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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

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT ROBERT FINDLETON'S MOTION TO DISMISS PURSUANT TO FRCP 12(b)(1) and (6)

Date: March 24, 2022
Time: 2:00 p.m.
Judge: Hon. Jon S. Tigar

Re: ECF No. 26

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I. INTRODUCTION

By the time this motion to dismiss is heard, set now for March 24, 2022, the underlying state litigation will have spanned a decade. In those ten years the tribe has refused to comply with orders to mediate and arbitrate, refused to pay awards of attorney fees on appeal, refused to comply with orders to produce documents, refused to cooperate in the orderly examination of debtors to effectuate collection of valid state court judgments, refused to pay sanctions awards, refused to comply with orders of the state appellate court, and now seeks relief in a federal district court to sanction this blatant disregard of law of the case, comity and basic principles of federal jurisprudence.

Plaintiff Coyote Valley Band of Pomo Indians (the "Tribe") seeks injunctive relief to stay enforcement of pending state court judgments and to declare valid tribal court rulings where that tribal court was not created until after Defendant Robert Findleton filed his petition to compel mediation and arbitration on March 23, 2012. (*Findleton v. Coyote Valley Band of Pomo Indians*, 1 Cal.App.5th 1194, 1202 (2016)(*Findleton I*)). In the past ten years there have been nine actions in the appellate court, all ruled in Findleton's favor, and three published appellate opinions. In *Findleton I*, the court of appeal found tribal waiver of sovereign immunity and reversed the trial court's order quashing service of petition to arbitrate. (*Findleton I*, 1 Cal.App.5th at 1217).

In *Findleton II*, the court of appeal upheld an attorney fee on appeal order. (*Findleton v. Coyote Valley Band of Pomo Indians*, 27 Cal.App.5th 565, 572 (2018)(*Findleton II*), stating:

> This argument [tribal immunity], too, is barred by law of the case because in the prior appeal we reversed the trial court's grant of the motion to quash for lack of jurisdiction and remanded the case to the superior court for further proceedings. We necessarily decided that the tribe waived its sovereign immunity *and thereby conferred jurisdiction on*

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> *the superior court* (as well as the state appellate courts) – not to resolve the underlying dispute, but *to enforce the arbitration clauses* in the agreements.

Findleton II, 27 Cal.App.5th at 572. (emphasis in original).

Findleton III involved the rare use of the disentitlement theory where the appellate court gave the Tribe until January 31, 2022 to comply with the orders it had continually flouted or its appeals would be dismissed. The Tribe did not comply and those orders are now final and Findleton is pursuing his remedies under California Enforcement of Judgment Law.

The Tribe has failed to present a federal question to justify this court's subject matter jurisdiction. The Tribe's action is barred by the Anti-Injunction Act. The Tribe's action seeks a federal district court to enjoin state proceedings which are ten years running and where the law of the case is settled, despite the Tribe's continuous protestations to the contrary. The *Rooker-Feldman* doctrine applies here; there is no jurisdiction for a district court to sit in review of state court judgments. Finally, the *Younger* abstention doctrine applies to allow pending state proceedings to run their due course free of interference from the federal court system.

II. STATEMENT OF FACTS

This dispute sprouted as a garden variety construction contract claim. The Coyote Valley Band of Pomo Indians (the "Tribe") sought to develop tribal lands into a casino. On June 2, 2007 the Tribe adopted Coyote Valley Tribal Council Resolution #07-01 delegating authority from the General Council of the Tribe to the Tribal Council to waive tribal immunity in order to induce non-Indian contractors to bid on the project. On August 14, 2007 the Tribe adopted Coyote Valley Tribal Council Resolution #07-09 "Repeal of Certain Tribal Laws." On October 4, 2007, Defendant Robert Findleton and the Tribe, on an instrument provided by the Tribe, entered the Construction Contract, which contained an arbitration clause. Prior to executing the contract,

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Findleton was informed that the tribe had repealed all laws except the ones necessary for the state compact and casino, and no tribal laws applied to this contract. On November 7, 2007, the parties entered the Equipment Rental Agreement, which also contained an arbitration clause.

On March 1, 2008, the tribe met and adopted Coyote Valley Band of Pomo Indians Resolution #08-01, by which the General Council delegated to the Tribal Council authority to waive tribal immunity for purposes of enforcement of the casino development agreements.

With the financial meltdown in 2008, the project had problems and the Tribe notified Findleton by August 8, 2008 letters they had to suspend construction, and promised to pay outstanding amounts. In August of 2008 Findleton met with tribal members, including members of the Tribal Council, and offered a work out, where he would continue to do additional work, would defer payment if the tribe agreed to pay interest on the deferred payment and conditioned on the tribe's waiving sovereign immunity as to enforcement of the agreements. (August 19, 2008 Third Amendment to Agreement). The day after this meeting the tribe had a meeting and adopted Resolution CV-08-20-08-03, which has been held by the state trial and appellate courts to have been an effective and express waiver by the tribe of its tribal immunity as to enforcement of the agreements, which contained an arbitration clause.

Findleton completed work based on the Third Amendment to Agreement and Resolution CV-08-20-08-03. He billed monthly with interest, the Tribe acknowledged the billings and continued promises to pay. In January 2011 the Tribe notified all contractors they would not pay, due to sovereign immunity and failure of contractors to file a claim. Findleton timely filed a claim, then filed for mediation and arbitration which the tribe refused to participate. On March 23, 2012 Findleton filed a petition in state court to compel mediation and arbitration. Ten years

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later we are in this United States District Court wherein the Tribe seeks federal injunctive relief against pending state court judgments.

CHRONOLOGY

1. June 2, 2007	Coyote Valley Tribal Council Resolution #07-01 Delegated authority to waive tribal immunity
2. August 14, 2007	Coyote Valley Tribal Council Resolution #07-09 Repeal of Certain Tribal Laws (obtained in May 2019)
3. October 4, 2007	AIA Document A107-1997 (modified) Construction Contract Arbitration clause, attorney fee clause
4. November 7, 2007	On-Site Equipment Master Rental Contract Arbitration clause, attorney fee clause
5. March 1, 2008	Coyote Valley Band of Pomo Indians Resolution #08-01 Delegated authority to waive tribal immunity
6. August 8, 2008	Coyote Valley Band of Pomo Indians letter, project suspension and intention to pay
7. August 19 2008	Third Amendment to Agreement Meeting with tribal council members confirming waiver
8. August 27, 2008	Resolution No. CV-08-20-08-03 Express waiver of tribal immunity as consideration
9. January 31, 2011	Coyote Valley Band of Pomo Indians letter, first notice of nonpayment of claim
10. July 29, 2011	Findleton filed Claim with Coyote Valley Band of Pomo Indians
11. March 9, 2012	Findleton filed Request for Mediation with AAA Further attempts thwarted by tribe
12. March 23, 2012	Findleton v. Coyote Valley Band of Pomo Indians, SCUK-CVG 2012-59929 Mendocino Superior Court
13. May 19, 2014	Defendant granted motion to quash, due to sovereign immunity (reversed on appeal July 29, 2016, Findleton I)
14. November 25, 2014	Defendant awarded attorney fees and costs Tribe filed motion August 22, 2014 (reversed on appeal October 3, 2016)
15. July 29, 2016	*Findleton I*, finds subject matter jurisdiction to enforce contract Tribe waived immunity
16. April 25, 2017	Order Compelling Mediation and Arbitration

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17. September 25, 2018	*Findleton II*, affirming fee award with costs incurred to enforce arbitration
18. December 10, 2018	Order Granting Plaintiff's Motion for Sanctions
11. April 26, 2019	Order Denying Defendant's Amended Motion for Clarification
12. April 26, 2019	Order Denying Defendant's Motion for Exemption from Enforcement of a Money Judgment
13. April 29, 2019	Order Granting Plaintiff's Motion for an Order Requiring Undertaking to Stay Execution On Order Awarding Sanctions and Motion for Order Directing Issuance of a Writ of Execution
14. December 13, 2019	Order Granting Plaintiff's Motion to Compel Responses to Plaintiff's Amended First Set of Requests for Production of Documents
15. September 19, 2021	*Findleton III*, A156459 (First Appellate District, Division Two) Conditionally dismissing on disentitlement doctrine Tribe's five appeals of orders compelling mediation and arbitration, compelling discovery and imposing sanctions, ordering an undertaking, denying an exemption from execution and denying clarification of an order denying the exemption. Conditions have not been met.

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13.	April 29, 2019	Order Granting Plaintiff's Motion for an Order Requiring Undertaking to Stay Execution On Order Awarding Sanctions and Motion for Order Directing Issuance of a Writ of Execution	2381
14.	December 13, 2019	Order Granting Plaintiff's Motion to Compel Responses to Plaintiff's Amended First Set of Requests for Production of Documents	215 (CT2)
15.	September 29, 2021	*Findleton III*	

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Numbers refer to the clerk's transcript on appeal, CT is the Clerk's Transcript on Appeal in *Findleton III,* A158173, CT2 is Clerk's Transcript Supplemental in *Findleton III*, A159823

III. ARGUMENT

A. The Tribe Has Not And Cannot Establish A Federal Question Under 28 U.S.C. §1362 FRCP 12(b)(6)

1. There is no Controversy Arising "Under the Constitution, Laws, Or Treaties of the United States"

The Tribe relies on 28 U.S.C. §1362 as the basis for federal subject matter jurisdiction. (First Amended Complaint (FAC) ¶8 at 2:27 – 3:1).

28 U.S.C. §1362 states:

> The district courts shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States.

28 U.S.C. §1362.

However, §1362 does not grant jurisdiction to every suit by a tribe where the United States could bring an action on behalf of the tribe under 28 U.S.C. §175. Thus a simple contract dispute raising no federal question is not within the statute. (13D Wright, Miller, Kane, Amar, Federal Practice & Procedure: Jurisdiction & Related Matters §3579 (3d ed. 2010); *Gila River Indian Community v. Henningson, Durham & Richardson*, 626 F.2d 708, 714 (9th Cir. 1980) (holding that §1362 did not apply because "[t]here is nothing in the present case which suggests that the action is anything more than a simple breach of contract case.”))

The test of applicability of 1362 is not whether a Tribe is plaintiff but whether Congress has clearly created a federal right or remedy which is enforceable in a federal court of equity

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and the only way to give effect to that right is to stay an ongoing state proceeding. (*Mitchum v. Foster*, 407 U.S. 225, 238, 92 S.Ct. 2151, 32 L.Ed.2d 705 (1972)).

The Tribe's action sounds in equity, seeking federal district court relief after repeatedly losing in state courts for nigh on a decade. Federal trial courts do not sit to review state court proceedings a decade old regarding a construction contract dispute.

2. The Tribe Seeks to Enjoin Enforcement of Valid Pre-existing State Judgments

The Tribe's request for injunctive relief is directed at the power of a court of general jurisdiction, the Mendocino County Superior Court, which over the last ten years has issued a series of orders compelling mediation and arbitration, compelling production of documents, imposing attorney fees and sanctions, and compelling compliance with orderly examination of debtors to obtain information to enforce valid state court judgments. The tribe has consistently ignored all these orders, claiming immunity and validity of tribal orders despite repeated orders of the trial and appellate court to the contrary.

The subject matter jurisdiction of the state court has been ruled upon and is law of the case. The waiver of tribal immunity has been ruled on and is law of the case. Such decisions of the state court cannot be attacked, in effect on appeal, in the federal district court. (*Jena Band of Choctaw Indians v. Tri-Millennium Corp., Inc.*, 387 F.Supp.2d 671, 674-675 (W.D.La. 2005)(*Jena*)).

In *Jena*, Defendants sued a federally recognized Indian tribe in state court for breach of contract arising out of agreements between the parties to develop a casino. (*Jena*, 387 F.Supp. at 673). The tribe did not seek to remove, but brought suit in federal court seeking a declaration that the contracts were void as unapproved management contracts under the Indian Regulatory

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Gaming Act (IRGA) and that the state court lacked subject matter jurisdiction. (*Jena*, 387 F.Supp. at 673).

The federal court stayed its proceedings under the Anti-Injunction Act and the state court subsequently held that it had subject matter jurisdiction over the dispute in state court. The tribe then resubmitted its request to the federal court to declare the state court without jurisdiction. (*Jena*, 387 F.Supp. at 674). The district court held that the tribe had fully litigated the issue of subject matter jurisdiction in the state trial court, upheld by the state appellate court. Therefore, under principles of res judicata, the district court was bound by the state court's determination. (*Jena*, 387 F.Supp. at 674-75).

As applicable here, the *Jena* court stated:

> Plaintiffs fully litigated the issue of subject matter jurisdiction before the state court and appealed the state court's decision. This court, therefore, is bound by the state court's determination that it had subject matter jurisdiction. Simply put, this court is without jurisdiction to reconsider the state court's determination.

Jena, 387 F.Supp. at 675.

The Tribe cites *Coeur D'Alene Tribe v. Hawks*, 933 F.3d 1052 (9th Cir. 2019)(*Coeur D'Alene*) and *Ute Indian Tribe of Uintah & Ouray Reservation v. Lawrence*, 18-4013 (10th Cir., Jan 6, 2022)(*Ute Indian Tribe*) as providing a basis of federal subject matter jurisdiction. Both are distinguishable. In *Coeur D'Alene* the Tribe sued Hawks in Tribal Court regarding an encroachment into tribal lands by a non-Indian. Hawks was defaulted in Tribal Court and the Tribe then sought federal enforcement of the tribal court decision against Hawks.

The *Coeur D'Alene* court held that federal question jurisdiction does not exist "merely because an Indian tribe is a party . . .", rather, a "specific rule of federal common law under which the Tribe's case arises" must be articulated. (*Coeur D'Alene*, 933 F.3d at 1055). The court

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held that after taking default against Hawks in tribal court, and seeking enforcement in federal court, the Tribe was "pressing the outer boundaries of its authority over non-members." (*Coeur D'Alene*, 933 F.3d at 1059, *citing Chilkat Indian Village v. Johnson*, 870 F.2d 1469, 1473-75 (9th Cir. 1989), *quoting National Farmers Union Insurance Cos. V. Crow Tribe of Indians*, 471 U.S. 845, 847, 105 S.Ct. 2447, 85 L.Ed.2d 818 (1978)). Since the tribe's enforcement action required a showing of authority of the tribal court against non-members, the court held that the tribe's invocation of its sovereign powers over reservation land against non-members "inhered in the district court complaint." (*Id.*)

Coeur D'Alene strictly circumscribed its holding, stating "[o]ur decision today should not be construed as recognizing federal question jurisdiction anytime a tribe sues a non-member." (*Coeur D'Alene*, 933 F.3d at 1060; *Gila River*, 626 F.2d at 715 ("Otherwise the federal courts might become a small claims court for all disputes.")).

Here, the tribal court was held to have been fraudulently set up after Findleton petitioned to compel arbitration in order to frustrate Findleton's ability to enforce the Construction and Equipment Rental Agreements and then the tribe engaged in a scorched earth take no prisoners litigation campaign to ignore, frustrate and impede the orderly procedure of judgment enforcement under valid state law.

In *Ute Indian Tribe of Uintah & Ouray Reservation v. Lawrence*, 18-4013 (10th Cir., Jan 6, 2022) a non-Indian sued Tribe in state court for breach of contract to pay percentage of mining revenue. Subsequently, Tribe filed suit in federal district court to challenge state court subject matter jurisdiction. The Court found Tribe did not consent to state court jurisdiction. By contrast, here, on appeal of an order quashing service of petition to compel mediation, the

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appellate court held there was an express consensual waiver of tribal immunity by the acts of the tribe in agreeing to the Third Amendment Agreement and by Resolution CV-08-20-08-03.

This action should be dismissed for failure of the Tribe to allege a Federal Question.

B. The Tribe's Motion for Preliminary Injunction Is Barred By The Anti-Injunction Act FRCP 12(b)(1)

1. The First Exception To The Anti-Injunction Act Does Not Apply

The Anti-Injunction Act provides:

> A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. §2283.

Congress adopted this restriction in deference to the essentially federal nature of our national government. (*Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 285, 90 S.Ct. 1739, 26 L.Ed. 234 (1970)(*Atlantic Coast*)). Our federal system of parallel state and federal judicial systems would not function if the courts were free to fight each other over control of a particular case. (*Atlantic Coast*, 398 U.S. at 286). Federal district courts "possess no power whatever to sit in direct review of state court decisions." (*Atlantic Coast*, 398 U.S. at 296).

Even if a state court is mistaken as to its own subject matter jurisdiction, state court litigation "must be allowed to run its course." (*Amalgamated Clothing Workers of America v. Richman Brothers*, 348 U.S. 511, 75 S.Ct. 452, 99 L.Ed. 600 (1955)(*Amalgamated Clothing*)). A party's bare assertion that the state court is "wholly without jurisdiction over the subject matter" is an insufficient basis by itself to apply an exception to the Anti-injunction Act. (*Amalgamated Clothing*, 348 U.S. at 515).

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The three statutory exceptions to the Anti-Injunction Act's bar on federal courts enjoining state court actions apply only when: (1) an injunction is "necessary in aid of [the federal court's] jurisdiction;" (2) Congress has expressly authorized such relief by statute; or (3) an injunction is necessary "to protect or effectuate [the federal court's] judgments." (*Alton Box Board Co. v. Esprit de Corp.*, 682 F.2d 1267, 1271 (9th Cir. 1982)(*Alton Box*)). The exceptions must be narrowly construed. (*Alton Box*, 682 F.2d at 1271).

The requested injunctive relief directed at the power of the Superior Court to adjudicate a pending action filed ten years ago falls squarely within the ambit of the Anti-Injunction Act. As stated above regarding the Tribe's lack of presenting a Federal Question, there is no necessity to aid federal jurisdiction as to a pending state court proceeding that has been dragging on for ten years. Quite the opposite, there is every reason to dismiss and there is no application of the first exception to the Anti-Injunction Act, there is no pending federal action, in rem or otherwise, justifying an exception.

2. The Second Exception To The Anti-Injunction Act Does Not Apply

The Tribe points to no Act of Congress allowing the tribe, after ten years of unsuccessful litigation in state court and serial refusal to comply with state court orders, to then seek federal declaratory relief to disrupt orderly proceedings to enforce the judgments under California Enforcement of Judgment Law. Clearly, the policy of the federal system in a matter such as this is to allow the state proceedings to run their course, with possible right to petition the United States Supreme Court for relief upon a final ruling of the California Supreme Court. But, a federal district court does not sit in direct review of pending state proceedings filed a decade ago and still lingering.

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3. The Third Exception To The Anti-Injunction Act Does Not Apply

The third exception to the Anti-Injunction Act is where an injunction is necessary to protect or effectuate a federal court judgment. This recent filing by the Tribe is the first federal action, there is no judgment to protect or effectuate at the federal level. There are several pending orders and judgments and levies in the state court. The Tribe seeks, hopefully in a last ditch effort, to avoid compliance with those valid state court judgments and enforcement of those judgments under California law. The third exception to protect or effectuate a federal court judgment is inapplicable.

The Anti-Injunction Act bars the very relief the tribe seeks.

C. The Tribe's Action is Barred By The *Rooker-Feldman* Doctrine Which Expressly Bars Subsequent Federal Direct Review Of State Court Judgments FRCP 12(b)(1)

1. This Federal Action Was Filed After Final State Court Judgments Were Entered And Ignored By The Tribe, At Both Trial And Appellate Levels

The *Rooker-Feldman* doctrine expressly bars federal district courts from reviewing state court decisions. (*Chemerinsky*, Federal Jurisdiction, §13.2 (8th ed. 2021)). In *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923)(*Rooker*) the court held that federal statutory jurisdiction over direct appeals from state courts lies exclusively with the United States Supreme Court and is beyond the jurisdiction of federal district courts. (*See also In re Gruntz*, 202 F.3d 1074, 1077, nt. 1 (9th Cir. 1999)(*Gruntz*)).

As the Ninth Circuit stated in *Gruntz*:

> At its core, the *Rooker-Feldman* doctrine stands for the unremarkable proposition that federal district courts are courts of original, not appellate, jurisdiction. See 28 U.S.C. §1331, 1332. Thus, it follows that federal district courts have "no authority to review the final determinations of a state court in judicial proceedings."

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Gruntz, 202 F.3d at 1078, *quoting Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir. 1986).

Gruntz explained that the *Rooker-Feldman* doctrine arises from a pair of negative inferences drawn from two statutes: 28 U.S.C. §1331, which establishes the district court's original jurisdiction of civil actions arising "under the Constitution, laws or treaties of the United States"; and 28 U.S.C. §1257, which allows Supreme Court review of "[f]inal judgments or decrees by the highest court of a State in which a decision could be had." *Gruntz*, 202 F.3d at 1078 and nt.2 (*Gruntz* held that a bankruptcy was a 'core' proceeding and the automatic stay could enjoin state proceedings and the *Rooker-Feldman* doctrine is not implicated).

In *D.C. Court of Apeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983)(*Feldman*) the court concluded that a federal district court has "no authority to review the final judgment of a state court in judicial proceedings." (*Feldman*, 460 U.S. at 482). As stated in *Johnson v. De Grandy*, 512 U.S. 997, 1005-1006, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994), the *Rooker-Feldman* doctrine provides that "a party losing in state court is barred from seeking what in substance would be appellate review of state judgment in a United States District Court based on the losing party's claim that the state judgment violates the loser's federal rights."

In *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 125 S.Ct. 1517, 161 L.Ed.3d 454 (2005)(*Exxon Mobil*), Justice Ginsberg reiterated the application of *Rooker-Feldman* to preclude district court review of prior state court judgments, stating that the doctrine:

> is confined to cases of the kind from which the doctrine acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.

Exxon Mobil, 544 U.S. at 284.

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Saudi Basic sued Exxon Mobil in state court seeking a declaratory judgment regarding royalties. Exxon Mobil filed a federal action alleging overcharging and Saudi Basic counterclaimed. Saudi Basic moved to dismiss the federal action, which was denied, Saudi Basic taking an appeal to the Third Circuit. While the appeal was pending the state court ruled in favor of Exxon Mobil. The Third Circuit dismissed the appeal under *Rooker-Feldman*. The United States Supreme Court, in a unanimous opinion, reversed, limiting *Rooker-Feldman* to situations, such as here, where the state court judgment was rendered prior to commencement of federal proceedings.

The Tribe's attempt for appellate review in federal district court is barred by classic application of the *Rooker-Feldman* doctrine.

2. The Tribe Has Unclean Hands After Repeated Failure To Comply With State Orders Compelling Mediation And Arbitration, Compelling Production Of Documents, Compelling Responses To Debtor's Examinations And For Sanctions And Attorney Fees

The law of this case is that by entering into the Third Amended Agreement and by enacting Resolution No. CV 08-20-08-03 the Tribe "effected an express waiver of the Tribe's immunity that was clear and unequivocal, and limited to Findleton's agreements with the Tribe, as amended by the proposal and the Third Amendment." (*Findleton I*, 1 Cal.App.5th at 1217).

This law of the case as to clear waiver of tribal immunity was reiterated in *Findleton II*, where the court stated:

> The Tribe rests its current sovereign immunity position in part on the contention that it did not waive its sovereign immunity as to the Rental Contract, which contains the attorney fee clause under which fees were awarded, and that the superior court therefore lacked jurisdiction to award fees under that contract. The problem with this argument is that we already decided in *Findleton I* that the Tribe waived its sovereign immunity not only as to the Construction Agreement but also as to the Rental Contract, and that decision is now law of the case.

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Findleton II, 27 Cal.App.5th at 571.

The court further stated that:

> We necessarily decided that the Tribe waived its sovereign immunity *and thereby conferred jurisdiction on the superior court* (as well as the state appellate courts) – not to resolve the underlying dispute but *to enforce the arbitration clauses* in the agreements. The Tribe is barred from rearguing the issues.

Findleton II, 27 Cal.App.5th at 572 (emphasis in original, citation omitted).

This action in federal court seeking to enjoin state court proceedings after a series of losses is itself a demonstration of the Tribe's unclean hands in refusing to abide by settled law of the case.

3. The First District Court Of Appeal Has Held That The Tribe Waived Tribal Immunity And That The Tribal Court Injunctions Have No Effect On Findleton's Pursuit Of Judgments Under California's Enforcement of Judgment Law

The Tribe seeks declaratory relief from this court to uphold the tribal court orders which are in direct opposition to the state court orders and judgments. There is no evidence that there was any tribal court in existence when Findleton filed his petition to compel mediation and arbitration. (*Findleton II*, 27 Cal.App.5th at 574; *Kremple v. Praire Island Indian Community*, 125 F.3d 621, 623 (8th Cir. 1997); *Johnson v. Gila River Indian Community*, 174 F.3d 1032, 1036 (9th Cir. 1999) ("Delay alone is not ordinarily sufficient to show that pursuing tribal remedies is futile. However, if a functioning appellate court does not exist, exhaustion is per se futile.")). It's not possible to exhaust a tribal court remedy that did not exist at the time the petition was filed.

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D. A Party Seeking Equitable Relief Must Do Equity, The Tribe's Unclean Hands Bar Issuance of any Injunctive Relief
FRCP 12(b)(6)

1. *Findleton III* Displays The Tribe's Utter Contempt for State Law

As stated recently by the court of appeals in *Findleton III*:

> The Tribe doubled down, refused to mediate or arbitrate, threatened to disparage AAA if it proceeded, petitioned a recently established tribal court, sought to relitigate in that court the issues this court and the superior court had already decided, persuaded the tribal court to enjoin arbitration and served the injunction on AAA, which at that point declined to mediate or arbitrate the dispute.

Findleton III, A156459 (First Appellate District, Division Two September 29, 2021) at 2.

In *Findleton III*, the Tribe sought to overturn on appeal while "continuing to flout the superior court's orders", orders imposing sanctions for refusal to comply with orders to mediate and arbitrate, compelling discovery and imposing sanctions, requiring an undertaking to stay execution and setting aside the Tribe's fraudulent conveyance, an order denying exemptions from execution and orders denying clarification of the order denying the exception. A more clear example of disregard of state law would be difficult to imagine.

2. The Superior Court Found The Tribe Fraudulently Conveyed Casino Assets

As held in *Findleton III*, the trial court found that the Tribe's subsequent filing in a recently formed tribal court was "designed to negate this Court's order compelling mediation and/or arbitration. . . and the Tribe's communication with AAA, were meant to intimidate the AAA from hearing the matter submitted by Mr. Findleton, directly contradicting and in contempt of this Court's order to compel . . ." (*Findleton III* at 17). The trial court imposed sanctions for refusal to comply with order compelling mediation and arbitration.

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The superior court held that casino assets traceable to accounts and during the term of the contracts and transferred to any entity owned by the Tribe would be "deemed available for execution . . . regardless of the putative current owner." (*Findleton III* at 19).

E. The *Younger* Abstention Doctrine Applies Avoiding Federal Intervention In Pending State Court Actions

As stated by Justice Black in *Younger v Harris*, 401 U.S. 37, 43-44, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971), absent extraordinary circumstances a court in equity should not act to enjoin state proceedings where plaintiff has an adequate remedy at law and will not suffer irreparable harm if denied equitable relief. The policy objective behind *Younger* abstention is to avoid unnecessary conflict between the state and federal parallel judicial systems. *United States v. Morros*, 268 F.3d 695, 707 (9th Cir. 2001).

Younger abstention is appropriate where (1) there are pending state court proceedings when the federal action was filed, (2) important state interests are implicated and (3) the state proceedings provide adequate opportunity to raise federal claims. *Middlesex County Ethics Committee v. Garden State Bar Association*, 457 U.S. 423, 431, 102 S.Ct. 2515, 73 L.Ed.2d 116; *M&A Gabaee v. Community Redevelopment Agency of City of Los Angeles*, 419 F.3d 1036, 1039 (9th Cir. 2005).

The underlying state action has been pending for ten years. The interests of the state in orderly execution of its orders, judgments and levies go to the core of the authority and jurisdiction of the state court process. The Tribe has continuously, in the face of repeated rejection, asserted its tribal immunity and the power of its tribal courts. The elements for application of the *Younger* abstention doctrine are present.

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CONCLUSION

Plaintiff Findleton respectfully submits that his motion to dismiss be granted for the following reasons:

- the Tribe has failed to present a federal question to justify this court's subject matter jurisdiction;
- the Tribe's action is barred by the Anti-Injunction Act;
- the Tribe's action seeks a federal district court to enjoin state proceedings which are ten years running and where the law of the case is settled, despite the Tribe's continuous protestations to the contrary;
- the *Rooker-Feldman* doctrine applies here; there is no jurisdiction for a district court to sit in review of state court judgments;
- finally, the *Younger* abstention doctrine applies to allow pending state proceedings to run their due course free of interference from the federal court system.

Date: February 14, 2022

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