No. 19-51123

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MATTHEW MITCHELL,

Plaintiff – Appellant – Cross-Appellee,

v.

ORICO BAILEY,

Defendant – Appellee

HOOPA VALLEY TRIBE, d/b/a
Americorps Hoopa Tribal Civilian Community Corps,

Defendant – Appellee – Cross-Appellant

Appeal from the United States District Court for the Western District of Texas,
San Antonio Division; No. 5:17-CV-00411-DAE

REPLY BRIEF OF HOOPA VALLEY TRIBE

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Argument

I. The District Court Lacked Subject Matter Jurisdiction Over Any Claims Under 28 U.S.C. § 1332 Because Hoopa's Presence As A Defendant Precludes Complete Diversity.

Mitchell incorrectly argues that the District Court had diversity jurisdiction over his state law tort claims against Orico Bailey. Mitchell Response Brief, p. 1. Due to the presence of the Hoopa Valley Tribe ("Hoopa") as a defendant in the action, the required complete diversity was lacking. Hoopa Principal Brief, pp. 12-15. Due to the lack of complete diversity, the District Court did not have diversity jurisdiction over any of Mitchell's claims against Bailey or Hoopa. *Id.*

It does not matter whether there was diversity of citizenship between Mitchell and Bailey; the salient point is that Hoopa's presence as a named defendant destroys the complete diversity that is required to invoke jurisdiction under 28 U.S.C. § 1332 over any claim against any party – including Bailey. *Id.*; *Newman-Green, Inc. v. Alfonzo-Larrain*, 490 U.S. 826, 828-30 (1989) (presence of one stateless party is a jurisdictional spoiler that destroys complete diversity and defeats diversity jurisdiction); *Exxon Mobil Corp. v. Allapattah Servs*., 545 U.S. 546, 564 (2005) ("A failure of complete diversity . . . contaminates every claim in the action"); *Ninigret Dev. Corp. v. Narragansett Indian Wetuomuck Hous. Auth.*, 207 F.3d 21, 27 (1st Cir. 2000) (Indian tribe is stateless party for jurisdictional purposes and presence of Indian tribe as party destroys complete diversity); *Frazier v. Brophy*, 358 Fed. Appx. 212, 213 (2d Cir. 2009) (same); *American*

Vantage Cos. v. Table Mountain Rancheria, 292 F.3d 1091, 1098, n. 6 (9th Cir. 2002) (finding lack of complete diversity due to presence of Indian tribe and that diversity jurisdiction would fail so long as tribe remained a party); *Payne v. Miss. Band of Choctaw Indians*, 159 F. Supp. 3d 724, 727 (S.D. Miss. 2015) (finding that, due to lack of complete diversity, there can be no diversity jurisdiction where Indian tribe is a real party in interest). Hoopa's presence as a named defendant destroyed complete diversity; thus, the District Court lacked diversity jurisdiction over any of Mitchell's claims, including his claims against Bailey.

II. The District Court Could Not Have Supplemental Jurisdiction Over Mitchell's Claims Against Hoopa Because the District Court Lacked Original Jurisdiction Over Any Claim and Because Exercising Supplemental Jurisdiction Over Hoopa Would Violate the Complete Diversity Requirement.

Mitchell argues that he relied on supplemental jurisdiction, not diversity jurisdiction, to bring his claims against Hoopa. This argument fails for many reasons. First, Mitchell's argument ignores that supplemental jurisdiction may exist only if the District Court has original jurisdiction over a claim in the action. Second, as discussed in Section I above, the District Court lacked any original jurisdiction over any claim due to Hoopa's presence as a defendant and the resulting failure of complete diversity. Third, even if supplemental jurisdiction could be claimed under 28 U.S.C. § 1367(a), the exercise of such jurisdiction would be inconsistent with the jurisdictional requirements of 28 U.S.C. § 1332 due

to the failure of complete diversity and thus is barred under 28 U.S.C. § 1367(b). Finally, the U.S. Supreme Court, in *Allapattah* and in *Owen Equipment & Erection Co. v. Kroger*, 437 U.S. 365 (1978), confirmed that supplemental jurisdiction may not be used to circumvent the complete diversity requirement.

Mitchell does not dispute that the existence of original jurisdiction over a claim is prerequisite to the exercise of supplemental jurisdiction. *Energy Mgmt. Servs., LLC v. City of Alexandria*, 739 F.3d 255, 259 (5th Cir. 2014) (original jurisdiction over a claim is required to provide a "jurisdictional hook" for the exercise of supplemental jurisdiction). Mitchell also concedes on page 3 of his response brief that complete diversity is required and may not be avoided through supplemental jurisdiction. Since Hoopa's presence as a defendant defeats complete diversity and deprived the District Court of any original jurisdiction over any claim, Mitchell's assertion of supplemental jurisdiction must fail. *Id.* "The presence of a nondiverse party directly contravenes the complete diversity requirement and, therefore, deprives the district court of jurisdiction over any of the claims, so there is nothing to which supplemental jurisdiction may attach." 16 Moore's Federal Practice, §102.22 (3d ed. 2018).

Mitchell argues that the complete diversity requirement is met because "neither the Tribe nor any member of the Tribe is a citizen of Texas." *See* Mitchell Response Brief, p. 4. While it is correct that Hoopa is not a citizen of Texas, it is

also not a citizen of any state for diversity purposes. Rather, it is a "stateless entity" that cannot sue or be sued in diversity. Hoopa Principal Brief, pp. 12-15; *Miccosukee Tribe of Indians of Florida v. Kraus-Anderson Constr. Co.*, 607 F.3d 1268, 1276 (11th Cir. 2010); *Ninigret Dev. Co.*, 207 F.3d at 27. And Hoopa's presence as a defendant destroys complete diversity for any claim. *Id.*[1]

Mitchell cites *Allapattah* as support for his supplemental jurisdiction argument. Mitchell Response Brief, p. 3. But *Allapattah* firmly supports Hoopa. In that case, the Supreme Court held that where the other elements of jurisdiction are present and at least one named plaintiff satisfies the amount-in-controversy requirement, a federal court in a diversity action may exercise supplemental jurisdiction over additional plaintiffs whose claims do not satisfy the minimum amount-in-controversy requirement. *Allapattah*, 545 U.S. at 549. While the Supreme Court found supplemental jurisdiction for the claims at issue in *Allapattah*, it expressly distinguished the amount-in-controversy requirement (at

[1] Mitchell's new assertion that no member of the Hoopa Valley Tribe is a citizen of Texas is not alleged in Mitchell's complaint nor is it established in the record in this case. Nor is Mitchell's new assertion that "all of the Tribe's members are citizens of California" alleged or established in the record. It is also highly unlikely. Tribal members may move from the Reservation and reside out-of-state to attend college, take employment, or for other reasons while still retaining membership in the Tribe. In any event, federal courts do not look to the individual residencies of the hundreds or thousands of tribal members for purposes of diversity jurisdiction. Instead, courts have adopted a uniform rule that Indian tribes, as stateless governmental entities, may not sue or be sued in diversity.

issue in *Allapattah*) from the requirement of complete diversity (at issue here). *Id.* at 553-554. "In order for a federal court to invoke supplemental jurisdiction . . . it must first have original jurisdiction over at least one claim in the action. Incomplete diversity destroys original jurisdiction with respect to all claims, so there is nothing to which supplemental jurisdiction can adhere." *Id.* at 554. "A failure of complete diversity, unlike the failure of some claims to meet the requisite amount in controversy, contaminates every claim in the action." *Id.* at 564.

Here, Mitchell's case does not present any issues related to the amount-in-controversy requirement. Rather, the issue is what effect the lack of complete diversity resulting from Hoopa's presence as a defendant had on the District Court's jurisdiction over Mitchell's claims. In *Allapattah*, the Supreme Court confirmed that complete diversity is mandatory and that the lack of complete diversity contaminates all claims, precluding the exercise of original diversity or supplemental jurisdiction. *Allapattah*, 545 U.S. at 553-554, 564. The other cases cited by Mitchell on page 3 of his response brief also address the amount-in-controversy requirement and not the complete diversity requirement at issue here. No authority supports Mitchell's argument that he may circumvent requirements of complete diversity by alleging supplemental jurisdiction over his claims against Hoopa.

Both the Supreme Court and Congress prohibit the use of supplemental jurisdiction to contravene complete diversity requirements. In *Owen*, the Supreme Court held that a claim asserted by a plaintiff against a third-party defendant required independent grounds of jurisdiction. *Owen*, 437 U.S. at 373-77. To allow such a claim to proceed under supplemental (at that time, ancillary) jurisdiction would be inconsistent with, and allow circumvention of, the complete diversity requirement. *Id.* Mitchell incorrectly argues that *Owen* is not good law due to enactment of 28 U.S.C. § 1367. To the contrary, 28 U.S.C. § 1367(b) codified the result in *Owen* and precludes Mitchell from circumventing the complete diversity requirement through creative supplemental jurisdiction arguments. *Conseco v. Wells Fargo Fin. Leasing, Inc.*, 204 F. Supp. 2d 1186, 1191 (S.D. Iowa 2002) (Congress, in § 1367(b), intended to prevent plaintiffs from circumventing diversity requirements); 16 Moore's Federal Practice, § 106.05[3] (3d ed. 2018) (explaining that § 1367(b) implements the rationale of *Owen* to prevent plaintiffs from circumventing diversity requirements). Under 28 U.S.C. § 1367(b), supplemental jurisdiction is not permitted where it would be incompatible with the requirement of complete diversity of citizenship.[2]

[2] On page 5 of his response brief, Mitchell quotes the issue raised in *Owen*:

> "In an action in which federal jurisdiction is based on diversity of citizenship, may the plaintiff assert a claim against a third-party defendant when there is no independent basis for federal jurisdiction over that claim?"

Nothing in 28 U.S.C. § 1367 has altered or limited the mandate of complete diversity. All the cases that Mitchell attempts to distinguish in footnotes 2, 3, and 4 of his response brief (which were cited and relied upon by Hoopa in its principal brief) were decided after (not before) passage of 28 U.S.C. § 1367. Those cases confirm that Indian tribes (like state and federal agencies) cannot sue or be sued in diversity and that their presence as a party in litigation will destroy complete diversity and defeat assertions of diversity jurisdiction. Nothing in 28 U.S.C. § 1367 changes that rule or otherwise permits supplemental jurisdiction over claims that would otherwise not satisfy the complete diversity requirements.

In this case, supplemental jurisdiction is not available under 28 U.S.C. § 1367(a) because Mitchell has no claim supported by original jurisdiction in federal court. Hoopa's presence is a jurisdictional spoiler that defeats complete diversity and destroys any original jurisdiction that might otherwise exist under 28 U.S.C. § 1332. And because there is no original federal jurisdiction over any claim, there is nothing to which supplemental jurisdiction may attach. But even if there was any original jurisdiction to support Mitchell's claims against Bailey, Mitchell still

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Before and after passage of 28 U.S.C. § 1367, such a claim would not be allowed if it would defeat complete diversity. Friedenthal et al., Civil Procedure (Second Edition), § 2.14, p. 78 (1993) (stating: "In conformity with the decision in [*Owen*], when jurisdiction is based on diversity of citizenship, no supplemental jurisdiction exists for a nonfederal claim against a nondiverse third-party defendant.").

could not assert supplemental jurisdiction over Hoopa because the exercise of such jurisdiction would conflict with principles of complete diversity and would be precluded under 28 U.S.C. § 1367(b). No basis for supplemental jurisdiction exists for Mitchell's claims against Hoopa.

III. The District Court Lacked Federal Question Jurisdiction; Mitchell Asserted No Claims Arising Under Federal Law.

Mitchell does not contend that he alleged federal jurisdiction or any federal claims whatsoever in his complaint. ROA.12-26. His new assertion of federal question jurisdiction is solely based on a federal defense raised by Hoopa and Bailey in the course of litigation. It is hornbook law that federal question jurisdiction exists only when a federal question is presented on the face of the plaintiff's complaint and that the existence of a federal defense is not sufficient to invoke federal question jurisdiction. *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 9-11 (1983).

Mitchell relies on two U.S. Supreme Court cases, neither of which help him. The issue decided in *Gutierrez de Martinez v. Lamagno*, 515 U.S. 417 (1995) is whether a certification made by the Attorney General under the Westfall Act, 28 U.S.C. § 2679(d)(1), is reviewable in federal court. *Id.* at 420. In *Lamagno*, the plaintiff filed a tort case in federal court against a federal employee, invoking diversity (not federal question) jurisdiction. *Id.* at 421. After the Attorney General

affirmatively certified, pursuant to 28 U.S.C. § 2679(d)(1), that the federal employee was acting within the scope of his federal employment at the time of the accident, the United States was substituted as defendant. *Id.* at 420. Upon being substituted, the United States moved to dismiss the case due to an exception to liability arising in the FTCA. *Id.* The plaintiff (unhappy with the results flowing from the Attorney General certification) desired judicial review of the Attorney General's certification in an effort to overturn it and to continue suit against the tortfeasor in his individual capacity. *Id.* The Court held that federal courts may review a certification issued by the Attorney General under the Westfall Act. *Id.*

Lamagno is not a case about federal court jurisdiction; rather, it is a case about judicial reviewability of an Attorney General certification. Federal court jurisdiction existed in *Lamagno* due to diversity and was undisputed. Thus, *Lamagno* does not address or lend any support to Mitchell's claim of federal question jurisdiction. The well-pleaded complaint rule bars any contention that the Westfall Act defense raised by Hoopa and Bailey can vest the Court with federal question jurisdiction over Mitchell's claims, which are exclusively non-federal. *Lamagno*, a case where diversity jurisdiction existed at the outset, is no precedent for subject matter jurisdiction for Mitchell's suit where diversity does not exist.

Nor does *Osborn v. Haley*, 549 U.S. 225 (2007) help Mitchell. In that case, plaintiff filed state law claims in state court. *Id.* at 232-233. The case was

removed from state court at the request of the United States following an affirmative Westfall Act certification by the Attorney General pursuant to 28 U.S.C. § 2679(d)(2). *Id.* at 234. 28 U.S.C. § 2679(d)(2) provides that the "certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal." The Supreme Court found that the conclusive nature of an affirmative scope-of-employment certification by the Attorney General confirmed that Congress gave district courts no authority to return cases to state courts on the ground that the Attorney General's certification was erroneous. In the context of affirmative Attorney General certifications under 28 U.S.C. § 2679(d)(2), "Congress adopted the 'conclusiv[e] . . . for purposes of removal' language to 'foreclose needless shuttling of a case from one court to another.'" *Id.* at 242, quoting *Lamagno*, 515 U.S. at 433.

The Court also explained that while the Westfall Act mandates removal to federal court and substitution of the United States as defendant in cases in which the Attorney General affirmatively certifies scope of employment, the Westfall Act does not impose such mandatory obligations in cases (like Mitchell's here) where the Attorney General does not affirmatively certify or where a petition for substitution is filed by a party to the litigation. *Id.* at 241-42. In those latter situations, the Westfall Act permissively allows removal and, for cases that began in state court, requires remand to state court in the event that the district court

determines the employee was not acting within the scope of employment. *Id.*; 28 U.S.C. § 2679(d)(3).

The facts and legal issues presented in Mitchell's case here bear no resemblance to *Osborn*. Here, the case did not begin in state court. Nor was it removed to federal court pursuant to an affirmative scope-of-employment certification by the Attorney General under 28 U.S.C. § 2679(d)(2). Rather, Mitchell filed his action in federal court (despite the lack of any federal claims or other source of federal jurisdiction) and then the defendants later asserted a defense that the United States should be substituted pursuant to the Westfall Act. Pursuing that defense, the Defendants filed a combined petition for certification and/or motion for substitution pursuant to 28 U.S.C. § 2679(d)(3). ROA.893. Mitchell opposed the request and disputed application of the Westfall Act throughout the entirety of the litigation. ROA.1000-1010. The Court never addressed the factual or legal substance of the Westfall Act issues; rather, the Court ruled the motion to substitute moot due to the Court's order of dismissal on sovereign immunity grounds. ROA.1221. After the Court's order of dismissal on sovereign immunity grounds, the United States filed an "advisory" informing the Court that it had administratively determined Orico Bailey was not acting in the course and scope of federal employment. ROA.1291. The Court never reviewed the merits of the United States' assertions regarding certification.

Osborn, which addressed the implications of removal following an affirmative scope-of-employment certification by the Attorney General under 28 U.S.C. § 2679(d)(2), has distinguishable facts and legal issues and lacks any relevance here. Mitchell's complaint asserts no federal claims. ROA.12-26. The Westfall Act defense raised by Defendants under 28 U.S.C. § 2679(d)(3) in the course of the litigation, vigorously disputed by Mitchell, and which was never certified by the Attorney General nor substantively addressed by the Court, did not provide federal question jurisdiction to adjudicate Mitchell's state law tort claims against Hoopa or Bailey in federal court.

Mitchell's assertion on page 10 of his response brief that the "Westfall Act expressly provides for federal subject matter jurisdiction when a defendant requests relief under the Act – regardless of whether federal claims have been asserted in the complaint" is plainly wrong. In fact, for cases that begin in state court, 28 U.S.C. § 2679(d)(3) requires remand back to state court if the federal district court ultimately determines the employee was not acting within the scope of employment. While a federal court has authority to review and rule on scope-of-employment under the Westfall Act, nothing in the Westfall Act, nor in *Lamagno* or *Osborn*, suggests that the mere assertion of a Westfall Act defense confers federal question jurisdiction over purely state law tort claims against non-federal defendants. While *Osborn* holds that a federal court may not remand back

to state court if a case was removed to federal court pursuant to an affirmative Attorney General certification under 28 U.S.C. § 2679(d)(2), that is not the fact pattern presented here.

Nor does the Westfall Act, *Lamagno*, or *Osborn* provide any support for Mitchell's contention that the well-pleaded complaint rule, a fundamental concept of jurisdictional practice, may be ignored any time that a defendant asserts application of the Westfall Act as a defense in the course of litigation. The District Court plainly lacked federal question jurisdiction over Mitchell's tort claims against Hoopa and Bailey.

Mitchell also argues on pages 10 - 12 of his response brief that the well-pleaded complaint rule has been modified by Congress in the contexts of ERISA and federal patent law. That argument has no relevance here in a case that does not involve ERISA or patents. To the extent that Mitchell is arguing that Congress has similarly modified the well-pleaded complaint rule in a manner that would allow federal question jurisdiction over his tort claims here, Mitchell is wrong for the reasons discussed above. The District Court lacked federal question jurisdiction over Mitchell's claims.

IV. This Court May Affirm the District Court's Judgment for Any Reason Supported by the Record.

Mitchell argues that this Court may not affirm the District Court's judgment dismissing Mitchell's claims if it finds that the District Court lacked federal question, supplemental, or diversity jurisdiction over Mitchell's claims. Mitchell is incorrect. This Court may affirm the District Court's judgment of dismissal for any reason that is supported by the record, even if not relied on by the District Court. *United States v. Batamula*, 823 F.3d 237, 240 (5th Cir. 2016); *Simmons v. Sabine River Auth. La.*, 732 F.3d 469, 474 (5th Cir. 2013); *United States v. Gonzalez*, 592 F.3d 675, 681 (5th Cir. 2009).

While Hoopa submits that the District Court's decision dismissing Mitchell's claims on tribal sovereign immunity grounds was correct, Hoopa has also provided alternative jurisdictional grounds for affirmance. There is nothing improper or inconsistent about Hoopa arguing for affirmance on alternate grounds. If the District Court lacked federal question, supplemental, or diversity jurisdiction over Mitchell's claims, as Hoopa argues, dismissal of Mitchell's claims must be affirmed. If the District Court did have subject matter jurisdiction under one of those jurisdictional grounds, the District Court's decision must also be affirmed because the Court correctly found that Hoopa is immune from Mitchell's suit here.

In *TTEA v. Ysleta Del Sur Pueblo*, 181 F.3d 676 (5th Cir. 1999), the plaintiff sued an Indian tribe and tribal officials. The District Court dismissed the action with prejudice on grounds of tribal sovereign immunity and lack of standing. *Id.* at 680. On appeal, this Court agreed that tribal sovereign immunity barred the plaintiff's claim for contract damages against the Tribe, but also ruled that "tribal immunity did not support [the District Court's] order dismissing the actions seeking declaratory and injunctive relief." *Id.* at 680-81. This Court then explained: "We would be obliged nonetheless to affirm the district court if it did not have subject matter jurisdiction over [the] equitable claims." *Id.* at 681. Similarly, affirmance of the District Court's judgment is required here if this Court determines subject matter jurisdiction was lacking.

Mitchell ignores that sovereign immunity is also jurisdictional in nature. *FDIC v. Meyer*, 510 U.S. 471, 475 (1994); *TTEA*, 181 F.3d at 680-81. "If sovereign immunity exists, then the court lacks both personal and subject matter jurisdiction to hear the case and must enter an order of dismissal." *De Sanchez v. Banco Central de Nicaragua*, 770 F.2d 1385, 1389 (5th Cir. 1985). "[A]lthough tribal sovereign immunity is jurisdictional in nature, consideration of that issue always must await resolution of the antecedent issue of federal subject matter jurisdiction." *Ninigret Dev. Corp.*, 207 F.3d at 28. Here, while the District Court

erred in proceeding first to the issue of tribal sovereign immunity, the ultimate result – dismissal of Mitchell's claims – was correct and should be affirmed.

Mitchell's argument regarding 28 U.S.C. § 1367(d) lacks any relevance, is incorrect, and is also waived by Mitchell's failure to raise it in the District Court. Because the District Court lacked any original jurisdiction over any claim in the proceeding, 28 U.S.C. § 1367, in its entirety, has no relevance here. In *Raygor v. Regents of Univ. of Minn.*, 534 U.S. 533 (2002), the Supreme Court dismissed the argument that 28 U.S.C. § 1367(d) applies to any claim technically "asserted" under 28 U.S.C. § 1367(a). Following *Raygor*, lower courts have held that 28 U.S.C. § 1367(d) has no application where, like here, there was no proper claim with original jurisdiction upon which supplemental jurisdiction could attach. *Morris v. Giovan*, 225 Ariz. 582 (Ariz. Ct. App. 2010) (holding that 28 U.S.C. § 1367(d) has no application where federal court lacked subject matter jurisdiction over any claim). Courts have also held 28 U.S.C. § 1367(d) inapplicable where the supplemental claim was not declined or dismissed for one of the reasons specified in 28 U.S.C. § 1367(c). *Parrish v. HBO & Co.*, 85 F. Supp. 2d 792, 795-98 (S.D. Ohio 1999); *Drake v. Consumers County Mut. Ins.*, 2015 Tex. App. LEXIS 4720, at *20-22 (Tex. Ct. App. 5th Dist., May 8, 2015) (disagreeing with plaintiff's assertion that 28 U.S.C. § 1367(d) applied regardless of whether federal court had original jurisdiction over any claim and regardless of reason for dismissal of suit in

federal court). Here, 28 U.S.C. § 1367(d) is irrelevant because there was no claim upon which supplemental jurisdiction could attach in the first instance; nor did the District Court decline to exercise supplemental jurisdiction for any reason listed under 28 U.S.C. § 1367(c). Also, Mitchell did not raise this argument regarding 28 U.S.C. §1367(d) in the District Court; thus, the argument is waived. *Celanese Corp. v. Martin K. Eby Constr. Co.*, 620 F.3d 529, 531 (5th Cir. 2010) (arguments not raised in the district court are waived and will not be considered on appeal).

Finally, Mitchell's citations to *Halmekangas v. State Farm & Cas. Ins. Co.*, 603 F.3d 290 (5th Cir. 2010) and *Auto-Owners Ins. Co. v. Tribal Court of the Spirit Lake Indian Reservation*, 495 F.3d 1017 (8th Cir. 2007) do not support his argument. In *Halmekangas*, a case that had been improperly removed from state court to federal court, this Court found that the District Court erroneously denied a motion to remand and thus reversed the District Court's judgment with instructions to remand back to state court. In *Auto-Owners Ins. Co.*, the District Court denied a motion to dismiss on grounds of tribal sovereign immunity. On appeal, the Eighth Circuit found that the motion to dismiss should have been granted, but on different jurisdictional grounds. Since the District Court had erroneously denied the motion to dismiss, the appellate court reversed and remanded for dismissal. Both cases are distinguishable from this case. Neither case supports Mitchell's argument that this Court may not affirm the District Court's dismissal of Mitchell's complaint on the

alternate jurisdictional grounds raised by Hoopa. *TTEA*, 181 F.3d at 681 (explaining that appellate court "would be obliged nonetheless to affirm the district court if it did not have subject matter jurisdiction over [the] equitable claims.").

Conclusion

This Court should affirm the District Court's judgment dismissing Mitchell's complaint in its entirety because the District Court lacked subject matter jurisdiction over any of Mitchell's claims. Also, Hoopa has sovereign immunity from Mitchell's suit, which provides an alternative basis for affirmance.

Respectfully submitted,

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Certificate of Service

On June 11, 2020, an electronic copy of the foregoing brief was filed with the Clerk of Court for the United States Court of Appeals for the Fifth Circuit using the appellate CM/ECF system, and service will be accomplished by the appellate CM/ECF system to the following:

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Certificate of Compliance

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