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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DISTRICT**

CORPORATION OF THE
PRESIDENT OF THE CHURCH OF
JESUS CHRIST OF LATTER-DAY
SAINTS, a Utah corporation; LDS
FAMILY SERVICES, a Utah
corporation,

Plaintiffs,

v.

F.D., an individual,

Defendant.

**REPLY MEMORANDUM
SUPPORTING MOTION TO
REMAND**

Case No. 2:20-cv-00507-CW-DAO

Judge Clark Waddoups

Magistrate Judge Daphne A. Oberg

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INTRODUCTION

For this matter to remain in federal court, F.D. must show either that (1) federal-question jurisdiction is apparent on the face of the Complaint, or (2) Plaintiffs' right to relief depends on the resolution of a substantial federal question. F.D. fails to satisfy this standard. She cannot identify a federal question that arises from the Complaint's allegations or point to a substantial federal question that must be resolved. She also fails to reconcile her removal of this case with the Court's order that relief related to this matter must be sought in tribal court *or state court*. See Oct. 23, 2019 Order at 22, Ex. 1 to Mot. Instead, she advances tortured interpretations of legal doctrines, coupled with unsupported factual assertions, in an effort to manufacture a federal question. Her arguments all fail.

First, F.D. contends that this case presents a federal question because Plaintiffs' causes of action are completely preempted by [25 U.S.C. § 1322](#). She is wrong. The doctrine of complete preemption applies only where a federal statute is so broad that it entirely displaces any state-law claims regarding the same subject matter. Here, [25 U.S.C. § 1322](#) is a jurisdictional statute that allows a state court, if it obtains tribal consent, to exercise subject-matter jurisdiction over disputes between Indians, or disputes involving Indians that arise from actionable conduct on tribal land within the state where the court is located. That statute is

inapplicable because this is not a dispute between Indians. Nor does it arise on tribal land in Utah. Besides, the statute is jurisdictional and thus does not preempt state-law causes of action.

Second, F.D. maintains that the Complaint presents a substantial federal question because it challenges the Navajo district court's subject-matter jurisdiction. Of course, F.D. does not cite a single allegation to support her argument. The Complaint makes no such challenge. Nor does it ask the court to exercise jurisdiction over the Navajo district court or to issue an order controlling its proceedings. Rather, the Complaint asks the Fourth District Court to exercise jurisdiction over F.D. (a Utah resident) and enjoin her personally from pursuing claims that she released under the parties' settlement agreement.

Third, F.D. argues that this action presents a federal question because the Fourth District Court lacks authority to enforce its judgment on the Navajo Nation, and because a tribal forum, when available, generally must be used to the exclusion of state and federal forums. Those arguments also fail. Nowhere in the Complaint do Plaintiffs ask the Fourth District Court to enforce its judgment in the Navajo Nation. And the preference for litigating in a tribal forum applies only where, unlike here, the dispute arises from actionable conduct on tribal land. This dispute

arises from the breach of a settlement agreement entered into in Utah between Utah parties.

A cursory review of Plaintiffs' Complaint shows there are no federal questions over which this Court may exercise jurisdiction. F.D. has failed to show otherwise. This case should be remanded to Fourth District Court.

ARGUMENT

Under the well-pleaded complaint rule, "courts examine the well-pleaded allegations of the complaint and ignore potential defenses" to determine whether an action arises under federal law. *Devon Energy Prod. Co., L.P. v. Mosaic Potash Carlsbad, Inc.*, 693 F.3d 1195, 1202 (10th Cir. 2012) (citation and brackets omitted). "[F]ederal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). "By omitting federal claims from a complaint, a plaintiff can generally guarantee the action will be heard in state court." *Devon*, 693 F.3d at 1202 (citation and brackets omitted).

The well-pleaded complaint rule has two narrow exceptions. *Id.* at 1203. Those exceptions provide that a complaint alleging exclusively state-law claims may nonetheless give rise to federal-question jurisdiction where the claims (1) are

completely preempted by federal law, or (2) present a substantial, disputed issue of federal law that is necessarily raised. *Id.* at 1203–1204.

In her opposition, F.D. argues that the Court has federal-question jurisdiction because Plaintiffs’ causes of action arise under federal law. She also argues that both exceptions to the well-pleaded complaint rule apply. She is wrong on all counts.

I. F.D. FAILS TO SHOW THAT PLAINTIFFS’ CLAIMS ARISE UNDER FEDERAL LAW.

A cause of action arises under federal law when it is “premised upon a violation of a federal statute or the Constitution.” *Dutcher v. Matheson*, 733 F.3d 980, 985 (10th Cir. 2013) (footnote omitted). “Neither the plaintiff’s anticipation of a federal defense nor the defendant’s assertion of a federal defense is sufficient to make the case arise under federal law.” *Turgeon v. Admin. Review Bd.*, 446 F.3d 1052, 1060 (10th Cir. 2006) (citation omitted).

Here, Plaintiffs’ Complaint alleges causes of action for breach of contract and declaratory judgment under *Utah Code § 78B-6-408*. The breach of contract claim alleges that F.D. materially breached her settlement agreement with Plaintiffs by proceeding with her claims against them despite their tender of the settlement payment. Compl. ¶¶ 23–26. Similarly, the declaratory judgment claim seeks a declaration that, pursuant to the settlement agreement, Plaintiffs were

released from any claims that F.D. asserted or could have asserted against them upon their tender of the settlement payment. *Id.* ¶ 18. Neither cause of action alleges violation of a federal statute or the Constitution.

Throughout her opposition, F.D. argues that Plaintiffs’ claims arise under federal law. But she offers nothing more than bald assertions to support that argument. She fails to identify any federal law that Plaintiffs’ Complaint alleges was violated. Her conclusory argument should be rejected.

II. F.D. FAILS TO SHOW THAT PLAINTIFFS’ CAUSES OF ACTION ARE COMPLETELY PREEMPTED BY FEDERAL LAW.

“[T]he doctrine of complete preemption [is] an exception to the well-pleaded complaint rule.” *Dutcher*, 733 F.3d at 985. The doctrine is “premised on the proposition that ‘Congress may so completely pre-empt a particular area that any civil complaint raising this select group of claims is necessarily federal in character.’” *State of Okla. ex rel. Okla. Tax Comm’n v. Wyandotte Tribe of Okla.*, 919 F.2d 1449, 1450 (10th Cir. 1990) (quoting *Metro. Life Ins. v. Taylor*, 481 U.S. 58, 63–64 (1987)). Complete preemption is a “rare doctrine” that represents an “extraordinary pre-emptive power.”¹ *Devon*, 693 F.3d at 1204 (internal citations

¹ The U.S. Supreme Court has recognized complete preemption in only three areas: (1) § 301 of the Labor Management Relations Act of 1947, (2) § 502 of the Employment Retirement Income Security Act of 1974, and (3) actions for usury against national banks under the National Bank Act.

and quotation marks omitted). “[F]or the complete-preemption doctrine to apply, the challenged claims must ‘fall within the scope of federal statutes intended by Congress completely to displace all state law on the given issue and comprehensively to regulate the area.’” *Id.* at 1205 (quoting *Hansen v. Harper Excavating, Inc.*, 641 F.3d 1216, 1221 (10th Cir. 2011)).

Under Tenth Circuit law, determining whether complete preemption applies involves a two-part test. *Id.* First, the Court asks if the federal regulation at issue preempts the state law relied on by Plaintiffs. *Id.* Second, the Court asks whether Congress intended to allow removal “as manifested by the provision of a federal cause of action to enforce the federal regulation.” *Id.* (citation, footnote, and brackets omitted).

Here, neither part of the test applies. F.D. cites no federal regulation—and Plaintiffs are not aware of one—that preempts Plaintiffs’ breach of contract or declaratory judgment claims. *See generally* Opp’n. And F.D. cites no federal claim or statute that was intended by Congress to displace Plaintiffs’ causes of action to enforce a federal regulation. *See id.*

F.D. cites 25 U.S.C. § 1322 (aka Public Law 280) as a basis for complete preemption, but that statute is inapplicable. That statute establishes a method whereby a state may, with consent from a tribe, assume jurisdiction over civil

causes of actions (1) between Indians or (2) to which Indians are parties that arise in the areas of Indian country situated within the state. *Id.* This dispute is not between Indians and does not arise on Navajo land. Further, 25 U.S.C. § 1322 is a jurisdictional statute and does not operate to preempt state causes of action. *Wyandotte*, 919 F.2d at 1451 (ruling that “where the underlying right or obligation arises under state law and federal law is merely alleged as a barrier to its effectuation . . . this barrier does not convert” the case to one “arising under federal law” (internal citation and quotation marks omitted)).

III. F.D. FAILS TO SHOW THAT PLAINTIFFS’ COMPLAINT RAISES A SUBSTANTIAL, DISPUTED FEDERAL QUESTION.

The substantial question exception applies where a “plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal [law].”

Holmes Grp., Inc. v. Vornado Air Circulation Sys., Inc., 535 U.S. 826, 830 (2002).

Dutcher, 733 F.3d at 987 n.6 (ruling that this exception covers an “exceedingly narrow” and “special and small category of cases”) (citation omitted). “Even if a federal question appears on the face of a well-pleaded complaint, federal jurisdiction is not automatic.” *Nicodemus v. Union Pac. Corp.*, 440 F.3d 1227, 1232 (10th Cir. 2006). “It is by now axiomatic that ‘federal jurisdiction demands not only a contested federal issue, but a substantial one, indicating a serious federal interest in claiming the advantages thought to be inherent in a federal forum.’” *Id.*

(quoting *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 313 (2005)).

Here, Plaintiffs' right to relief does not require resolution of a federal question, let alone a substantial one. Plaintiffs' requested relief is for a declaration that F.D. released her claims pursuant to the parties' settlement agreement, and an injunction prohibiting F.D. from pursuing claims against Plaintiffs that she settled and released under the parties' settlement agreement. Compl. at 5. That requested relief applies to, and places obligations on and only on F.D. individually.

F.D. maintains that this case involves a substantial federal question regarding tribal exhaustion. Opp'n at 21. Not so. The tribal exhaustion rule provides that federal courts should generally "abstain from hearing cases that ***challenge tribal [authority]*** until tribal court remedies ... are exhausted." *Valenzuela v. Silversmith*, 699 F.3d 1199, 1206 (10th Cir. 2012) (emphasis added; brackets in original). Here, as already explained, the Complaint does not make a challenge to tribal authority. It also does not ask the Fourth District Court to take any action with respect to the tribal court, to exercise jurisdiction over the tribal court, or to issue an order controlling tribal court's proceedings. *Id.* The tribal exhaustion rule does not apply.

IV. F.D.’S REMAINING ARGUMENTS FAIL TO ESTABLISH FEDERAL-QUESTION JURISDICTION.

F.D.’s remaining arguments ask the Court to ignore the well-pleaded complaint rule and its exceptions and instead exercise federal-question jurisdiction based on other legal principles. Those principles are inapplicable and fail to provide a basis for this Court to exercise jurisdiction.

First, F.D. argues that, as a practical matter, the Court should “deny[] state jurisdiction in this case” because “State courts cannot enforce their judgment against Indians on property located on an Indian reservation.” Opp’n at 19. F.D.’s argument makes no sense here. The Complaint does not ask the Fourth District Court to enforce its judgment on the Navajo Nation. It asks that court to exercise jurisdiction over and enforce judgment against F.D. (a Utah resident) individually.

In any case, even if F.D.’s argument were applicable—and it is not—it is a jurisdictional defense arising under federal law, which is insufficient to create a federal question. See [Wyandotte](#), 919 F.2d at 1451 (where federal law is alleged as jurisdictional barrier to effectuate a state-law claim, the “barrier does not convert” the case to one “arising under federal law”); [Turgeau](#), 446 F.3d at 1060 (“[A]ssertion of a federal defense is [not] sufficient to make the case arise under federal law.”) (citation omitted).

Second, F.D. contends that jurisdiction in Fourth District Court is improper because, under *R.J. Williams Co. v. Fort Belknap Hous. Auth.*, 719 F.2d 979, 983 (9th Cir. 1983), where a tribal forum is available, it must be used to the exclusion of a state or federal court. Opp’n at 19. Not so. *R.J. Williams* held that a tribal court is “generally the exclusive forum for the adjudication of disputes ... [that] *arise on the reservation.*” *R.J. Williams*, 719 F.2d at 983 (citation omitted; emphasis added).² That holding is irrelevant because this action does not present a dispute arising from on-reservation conduct. To the contrary, it arises from breach of a settlement agreement entered into in Utah between a Utah resident and Utah companies.

Third, F.D. argues that this Court already ruled that the parties’ dispute relating to enforcement of the settlement agreement involves a challenge to tribal jurisdiction and thus presents a federal question. Opp’n at 21. She is wrong. In the prior federal court action, Plaintiffs argued that F.D.’s claims in tribal court were moot as a result of the Fourth District Court’s order that F.D. was bound by

² In further support of her arguments, F.D. cites language from *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 65 (1978) stating that “[t]ribal courts have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of both Indians and non-Indians.” That quote was in the context of claims brought under the Indian Civil Rights Act and 25 U.S.C. § 1302. *Id.* at 65–66. The quote does not, of course, stand for the proposition that tribal courts have subject-matter jurisdiction to adjudicate *any* dispute affecting personal property of Indians and non-Indians.

the settlement agreement. The Court recognized that, if correct, Plaintiffs' argument constituted a new challenge to the Navajo court's subject-matter jurisdiction, requiring exhaustion of tribal remedies. Oct. 23, 2019 Order at 22 n.6, Ex. 1 to Mot. However, the Court rejected Plaintiffs' argument. *Id.*

Instead, the Court held that "[b]ecause the state court judgment relates to an issue of preclusion—and not a lack of subject matter jurisdiction by virtue of mootness—this court concludes that relief related to the state court judgment must be made either *in the state court* or in the tribal court." *Id.* at 22 (emphasis added). Regardless, Plaintiffs' Complaint does not allege that F.D.'s claims are moot. *See generally* Compl. F.D.'s argument fails.

CONCLUSION

This is a simple contract case arising in Utah. It belongs in Fourth District Court. F.D. has failed to satisfy her burden to show this Court has federal-question jurisdiction. Plaintiffs' motion to remand should be granted.

WORD COUNT: 2,423

DATED: September 9, 2020.

STOEL RIVES LLP

/s/ David J. Jordan

David J. Jordan

Jordan C. Bledsoe

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of September 2020, a copy of the foregoing **REPLY MEMORANDUM SUPPORTING MOTION TO REMAND** was served via EMC/ECF on the following:

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