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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON
11 AT YAKIMA

12 UNITED FINANCIAL CASUALTY
13 COMPANY, a foreign insurance
14 company

15 Plaintiff,

16 v.

17 SPENCER TRUCKING LLC, a
18 Washington limited liability company;
19 RYAN SPENCER, an individual; and
20 THE ESTATE OF IVAN
21 EMMANUEL CARDENAS SR.; I.C.,
22 an individual

23 Defendants.

No. 1:20-cv-03211-SMJ

**PLAINTIFF UNITED
FINANCIAL CASUALTY
COMPANY’S RESPONSE IN
OPPOSITION TO
DEFENDANTS’ MOTION TO
DISMISS**

21 Plaintiff United Financial Casualty Company (hereinafter “UFCC”)
22 submits the following Response in Opposition to Defendant Spencer Trucking,
23

1 LLC and Ryan Spencer’s (hereinafter collectively the “Spencer Defendants”)
2 Motion to Dismiss.

3
4 **I. RELIEF REQUESTED**

5 UFCC asks that the Court deny the Spencer Defendants’ Motion to
6 Dismiss. This Court has jurisdiction over the subject matter of this action based
7 on diversity of citizenship pursuant to 28 U.S.C. §1332 and 28 U.S.C. § 2201.

8 **II. INTRODUCTION**

9 UFCC opposes the Spencer Defendants’ Motion to Dismiss. The Spencer
10 Defendants’ assertion that this case must be dismissed because the Yakama
11 Nation Tribal Court (hereinafter the “Tribal Court”) has priority jurisdiction lacks
12 merit.
13

14 The Spencer Defendants base their argument on the facts that Ryan
15 Spencer is a member of the Confederated Tribes and Bands of the Yakama
16 Nation (hereinafter “Yakama Nation”), and Spencer Trucking is a Yakama
17 Nation business. Their entire argument focuses on these two facts, to the
18 exclusion of other relevant information.

19
20 First, this case has limited connection to the Yakama Nation. The Spencer
21 Defendants are a Tribal Member and a Tribal business. However, Plaintiff UFCC
22 is not a tribal entity. Defendants I.C. and the Estate of Ivan Cardenas Sr., who are
23 the two claimants in this matter, are not members of the Yakama Nation.

1 Moreover, the motor vehicle accident that is the subject loss did not occur on
2 tribal lands.

3 Additionally, this lawsuit was filed by UFCC in order to obtain a judicial
4 declaration of UFCC's rights and obligations under an insurance policy. Yakama
5 Nation has not adopted the Federal Declaratory Judgment Act, 28 U.S.C. § 2201,
6 and therefore lacks the ability to grant the relief sought by UFCC. Accordingly,
7 pursuing this matter in the Tribal Court is inappropriate because it would result in
8 delay and the Tribal Court lacks subject matter jurisdiction.
9

10 Furthermore, the claimants, I.C. and the Estate of Ivan Cardenas, are
11 indispensable parties over which the Tribal Court does not have jurisdiction.
12 These claimants are named in this action because they have asserted claims to
13 which the proceeds of UFCC's insurance policy may, or may not, apply. As a
14 result, any decision by any Court regarding UFCC's obligations under the policy
15 has an effect on the claimants' interests. If the claimants are not party to this
16 declaratory relief proceeding, the results are arguably not binding on the
17 claimants, and the process must be repeated in a Court with jurisdiction over the
18 claimants. This means transferring this case to the Tribal Court would be futile.
19 This Court, however, does have jurisdiction over all parties and all of UFCC's
20 claims, and all claims can be adjudicated with respect to all parties in a single
21 proceeding.
22
23

1 Finally, there is no action concerning this accident or coverage under the
2 UFCC policy currently pending in the Tribal Court.

3 In light of these facts, there is no basis for dismissal of UFCC's action. As
4 set forth below, this Court has jurisdiction, exhaustion of tribal remedies is not
5 required, and even if they were, the exceptions clearly apply. As a result, UFCC
6 asks that this Court deny the Motion to Dismiss and allow this Declaratory
7 Judgment Action to proceed.
8

9 III. STATEMENT OF FACTS

10 A. The Accident

11 On June 29, 2020, Ivan Cardenas (hereinafter "Cardenas") was
12 transporting timber to the Hampton Lumber Mill on Forest Service Road 5603.
13 Dkt. at 3. While traveling, Cardenas crashed and rolled the truck he was driving
14 (hereinafter the "Incident"). Dkt. at 3. The Incident caused Cardenas to become
15 trapped inside the vehicle until he passed away from his injuries. Dkt. at 3. The
16 Incident did not occur on tribal lands. Declaration of Alison Orton ("Orton
17 Decl."). Upon information and belief, Cardenas was not a tribal member. ("Orton
18 Decl.").
19
20

21 B. The Instant Action

22 On July 27, 2020, I.C. sent a letter to UFCC requesting documents from
23 UFCC for a potential cause of action against Spencer Trucking, LLC (hereinafter

1 “Spencer Trucking”) for personal injuries and/or property damage sustained by
2 Cardenas as a result of the Incident. Dkt. at 3. Spencer Trucking tendered a claim
3 for defense and indemnity for liability arising out of the Incident to UFCC. Dkt.
4 at 3. UFCC received notice of Spencer Trucking’s claim on June 30, 2020. Dkt.
5 at 3. Upon receiving notice of Spencer Trucking’s claim, UFCC promptly opened
6 a claim and began investigating coverage. Dkt. at 3. On September 24, 2020,
7 UFCC agreed to defend Spencer Trucking for claims arising out of the Incident
8 under a reservation of rights and assigned defense counsel. Dkt. at 3.

10 UFCC filed the Amended Complaint for the instant action on December 3,
11 2020 seeking a judicial determination as to UFCC’s rights and obligations under
12 an auto insurance policy issued to named insured Spencer Trucking, policy no.
13 03780576-4 (hereinafter the “Policy”). Dkt. at 3. The Policy was in effect from
14 May 12, 2020 to May 12, 2021. Dkt. at 3.

16 This lawsuit involves questions of coverage for the Incident. The Cardenas
17 Defendants have raised a claim against Spencer Trucking, LLC. Dkt. at 3. Based
18 on the terms and conditions of the Policy, UFCC contends that coverage is
19 precluded for this claim. Dkt. at 3. UFCC brought this action seeking a
20 declaration from the Court that UFCC owes no defense or indemnity obligations
21 to the Spencer Defendants for any of the Cardenas Defendants’ claims. Dkt. at 3.
22
23

At the time of the filing of UFCC’s Amended Complaint, no suit had been filed by the Cardenas Defendants against the Spencer Defendants in any Court. (“Orton Decl”).

IV. LEGAL ARGUMENT

The Spencer Defendants claim that this Court lacks jurisdiction because UFCC must exhaust its remedies in the Tribal Court first. Dkt. at 5. For the reasons discussed below, the Spencer Defendants’ argument lacks merit. This Court has jurisdiction and there is no cause to stay or dismiss this action.

A. Legal Standard for Motions to Dismiss for Lack of Subject Matter Jurisdiction

A complaint may be dismissed under Rule 12(b)(1) only if, considering the factual allegations in the light most favorable to the plaintiff, the action: (1) does not arise under the Constitution, laws, or treaties of the United States, or does not fall within one of the other enumerated categories of Article III, Section 2, of the Constitution; (2) is not a case or controversy within the meaning of the Constitution; or (3) is not one described in any jurisdictional statute. *Baker v. Carr*, 369 U.S. 186, 198 (1962); *D.G. Rung Indus., Inc. v. Tinnerman*, 626 F.Supp. 1062, 1063 (W.D. Wash. 1986); *see* 28 U.S.C. §§ 1332 (original federal jurisdiction).

When considering a motion to dismiss pursuant to Rule 12(b)(1), the court “is not restricted to the face of the pleadings.” *McCarthy v. United States*, 850

1 F.2d 558, 560 (9th Cir. 1988), *cert. denied*, 489 U.S. 1052 (1989); *Biotics*
2 *Research Corp. v. Heckler*, 710 F.2d 1375, 1379 (9th Cir. 1983). A court may
3 review and rely on any evidence extrinsic to the pleadings to resolve factual
4 disputes concerning the existence of jurisdiction. *St. Clair v. City of Chico*, 880
5 F.2d 199, 201 (9th Cir.), *cert. denied*, 493 U.S. 993 , 110 S.Ct. 541 (1989);
6 *Roberts v. Corrothers*, 812 F.2d 1173, 1177 (9th Cir. 1987); *Augustine v. United*
7 *States*, 704 F.2d 1074, 1077 (9th Cir. 1983); *Kroske v. U.S. BankCorp*, 432 F.3d
8 976, 980 (9th Cir. 2005) (a court may look beyond the pleadings and consider
9 other summary judgment type evidence relevant to the amount-in-controversy).
10 When a court considers "items outside the pleading" on a F.R.Civ.P. 12(b)(1)
11 motion, the court resolves "all disputes of fact in favor of the non-movant."
12 *Dreier v. United States*, 106 F.3d 844, 847 (9th Cir. 1996).

13
14
15 **B. The Federal Court Has Jurisdiction And Can Retain This Case**

16 This Court has jurisdiction over the parties and claims asserted by UFCC
17 under 28 U.S.C. §1332. In fact, the Spencer Defendants do not argue that this
18 Court lacks jurisdiction. The Spencer Defendants only contend that UFCC must
19 exhaust its remedies in the Tribal Court first. For the reasons discussed below,
20 transferring this action to the Tribal Court would be futile.

21
22 Moreover, the Yakama Nation has on numerous occasions sought
23 declaratory relief in federal courts. *See Yakima Indian Nation v. Whiteside*, 617

1 F. Supp. 750 (9th Cir. 1985); *Yakama Indian Nation v. Washington Dep't of*
 2 *Revenue*, 176 F.3d 1241 (9th Cir. 1999); *Confederated Tribes & Bands of the*
 3 *Yakama Nation v. United States*, 616 F. Supp. 2d 1094 (E.D. Wash. 2007);
 4 *Confederated Tribes & Bands of the Yakama Indian Nation v. Alcohol &*
 5 *Tobacco Tax & Trade Bureau*, 843 F.3d 810 (9th Cir. 2016).
 6

7 As a result, there is no basis for dismissal of this action based upon this
 8 Court's lack of jurisdiction.

9 **C. Transferring This Case To Tribal Court Is Futile**

10 The Spencer Defendants argue that this case should be dismissed solely
 11 because the Defendants are tribal entities. Accordingly, they argue that
 12 exhaustion of tribal remedies is first required. As set forth below, this argument is
 13 without merit.
 14

15 **1. *The Exhaustion Requirement Does Not Apply***

16 The Spencer Defendants do not provide the Court with clear legal support
 17 for their position. In their Motions, the Spencer Defendants base their argument
 18 regarding exhaustion of tribal remedies on *National Farmers Union Ins. Cos. v.*
 19 *Crow Tribe of Indians*, 471 U.S. 845 (1985).
 20

21 In this completely distinguishable case, a minor tribal member was struck
 22 by a motorist on the grounds of an elementary school located within the
 23 boundaries of the Crow Indian Reservation. *Id.* at 847. The minor tribal member

1 brought tort claims against the school. *Id.* at 847. When the school tried to have
2 the case brought to federal court, the Supreme Court ruled that the school must
3 exhaust its remedies in Tribal Court first. *Id.* at 857.

4 The facts alleged in the instant action are significantly different from that
5 of *National Farmers*. In *National Farmers*, the incident giving rise to the lawsuit
6 occurred on reservation land. *Id.* at 847. The party claiming that exhaustion in the
7 Tribal Court was required was the injured plaintiff. *Id.* Finally, the plaintiff
8 asserted a tort claim in *National Farmers*. In light of these facts, it was clear that
9 tribal jurisdiction applied in *National Farmers*.
10

11 This matter, however, presents an entirely different set of circumstances.
12 This is not a tort claim, but rather a Declaratory Judgment Action. The Plaintiff,
13 UFCC, is not a tribal entity. Moreover, the subject loss did not occur on tribal
14 lands. As a result, it does not appear the requirement that Tribal Court remedies
15 first be exhausted applies to this matter.
16

17 The Spencer Defendants also rely heavily on *Iowa Mut. Ins. Co. v.*
18 *LaPlante*, 480 U.S. 9 (1987). This case, however, supports UFCC's position that
19 a first filed declaratory relief action should be allowed to proceed in federal
20 court. In *Iowa Mutual*, an injured tribal member brought claims against a tribal
21 member tortfeasor and the tortfeasor's insurer. *Id.* at 11. While the case was
22 pending, the insurer filed a lawsuit in federal court seeking a declaration that it
23

1 had no duty to defend or indemnify the insured tortfeasor because coverage was
2 unavailable under the terms and conditions of the subject insurance policies. *Id.*
3 at 12-13. The *Iowa Mutual* court ruled that the defendant insurer must exhaust its
4 remedies in the Tribal Court first. *Id.* at 19.

5
6 The parties in *Iowa Mutual* consist of an injured tribal member, insured
7 tribal member, and a non-tribal insurer wherein the injured party was injured on
8 tribal land. In contrast, the instant action involves a non-tribal injured party, a
9 tribal insured, and non-tribal insurer wherein the injured party was allegedly
10 injured off tribal land. Additionally, in *Iowa Mutual*, claims of bad faith for
11 failure to settle were raised in Tribal Court against the insurer by tribal members.
12
13 There are no extra-contractual claims against UFCC at issue. The instant action
14 was filed in this Court and pertains solely to contractual issues found in the
15 Policy. Furthermore, the *Iowa Mutual* court held:

16 A Federal District Court may not exercise diversity
17 jurisdiction, under 28 USCS 1332, before an Indian tribal
18 court system has an opportunity to determine its own
19 jurisdiction, where, at the time the District Court action is
20 initiated, proceedings involving the same parties and
based upon the same dispute are pending before the tribal
courts...

21 *Id.* at 11 (emphasis added). Here, the Spencer Defendants have not shown there
22 were any proceedings involving the same parties in the instant action and based
23 upon the same dispute pending before the Tribal Court at the time the instant

1 action was filed. Accordingly, this Court should find that *Iowa Mutual* is
 2 distinguishable. In light of the Spencer Defendants’ lack of controlling case law,
 3 the Motion to Dismiss should be denied.

4
 5 **2. *Even If Exhaustion Of Tribal Remedies Was Required, Transfer***
 6 ***Would Only Result In Delay Due To Lack Of Jurisdiction***

7 Should the Court nevertheless find that the exhaustion requirement is
 8 applicable in the instant action, there is an exception to the exhaustion
 9 requirement for delay found in *Strate v. A-1 Contrs.*, 520 U.S. 438 (1997). The
 10 *Strate* court stated:

11 When...it is plain that no federal grant provides for tribal
 12 governance of nonmembers’ conduct on land covered by
 13 *Montana’s* main rule, it will be equally evidence that
 14 tribal courts lack adjudicatory authority over disputes
 15 arising from such conduct. As in criminal proceedings,
 16 state or federal courts will be the only forums competent
 17 to adjudicate those disputes. Therefore...the otherwise
 18 applicable exhaustion requirement, must give way, for it
 19 would serve no purpose other than delay.

20 *Id.* at 459 (citations omitted); *see also Nevada*, 533 U.S. 353, 369 (“Since it is
 21 clear...that tribal courts lack jurisdiction over state officials for causes of action
 22 relating to their performance of official duties, adherence to the tribal exhaustion
 23 requirement in such cases would serve no purpose other than delay and is
 therefore unnecessary”) (internal quotations omitted).

To “exercise civil authority over a defendant,” a Tribal Court must have
 both subject matter jurisdiction and personal jurisdiction. *Water Wheel Camp*
Rec. Area, Inc. v. Larance, 642 F.3d 802, 819 (9th Cir. 2011). As set forth below,

1 the Spencer Defendants have failed to establish either personal or subject matter
2 jurisdiction. Accordingly, the Motion to Dismiss should be denied.

3 **3. *The Tribal Court Lacks Personal Jurisdiction***

4 Defendants The Estate of Ivan Cardenas and I.C. are required parties to
5 UFCC's Declaratory Judgment Action. As the claimants, they are potentially
6 seeking the proceeds of UFCC's policy and its indemnity obligation, if any,
7 towards the Spencer Defendants. As a result, the Cardenas Defendants are
8 necessary parties. FCRP 19 states:

10 (1) Required Party. A person who is subject to service of
11 process and whose joinder will not deprive the court
12 of subject-matter jurisdiction must be joined as a party
if:

13 (A) in that person's absence, the court cannot accord
14 complete relief among existing parties; or

15 (B) that person claims an interest relating to the
16 subject of the action and is so situated that
17 disposing of the action in the person's absence
may:

18 (i) as a practical matter impair or impede the
19 person's ability to protect the interest; or

20 (ii) leave an existing party subject to a substantial
21 risk of incurring double, multiple, or otherwise
inconsistent obligations because of the interest.

22 FCRP 19.

1 The instant action concerns liability coverage for claims made by the
 2 Cardenas Defendants against the Spencer Defendants. UFCC seeks a binding
 3 declaration from this Court that there is no coverage for defense or indemnity for
 4 the Cardenas Defendants' claims. Furthermore, the Cardenas Defendants, as the
 5 injured party claimants, have an interest in the proceeds of the Policy issued by
 6 UFCC. Litigating the instant action without the Cardenas Defendants may impair
 7 or impede their ability to protect this interest. Based on FCRP 19, UFCC has a
 8 right and obligation to name the Cardenas Defendants as defendants to the instant
 9 action. *See Allstate Ins. Co. v. King*, 2013 WL 5302494 (W.D. Wash. 2013)
 10 (Held that an insurer had a right and obligation to name both their insured
 11 tortfeasor and injured party claimant to an action for declaratory relief).

14 However, the Spencer Defendants have failed to establish that the Tribal
 15 Court has jurisdiction over the Cardenas Defendants. Without UFCC being able
 16 to obtain jurisdiction over the Cardenas Defendants in the Tribal Court, any
 17 decision there would be non-binding and incomplete with respect to the Cardenas
 18 Defendants. This matter would ultimately result in returning to federal court,
 19 therefore exceptions for delay and lack of jurisdiction would apply.

21 ***4. The Tribal Court Lacks Subject Matter Jurisdiction***

22 The Tribal Court lacks subject matter jurisdiction over this declaratory
 23 relief action as well. UFCC seeks declaratory relief regarding liability coverage

1 for the claims of a non-tribal member involved in an alleged accident that
2 occurred off the Yakama Nation reservation. As a general matter, Tribal Courts
3 lack subject matter jurisdiction over the activities of nonmembers of the tribe.
4
5 *Montana v. United States*, 450 U.S. 544, 565 (1981).

6 The Spencer Defendants cite *Montana* to support their claim that the Tribal
7 Court has jurisdiction. This case is distinguishable as *Montana* pertains to the
8 rights of an Indian tribe to regulate hunting and fishing by nonmembers of the
9 tribe on non-Indian property that is within the boundaries of the reservation. 450
10 U.S. 544, 547. In contrast, the instant action concerns insurance coverage for an
11 alleged accident involving a nonmember of the Yakama Nation occurring outside
12 reservation land. Accordingly, this Court should find that *Montana* is
13 distinguishable and does not apply.
14

15 Furthermore, in determining the right of an Indian Tribe to regulate
16 activities of nonmembers, the Spencer Defendants' reading of *Montana* is
17 inaccurate. *Montana* states, "A tribe may regulate, through taxation licensing, or
18 other means, the activities of nonmembers who enter consensual relationships
19 with the tribe or its members, through commercial dealing, contracts, leases, or
20 other arrangements." *Id.* at 566. *Montana* does not grant jurisdiction to Tribal
21 Courts for claims of non-tribal members against tribal members arising out of
22 incidents occurring off tribal and/or reservation lands. 450 U.S. 544.
23

1 Additionally, *Montana* states, “A tribe may also retain inherent power to
2 exercise civil authority over the conduct of non-Indians on fee lands within its
3 reservation when that conduct threatens or has some direct effect on the political
4 integrity, the economic security, or the health or welfare of the *tribe*.” *Id.* at 566
5 (emphasis added). *Montana* is inapplicable to the instant action because the
6 instant action does not relate in any way to the political integrity, the economic
7 security, or the health or welfare of the Yakama Nation. UFCC’s claim in the
8 instant action is not against the Yakama Nation or any plurality of its members.
9 The only parties to the instant action that may be considered members of the
10 Yakama Nation are the Spencer Defendants. Furthermore, *Montana* applies to the
11 power of a tribe to exercise civil authority over the conduct of non-Indians on
12 “fee lands within its reservation.” Again, the Incident did not occur within the
13 Yakama Nation’s reservation.

16 Furthermore, the court in *Nevada v. Hicks*, 533 U.S. 353 (2001) states, “the
17 inherent sovereign powers of an Indian tribe do not extend to the activities of
18 nonmembers of the tribe except to the extent necessary to protect tribal self-
19 governance or to control internal relations.” 533 U.S. 353, 359 (internal
20 quotations omitted) (Quoting *Montana*, 450 U.S. 544, 565). Furthermore, *Nevada*
21 states:
22

23 In litigation between Indians and non-Indians arising out
of conduct on an Indian reservation, resolution of

1 conflicts between the jurisdiction of state and tribal
2 courts has depended, absent a governing Act of
3 Congress, on whether the state action infringed on the
4 right of reservation Indians to make their own laws and
5 be ruled by them. Tribal assertion of regulatory authority
6 over nonmembers must be connected to that right of the
7 Indians to make their own laws and be governed by them.

8 *Id.* at 361 (Citing *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 102 (1982).

9 The Spencer Defendants have made no argument that litigating this matter
10 or applying the exhaustion requirement is necessary to protect tribal self-
11 governance or to control internal relations. Maintaining the instant action in this
12 Court would not infringe on the right of the Yakama Nation to make their own
13 laws and be ruled by them. Any claim that litigating the instant action in this
14 Court would infringe upon the Yakama Nation's right to make its own laws
15 would be unsupported because the Yakama Nation has not yet chosen to adopt 28
16 U.S.C. § 2201. Additionally, the Yakama Nation has not adopted any statutes
17 governing the application of insurance contracts. The issues in the instant action
18 pertain solely to the terms of the Policy and not any law of the Yakama Nation.
19 Based on the foregoing reasons, this Court should find that litigating the instant
20 action in this Court would not infringe on the Yakama Nation's self-governance
21 or right to make its own laws.

22 Finally, the fact that the Yakima Nation has not adopted the Federal
23 Declaratory Judgment Act would also result in mere delay caused by lack of

jurisdiction. UFCC filed the instant action seeking declaratory relief under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201. Dkt. at 3. The Yakama Nation has not adopted 28 U.S.C. § 2201 and therefore the Tribal Court lacks subject matter jurisdiction over UFCC's claims. It would be determined that the Tribal Court has no jurisdiction over UFCC's claims and therefore, the case would be transferred once again to this Court. Based on the Yakama Nation lacking the ability to give UFCC the declaratory relief it seeks and the Cardenas Defendants being indispensable parties over which the Tribal Court does not have jurisdiction, this Court should find that the exception to the exhaustion requirement found in *Nevada* applies.

V. CONCLUSION

Based on the foregoing, United Financial Casualty Company asks that the Spencer Defendants' Motion to Dismiss be denied.

DATED this 29th day of December, 2020.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies under the penalty of perjury under the laws of the State of Washington that on this date I caused to be served in the manner noted below a true and correct copy of the foregoing on the following party(ies):

Jack W. Fiander
Towtnuk Law Offices, Ltd.
Sacred Ground Legal Services Inc.
5808A Summitview Avenue, #93
Yakima, Wa 98908

By: ☐ **First Class Mail** ☒ **ECF** ☐ **Legal Messenger**

DATED this 29th day of December 2020 at Seattle, Washington.

/s/ Judy Tustison

Judy Tustison | Paralegal