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Coyote Valley Band of Pomo Indians

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COYOTE VALLEY BAND OF POMO
INDIANS, a federally recognized Indian tribe,

Plaintiff,

v.

ROBERT FINDLETON, doing business as Terre
Construction and On-Site Equipment; ANN C.
MOORMAN, Judge of the Superior Court of
Mendocino County, California, in her official
capacity; SAVINGS BANK OF MENDOCINO
COUNTY, a California corporation; JOHN AND
JANE DOES 1-10; ABC CORPORATIONS 1-
10; and XYZ LLCs 1-10,

Defendants.

Case No. 4:22-cv-00607-JST

**EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER**

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED that the Plaintiff Coyote Valley Band of Pomo Indians (“Tribe”) will move for a temporary restraining order (“TRO”) pursuant to Rule 65 of the Federal Rules of Civil Procedure against Defendant Robert Findleton (“Findleton”), doing business as Terre Construction and On-Site Equipment, the Honorable Ann C. Moorman, in her official capacity as Judge of the Superior Court of Mendocino County, California (the “State Court”), and an additional Defendant Savings Bank of Mendocino County (“Savings Bank”). The Tribe filed a First Amended Complaint that names as an additional Defendant Savings Bank. As set forth in detail below, the Tribe seeks a TRO that enjoins Findleton from pursuing, the State Court from facilitating, and the Savings Bank from allowing the garnishment of certain funds from the Tribe’s accounts at Savings Bank. Moreover, the developments regarding the garnishment of restricted tribal funds underscores the need for the relief set forth in the Tribe’s pending Motion for Preliminary Injunction (Doc. 9) and compels the Tribe to move for a TRO consistent with the same.

DATED this 3rd day of February, 2022.

CEIBA LEGAL, PC

By:



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*Attorneys for Plaintiff
Coyote Valley Band of Pomo Indians*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 *With earnest, the Tribe respectfully requests the Court's immediate involvement to*
3 *temporarily restrain Findleton, the State Court, and Savings Bank from deepening the irreparable*
4 *harm to the Tribe.* For the sake of brevity, the Tribe incorporates by reference the Verified Complaint
5 [Doc. 3], First Amended Complaint [Doc. 26], the Motion for Preliminary Injunction (the "PI Motion")
6 [Doc. 9], the Motion for Leave to Deposit Funds with the Court [Doc. 7] (the "Rule 67 Motion"), and
7 the Declaration of Scott Crowell and the Declaration of Little Fawn Boland filed in support of this
8 emergency motion. Moreover, this Motion supplements and should be considered with the
9 background and argument sections set forth in the Motion for Preliminary Injunction.

10 As set forth in the PI Motion, First Amended Complaint, and Verified Complaint, Findleton
11 and the State Court have disregarded the Tribe's sovereignty and sovereign immunity and flouted the
12 Coyote Valley Tribal Court's (the "Tribal Court") orders. Since the Tribe filed the Verified Complaint
13 and PI Motion, however, Findleton, the State Court, and now Savings Bank have again disregarded the
14 Tribe's sovereignty and sovereign immunity by taking additional actions that further exacerbate the
15 conflict between the Tribal Court's and State Court's orders. Indeed, in plain disregard for the Tribal
16 Court's Permanent Injunctions and a Temporary Restraining Order the Tribal Court entered on January
17 22, 2022, and despite the State Court's plain lack of subject-matter jurisdiction, Savings Bank debited
18 \$298,514.80 from the Tribe's Account No. 7444 (the "Garnished Funds") pursuant to writs of
19 execution issued by the State Court in the matter styled as *Findleton v. Coyote Valley Band of Pomo*
20 *Indians*, Case No. SCUK CVG 12-59929 (the "State Court Proceedings") and hand delivered a
21 cashier's check ("Cashier's Check") for such amount with the Mendocino County Sherriff's Office.
22 The Tribe is informed and believes that the Cashier's Check (Garnished Funds) will be delivered to
23 Findleton forthwith—if he has not already received them.

24 Garnishment of the Tribe's assets pursuant to orders of a tribunal that lacks jurisdiction deepens
25 the already irreparable harm to the Tribe. *See, e g., Ute Indian Tribe of the Uintah and Ouray*
26 *Reservation v. Lawrence (Lawrence II)*, __ F.4th __, 2022 WL 53421, at *11 (10th Cir. 2022)
27 (recognizing that compelling a sovereign tribe to expend time and effort in a tribunal that lacks
28 jurisdiction constitutes irreparable harm); *Seneca-Cayuga Tribe of Okla. v. State of Okla.*, 874 F.2d

709, 716 (10th Cir. 1989) (recognizing that an Indian tribe suffers irreparable harm when it is “forced to expend time and effort on litigation in a court that does not have jurisdiction over it”). Accordingly, the Tribe seeks a temporary restraining order requiring the following: (1) Findleton shall immediately deposit the Cashier’s Check (Garnished Funds) with the Court pursuant to Fed. R. Civ. P. 67, or if not yet cashed, immediately return to Savings Bank the Cashier’s Check such that it will deposit the funds back into the Tribe’s account ending in #7444; (2) if Findleton has not received the Cashier’s Check, Savings Bank shall immediately cancel it and credit the Tribe’s account in an amount equal to the Garnished Funds; (3) the State Court shall immediately stay any and all writs of execution issued in the State Court Proceedings; and (4) the State Court shall immediately issue a stay of the State Court Proceedings.

I. BACKGROUND

Over the last few months, the Tribe informed Findleton’s legal counsel of its intent to file the instant lawsuit in several filings in the State Court. Afterwards, on January 13, 2022, Findleton served five writs of execution (“Writs of Execution”) on Savings Bank totaling \$298,514.80. On January 20, 2022, without prior warning from the Bank or Findleton, the Tribe received a letter from Savings Bank stating that the Tribe’s accounts would be debited pursuant to the Writs of Execution the next day. This prompted the Tribe’s counsel to contact Findleton’s counsel and propose that the funds be placed into escrow for release if the Tribe does not prevail on the claims alleged in the Verified Complaint or, alternatively, be deposited with this Court pursuant to the Tribe’s pending Rule 67 Motion. Findleton’s legal counsel promptly rejected the proposal.

Since the Tribe first received the letter from Savings Bank, the Tribe filed two Ex Parte Applications for Stay of Writ of Execution (the “Applications”) with the Mendocino County Superior Court (the “State Court”). Decl. of Little Fawn Boland [hereinafter “Boland Decl.”], attached as **Exhibit 1** ¶ 5 & Exs. A & B. The Tribe’s first Application sets forth a proposal to place the funds in question, plus an additional amount to cover one year’s worth of interest, into escrow pending a decision on the merits in the above-captioned matter. *Id.* ¶ 6& Ex. A. The State Court took issue with the lack of a date-certain on which the funds would be disbursed and denied the Tribe’s Application. *Id.* ¶ 7. The Tribe filed a second Application with a revised proposal that would allow the funds to be

1 disbursed within one year or upon a decision on the merits, whichever occurs first. *Id.* ¶ 8 and Ex. B.
2 The State Court’s ruling on the Tribe’s second Application remains forthcoming. *Id.* ¶ 9.

3 On January 21, 2022, after giving Savings Bank notice and an opportunity to be heard, wherein
4 legal counsel for Savings Bank, Michaelyn P. Wipf, appeared, the Coyote Valley Tribal Court (“Tribal
5 Court”), a member court of the Northern California Intertribal Court System, entered a Temporary
6 Restraining Order (the “Tribal Court TRO”) in Case No. CIV-2022-001-JW (the “Savings Bank
7 Proceedings”). Decl. of Scott D. Crowell [hereinafter “Crowell Decl.”], attached as **Exhibit 2**, at ¶ 3.
8 The Tribal Court TRO declares that \$298,514.80 on deposit with Savings Bank, and of which
9 Findleton seeks garnishment in connection with the State Court proceedings, is “the property of the
10 Tribe” and “cannot be garnished or transferred without the Tribe’s consent.” *Id.* ¶ 4. The Tribal Court
11 TRO further states that Savings Bank “is temporarily restrained from garnishing the funds in any of the
12 Tribe’s accounts held at the Bank . . . until further notice from [the Tribal] Court.” *Id.* ¶ 5. At the
13 January 21, 2022 hearing, after consideration of arguments and analysis by legal counsel for the Tribe
14 and Savings Bank, the Tribal Court set the matter for a hearing on February 2, 2022 at 11:00 a.m. to
15 assess whether the TRO should be extended. *Id.* ¶ 6. Ms. Wipf represented at that hearing that she
16 understood what the Tribal Court’s TRO requires and that Savings Bank would comply with the TRO.
17 *Id.* ¶ 7.

18 On January 21, 2022 the Tribal Court TRO was served on counsel for Savings Bank. *Id.* ¶ 8.
19 On January 28, 2022, however, another attorney with the Bank named James King informed the
20 Tribe’s counsel that Savings Bank had questions about whether it was bound by the Tribal Court TRO.
21 *Id.* He reiterated, however, that Savings Bank intended to comply with the Tribal Court TRO at least
22 until after the February 2, 2022 Tribal Court hearing on the Tribe’s request for a preliminary
23 injunction. *Id.*

24 In a complete reversal from its prior position, late in the day on January 31, 2022 Savings Bank
25 filed a Special Appearance and Objection to Jurisdiction of Tribal Court (the “Objections”) in the
26 Savings Bank Proceedings. *Id.* ¶ 9. In the Objections, the Bank acknowledges having entered into a
27 contract with the Tribe that “will be governed by and interpreted in accordance with all applicable
28 federal and California laws and regulations” but contends that the Tribal Court “lacks power to enforce

1 its orders against non-Indian corporations and entities [that] are situated off-reservation.” *Id.* ¶ 10.
2 Savings Bank also requested that the Tribal Court TRO be “dissolved” and the Savings Bank
3 Proceedings “be dismissed.” *Id.* ¶ 11. The same day, without notifying the Tribe, and despite the
4 Tribal Court TRO, Savings Bank debited the Garnished Funds (\$298,514.80) from the Tribe’s bank
5 account ending in #7444 and issued the Cashier’s Check in that amount to the Mendocino County
6 Sheriff (the “Sheriff”) pursuant to the Writs of Execution. *Id.* ¶ 12. The Objections do not mention that
7 the Bank debited the Garnished Funds from the Tribe’s account, yet it appears Savings Bank debited
8 the Garnished Funds before it filed the Objections with the Tribal Court.

9 On February 2, 2022, the Tribal Court conducted a hearing—of which Savings Bank had prior
10 notice—regarding an extension of the Tribal Court TRO. *Id.* ¶ 13. After counsel for Savings Bank
11 failed to appear, the Tribe’s counsel called Mr. King during the hearing and informed him that the
12 Tribal Court was waiting for Savings Bank to enter an appearance. *Id.* ¶ 14. Mr. King refused to
13 participate, however, and stated that the “hearing was moot” because Savings Bank had already
14 debited the Tribe’s account and had given the Cashier’s Check to the Sheriff. *Id.* The Tribe is
15 informed and believes that delivery of the Garnished Funds to Findleton is imminent.

16 **II. JURISDICTION/STANDARD**

17 The PI Motion sets forth this Court’s jurisdiction over Findleton and the State Court. The Tribe
18 filed a Verified First Amended Complaint, which asserted a new cause of action for recognition and
19 enforcement of the two Tribal Court TRO’s and naming Savings Bank as a Defendant. *Id.* ¶ 13. The
20 Court also has jurisdiction over the Tribe’s forthcoming claims against Savings Bank, which will seek
21 recognition and enforcement of the Tribal Court TRO, under 28 U.S.C. §§ 1331, 1362. *See Coeur*
22 *D’Alene Tribe v. Hawks*, 933 F.3d 1052, 1057 (9th Cir. 2019); *Ute Indian Tribe of the Uintah & Ouray*
23 *Rsrv. v. Lawrence (Lawrence I)*, 875 F.3d 539, 543 (10th Cir. 2017).

24 Courts in the Ninth Circuit must enter a temporary restraining order when, as here, the plaintiff
25 satisfies one of two alternative tests. Under the first alternative, injunctive relief should be granted
26 when the plaintiff demonstrates the following: (1) a likelihood of success on the merits; (2) a
27 likelihood that the plaintiff will suffer irreparable harm absent an injunction; (3) the balance of equities
28 tips in the plaintiff’s favor; and (4) injunctive relief is in the public interest. *Alliance for the Wild*

1 *Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). Alternatively, courts in the Ninth Circuit
2 grant injunctive relief when the plaintiff shows “there are at least serious questions on the merits” and
3 the “balance of hardships tips sharply in its favor.” *Id.* at 1135; *see also id.* (stating that the trial court
4 “did not apply the ‘serious questions’ test” and therefore “made an error of law in denying [a]
5 preliminary injunction”). These same standards are set forth in the Tribe’s Motion for Preliminary
6 Injunction (Doc. 9 at pp. 7–8), and are equally applicable to motions for temporary restraining orders.
7 *Stuhlbarg Int’l Sales co. v. John D. Brush & Co.*, 240 F.3d 832, 839, n. 7 (9th Cir. 2001). Thus, the
8 Court should grant the Tribe’s Motion because, for the reasons below, the Tribe satisfies both tests.

9 **III. ARGUMENT**

10 **A. THE TRIBE IS LIKELY TO SUCCEED ON THE MERITS BECAUSE**
11 **THE TRIBAL COURT HAS JURISDICTION OVER THE UNDERLYING**
12 **DISPUTE, AND PRINCIPLES OF COMITY WEIGH IN FAVOR OF**
13 **ENFORCING THE TRIBAL COURT’S ORDERS.**

14 The Tribe sets forth in its Motion for Preliminary Injunction (Doc. 9 at pp. 8–20), the analysis
15 that it is likely to succeed on the merits of its claims against Findleton and the State Court. That same
16 analysis applies to the forthcoming claims against Savings Bank. Indeed, because Savings Bank
17 entered into a contractual relationship with the Tribe that is expressly governed by all applicable
18 federal laws, Crowell Decl. ¶ 14, Savings Bank “should have reasonably anticipated that [its]
19 interactions might ‘trigger’ tribal authority.” *Water Wheel Camp Rec. Area, Inc. v. LaRance*, 642 F.3d
20 802, 817–18 (9th Cir. 2011) (alterations in original) (quoting *Plains Com. Bank v. Long Family Land*
21 *& Cattle Co.*, 554 U.S. 316, 337 (2008)). Additionally, the Tribe possesses *in rem* jurisdiction over
22 Tribal property. See, Section 03 of the Enforcement of Judgments Ordinance, which states “[t]he
23 Tribal Court shall have exclusive jurisdiction over the Execution of a judgment on any property (real
24 or personal) within the boundaries of the reservation, and over any property, regardless where located,
25 of the Tribe and Tribal Entities.” (Enforcement of Judgments Ordinance, Ex. Q to Verified
26 Complaint); *see also*, Henry S. Noyes, *A “Civil” Method of Law Enforcement on the Reservation: In*
27 *Rem Forfeiture and Indian Law*, 20 Am. Indian L. Rev. 307 (1996). The funds Savings Bank is
28 disbursing through garnishment proceedings are undeniably Tribal property, and the Tribal Court

1 TRO, issued pursuant to the Tribal Court’s jurisdiction over that Tribal property and over Savings
2 Bank, is valid and should be respected under principles of comity.

3 No exceptions to enforcement of the Tribal Court TRO under comity principles apply to
4 Savings Bank. The Tribal Court clearly afforded Savings Bank due process as required by *Wilson v.*
5 *Marchington*, 127 F.3d 805, 811 (9th Cir. 1997). Indeed, it is telling that Savings Bank knowingly filed
6 its Objections with the Tribal Court after or at the same time it remitted the Garnished Funds, such
7 action was clearly intended to deprive the Tribal Court an opportunity to consider and rule on the
8 Objections, or otherwise to moot the Tribal Court proceedings.

9 The Tribal Court TRO was not obtained by fraud and, for the same reasons set forth in the
10 Motion for Preliminary Injunction, and does not conflict with another final judgment that is entitled to
11 recognition. Moreover, because all applicable federal laws govern the Tribe’s agreement with Savings
12 Bank, including *Montana* and its progeny, recognition and enforcement of the Tribal Court TRO is
13 also consistent with the parties’ contractual choice of forum. *See Wilson*, 127 F.3d at 810.

14 Recognition and enforcement of the Tribal Court TRO protects the Tribe from unlawful
15 deprivation of its assets pending a decision on the merits in the above-captioned matter, such that
16 doing so is not “against the public policy of the United States or the forum state in which recognition
17 of the [order] is sought.” *Id.*; *Somportex Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 440
18 (3d Cir. 1971) (“Comity should be withheld only when its acceptance would be contrary or prejudicial
19 to the interest of the nation called upon to give it effect.”). The Tribe is therefore likely to succeed on
20 the merits of its forthcoming claim for recognition and enforcement of the Tribal Court TRO as against
21 Savings Bank. The analysis set forth herein regarding Savings Bank, and the analysis set forth in the PI
22 Motion regarding Findleton and the State Court, establish that the Tribe is likely to prevail on the
23 merits of its claims against Findleton, the State Court, and Savings Bank.

24 **B. FOR THE REASONS SET FORTH IN THE MOTION FOR**
25 **PRELIMINARY INJUNCTION, ALL OTHER ELEMENTS OF THE TEST**
26 **FOR GRANTING A PRELIMINARY INJUNCTION ARE SATISFIED.**

27 The Tribe sets forth in its Motion for Preliminary Injunction (Doc. 9 at pp. 20–23), the analysis
28 that it is will suffer irreparable harm if the requested injunctive relief against Findleton and the State
Court is not granted, that the balance of harms weighs heavily in favor of the Tribe (particularly with

1 the Tribe's offer to create an escrow account in an amount sufficient to pay the disputed funds or
2 alternatively the Tribe's Rule 67 Motion to deposit such funds with this Court), and that the public
3 interest is better served by granting the requested relief. That same analysis applies to the forthcoming
4 claims against Savings Bank. Moreover, Tribal Account #7444, is used to hold specific funds received
5 from federal programs and self-governance contracts and state grants. Crowell Decl. at ¶ 18. Account
6 #7444 does not hold or contain any other type of funds, nor has it ever held or contain any other type
7 of funds. *Id.* Payment of the funds in Tribal Account # 7444 to Findleton is not an authorized use of
8 federal grant funds. Accordingly, the disbursement to Findleton subjects the Tribe to possible
9 debarment from receiving future funding, administrative recoveries of funds, civil law suits and
10 criminal prosecution— or a combination of all or some of consequences. *See* Ex. D to Crowell Decl.
11 These facts specific to the new efforts by Findleton and facilitation by the State Court to garnish Tribal
12 Account # 7444, further evidence the irreparable harm to be suffered by the Tribe if the requested TRO
13 and Preliminary Injunctions are not granted, and further tip the balance of hardships sharply in favor of
14 granting the requested relief.

15 The Tribe established all elements required for entry of a temporary restraining order and
16 preliminary injunction against Findleton, the State Court, and Savings Bank.


17 **IV. CONCLUSION**

18 For the reasons above and in the pending Motion for Preliminary Injunction the Tribe
19 respectfully requests that the Court grant this Motion and enter a Temporary Restraining Order
20 requiring the following: (1) Findleton shall immediately deposit the Cashier's Check (Garnished
21 Funds) with the Court pursuant to Fed. R. Civ. P. 67, or if not yet cashed, immediately return the
22 Cashier's Check to Savings Bank; (2) if Findleton has not received the Cashier's Check or returns it to
23 Savings Bank, Savings Bank shall immediately cancel the Cashier's Check and credit the Tribe's
24 account ending in 7444 in an amount equal to the Garnished Funds; (3) the State Court shall
25 immediately stay any and all writs of execution issued in the State Court Proceedings; and (4) the State
26 Court shall immediately issue a stay of the State Court Proceedings.

27 DATED this 3rd day of February, 2022.

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