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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 OPPOSITION TO MOTION
FOR PRELIMINARY INJUNCTION**

Date: March 24, 2022

Time: 2:00 p.m.

Judge: Hon. Jon S. Tigar

Re: ECF No. 9

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1 I. INTRODUCTION

2 By the time this motion for a preliminary injunction is heard, set now for March 24, 2022,
 3 the underlying state litigation will have spanned a decade. In those ten years the tribe has
 4 refused to comply with orders to mediate and arbitrate, refused to pay awards of attorney fees
 5 on appeal, refused to comply with orders to produce documents, refused to cooperate in the
 6 orderly examination of debtors to effectuate collection of valid state court judgments, refused
 7 to pay sanctions awards, refused to comply with orders of the state appellate court, and now
 8 seeks relief in a federal district court to sanction this blatant disregard of law of the case, comity
 9 and basic principles of federal jurisprudence.
 10

11
 12 Plaintiff Coyote Valley Band of Pomo Indians (the “Tribe”) seeks injunctive relief to stay
 13 enforcement of pending state court judgments and to declare valid tribal court rulings where
 14 that tribal court was not created until after Defendant Robert Findleton filed his petition to
 15 compel mediation and arbitration on March 23, 2012. (*Findleton v. Coyote Valley Band of Pomo*
 16 *Indians*, 1 Cal.App.5th 1194, 1202 (216)(*Findleton I*)). In the past ten years there have been three
 17 published appellate opinions. In *Findleton I*, the court of appeal found tribal waiver of sovereign
 18 immunity and reversed the trial court’s order quashing service of petition to arbitrate. (*Findleton*
 19 *I*, 1 Cal.App.5th at 1217).
 20

21
 22 In *Findleton II*, the court of appeal upheld an attorney fee on appeal order. (*Findleton v.*
 23 *Coyote Valley Band of Pomo Indians*, 27 Cal.App.5th 565, 572 (2018)(*Findleton II*), stating:

24 This argument [tribal immunity], too, is barred by law of the case because in the prior
 25 appeal we reversed the trial court’s grant of the motion to quash for lack of jurisdiction
 26 and remanded the case to the superior court for further proceedings. We necessarily
 27 decided that the tribe waived its sovereign immunity *and thereby conferred jurisdiction on*
 28 *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.

1
2 *Findleton II*, 27 Cal.App.5th at 572. (emphasis in original).

3 *Findleton III* involved the rare use of the disentitlement theory where the appellate court
4 gave the Tribe until January 31, 2022 to comply with the orders it had continually flouted or its
5 appeals would be dismissed. The Tribe did not comply and those orders are now final and
6 Findleton is pursuing his remedies under California Enforcement of Judgment Law.
7

8 The Tribe's motion for a preliminary injunction should be denied because the Tribe has
9 unclean hands, the Tribe's action is barred by the Anti-Injunction Act and there is a Failure of
10 Showing of Immediate and Irreparable Harm. The Tribe requests original subject matter
11 jurisdiction in a federal district court to undo a decade of state court orders it has flouted and to
12 instead give effect to tribal court orders issued by a court not in existence when Findleton filed
13 his petition now lo these ten years later.
14

15 II. STATEMENT OF FACTS

16 This dispute sprouted as a garden variety construction contract claim. The Coyote Valley
17 Band of Pomo Indians (the "Tribe") sought to develop tribal lands into a casino. On June 2, 2007
18 the Tribe adopted Coyote Valley Tribal Council Resolution #07-01 delegating authority from the
19 General Council of the Tribe to the Tribal Council to waive tribal immunity in order to induce
20 non-Indian contractors to bid on the project. On August 14, 2007 the Tribe adopted Coyote
21 Valley Tribal Council Resolution #07-09 "Repeal of Certain Tribal Laws." On October 4, 2007,
22 Defendant Robert Findleton and the Tribe, on an instrument provided by the Tribe, entered the
23 Construction Contract, which contained an arbitration clause. Prior to executing the contract,
24 Findleton was informed that the tribe had repealed all laws except the ones necessary for the
25
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1 state compact and casino, and no tribal laws applied to this contract. On November 7, 2007, the
2 parties entered the Equipment Rental Agreement, which also contained an arbitration clause.

3 On March 1, 2008, the tribe met and adopted Coyote Valley Band of Pomo Indians
4 Resolution #08-01, by which the General Council delegated to the Tribal Council authority to
5 waive tribal immunity for purposes of enforcement of the casino development agreements.
6

7 With the financial meltdown in 2008, the project had problems and the Tribe notified
8 Findleton by August 8, 2008 letters they had to suspend construction, and promised to pay
9 outstanding amounts. In August of 2008 Findleton met with tribal members, including members
10 of the Tribal Council, and offered a work out, where he would continue to complete the agreed
11 project, would do additional work, would defer payment if the tribe accepted interest on the
12 deferred payment and conditioned on the tribe's waiving sovereign immunity as to enforcement
13 of the agreements. (August 19, 2008 Third Amendment to Agreement). The day after this
14 meeting the tribe had a meeting and adopted Resolution CV-08-20-08-03, which has been held
15 by the state trial and appellate courts to have been an effective and express waiver by the tribe
16 of its tribal immunity as to enforcement of the agreements, which contained an arbitration
17 clause.
18

19 Findleton continued work based on the Third Amendment to Agreement and Resolution
20 CV-08-20-08-03. The tribe failed to pay, first saying they would pay eventually, then simply
21 refusing to pay. On March 23, 2012 Findleton filed a petition in state court to compel mediation
22 and arbitration. Ten years later we are in this United States District Court wherein the Tribe
23 seeks federal injunctive relief against pending state court judgments.
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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
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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5.	August 19, 2008	Third Amendment to Agreement	255
6.	August 27, 2008	Resolution No. CV-08-20-08-03	963
7.	July 29, 2016	<i>Findleton I</i>	
8.	April 25, 2017	Order Compelling Mediation and Arbitration	1137
9.	September 25, 2018	<i>Findleton II</i>	
10.	December 10, 2018	Order Granting Plaintiff's Motion for Sanctions	1519
11.	April 26, 2019	Order Denying Defendant's Amended Motion for Clarification	2365
12.	April 26, 2019	Order Denying Defendant's Motion for Exemption from Enforcement of a Money Judgment	2362
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	<i>Findleton III</i>	

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

1 III. ARGUMENT

2 A. Injunctive Relief Must Be Denied Where The Tribe Has Unclean Hands

3 i. The Tribe Comes Before The Court With Unclean Hands Presenting Its Equitable
 4 Motion for Preliminary Injunction While Ignoring Law of The Case In This
 5 Decade Old State Action

6 A more textbook example of ‘unclean hands’ could not be found, the tribe seeks the shield
 7 of tribal court injunction orders contrary state trial and appellate orders, issued by a tribal court
 8 not in existence when, and created to counter, Findleton’s petition to compel mediation and
 9 arbitration in state court.
 10

11 As the court in *Findleton III* stated:

12 We pause to observe that, as the superior court found, a part of the Tribe’s strategy for
 13 thwarting the superior court’s orders was to enlist the aid of a previously unavailable tribal
 14 court at various points along the way. As we have already indicated, the Tribe cannot use
 15 that tactic as a shield to avoid the consequences of its ongoing noncompliance with
 16 presumptively valid superior court rulings.

17 *Findleton III*, at 39.

18 The Tribe’s Motion for Preliminary Injunction should be denied based on the equitable
 19 maxim that equity will not entertain a plea of a party with unclean hands.

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

21 The Tribe’s request for injunctive relief is directed at the power of a court of general
 22 jurisdiction, the Mendocino County Superior Court, which over the last ten years has issued a
 23 series of orders compelling mediation and arbitration, compelling production of documents,
 24 imposing attorney fees and sanctions, and compelling compliance with orderly examination of
 25 debtors to obtain information to enforce valid state court judgments. The tribe has consistently
 26 ignored all these orders, claiming immunity and validity of tribal orders despite repeated orders
 27 of the trial and appellate court to the contrary.
 28

1 As held in *Findleton III*, the trial court found that the Tribe's subsequent filing in a recently
 2 formed tribal court was "designed to negate this Court's order compelling mediation and/or
 3 arbitration. . . and the Tribe's communication with AAA, were meant to intimidate the AAA
 4 from hearing the matter submitted by Mr. Findleton, directly contradicting and in contempt of
 5 this Court's order to compel . . ." (*Findleton III* at 17). The trial court imposed sanctions for
 6 refusal to comply with order compelling mediation and arbitration.
 7

8 Here, the tribal court was held to have been fraudulently set up after Findleton petitioned
 9 to compel arbitration in order to frustrate Findleton's ability to enforce the Construction and
 10 Equipment Rental Agreements and then the tribe engaged in a scorched earth take no prisoners
 11 litigation campaign to ignore, frustrate and impede the orderly procedure of judgment
 12 enforcement under valid state law.
 13

14 The Tribe's Motion for Preliminary Injunction should be denied where pending valid state
 15 court trial and appellate court judgments would be impeded if the relief requested were
 16 granted.
 17

18 iii. The tribal court permanent injunction must be treated as void

19 Since there is neither subject matter jurisdiction (*Rooker-Feldman*), and the Anti-
 20 Injunction Act bars the relief requested, this court need not consider the efficacy of the tribal
 21 court orders sought by the Tribe to be invigorated against pending state court orders. While
 22 state courts may not have jurisdiction to enjoin tribal courts, they may certainly elect to
 23 disregard an apparently void foreign order which harms the integrity of judicial process.
 24 (*Alexander v. Robertson*. 882 F.2d 421, 424-425 (9th Cir. 1989) [*"Alexander"*]; *Chevron Corp. v.*
 25 *Donziger* 974 F.Supp.2d 362, 555-557 (S.D.N.Y. 2014) [*"Donziger"*].) Presenting a secretly
 26 formed tribal court as a duly constituted court of the federally funded NCICS subverts the
 27
 28

integrity of the judicial process and thereby “falls neatly within the confines” of the rationale for fraud on the court. (*Alexander*, 882 F.2d at p. 424; *H.K. Porter Co. Inc. v. Goodyear Tire Rubber, Co.* 536 F.2d 1115, 1119 (6th Cir. 1976).)

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

i. 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).

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

7
 8 The requested injunctive relief directed at the power of the Superior Court to adjudicate a
 9 pending action filed ten years ago falls squarely within the ambit of the Anti-Injunction Act. As
 10 stated above regarding the Tribe’s lack of presenting a Federal Question, there is no necessity to
 11 aid federal jurisdiction as to a pending state court proceeding that has been dragging on for ten
 12 years. Quite the opposite, there is every reason to dismiss and there is no application of the first
 13 exception to the Anti-Injunction Act, there is no pending federal action, in rem or otherwise,
 14 justifying an exception.
 15

16
 17 ii. The Second Exception To The Anti-Injunction Act Does Not Apply

18 The Tribe points to no Act of Congress allowing the tribe, after ten years of unsuccessful
 19 litigation in state court and serial refusal to comply with state court orders, to then seek federal
 20 declaratory relief to disrupt orderly proceedings to enforce the judgments under California
 21 Enforcement of Judgment Law. Clearly, the policy of the federal system in a matter such as this
 22 is to allow the state proceedings to run their course, with possible right to petition the United
 23 States Supreme Court for relief upon a final ruling of the California Supreme Court. But, a
 24 federal district court does not sit in direct review of pending state proceedings filed a decade
 25 ago and still lingering.
 26
 27
 28

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

2 The third exception to the Anti-Injunction Act is where an injunction is necessary to
 3 protect or effectuate a federal court judgment. This recent filing by the Tribe is the first federal
 4 action, there is no judgment to protect or effectuate at the federal level. There are several
 5 pending orders and judgments and levies in the state court. The Tribe seeks, hopefully in a last
 6 ditch effort, to avoid compliance with those valid state court judgments and enforcement of
 7 those judgments under California law. The third exception to protect or effectuate a federal
 8 court judgment is inapplicable.
 9

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

11 C. Injunctive Relief Is Inappropriate Where Monetary Relief Is The Only Harm

12 The Tribe fails to allege any “immediate and irreparable” harm other than monetary harm
 13 it would suffer when these fee orders, sanction orders and levies are eventually executed under
 14 California Enforcement of Judgment Law. Where the only immediate injury is monetary, such
 15 harm is deemed not to be irreparable, if the state court is wrong about jurisdiction, the Tribe
 16 may appeal to the California Supreme Court. Direct review in federal district court is not an
 17 appellate avenue to overturn state court orders and judgments. *Patriot Contract Services v.*
 18 *United States*, 388 F.Supp.2d 1010, 1026 (N.D. Cal. 2005).
 19
 20
 21

22 **CONCLUSION**

23 Defendant Findleton respectfully submits that the Tribe’s Motion for Preliminary
 24 Injunction be denied for the following reasons:

- 25 • 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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