of an extant federal court case naming the Tribal Court Judge as a defendant. Judicial economy strongly favors dismissal. If the plaintiffs are correct that the Tribal Court does not have subject matter jurisdiction over the underlying case, the Tribal Appellate Court will presumably overturn the Tribal Court, thereby rendering this federal case moot.

Because there would be no benefit to staying the case rather than dismissing it outright, it would be "inappropriate and imprudent" for this court "to retain any role in this matter … given the Tribal Court's entitlement to determining the jurisdictional issue in the first instance." *Id.*; *see also Elliott v. White Mountain Apache Tribal Court*, No. CIV 05–

4240–PCT–MHM, 2006 WL 3533147, at *8 (D. Ariz. Dec. 6, 2006), *aff'd,* 566 F.3d 842 (9th Cir. 2009) (dismissing case without prejudice for failure to exhaust tribal remedies); *Landmark Golf Ltd. P'ship*, 49 F. Supp. 2d at 1176 (same); *Walker v. Boy*, No. CV-19-43-GF-JTJ, 2019 WL 5700770, at *2 (D. Mont. Nov. 4, 2019) (same).

VII. Conclusion.

This case must be dismissed. Tribal Court jurisdiction is "colorable" or at an absolute minimum "plausible." Continued action in this Court is foreclosed pending exhaustion of plaintiffs' tribal court remedies. Additionally, plaintiffs' claims are barred by the Tribes' sovereign immunity, and do not present a federal question that creates jurisdiction under 28 U.S.C. § 1331.

Respectfully submitted December 3, 2019, at Juneau, Alaska.

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CERTIFICATE OF SERVICE

The undersigned certifies that on December 3, 2019 a true and correct copy of the foregoing document and all exhibits was served via U.S. Mail on:

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