

Todd S. Kartchner (SBN 250215)
Christopher L. Callahan (Admitted Pro Hac Vice)
FENNEMORE CRAIG, P.C.
2394 E. Camelback Road, Suite 600
Phoenix, Arizona 85016
Phone: (602) 916-5000 / Fax: (602) 916-5999
tkartchner@fennemorelaw.com
ccallahan@fennemorelaw.com

Little Fawn Boland (SBN 240181)
CEIBA LEGAL, PC
35 Miller Avenue, No. 143
Mill Valley, CA 94941
Phone: (415) 939-7797
littlefawn@ceibalegal.com

Keith Anderson (SBN 282975)
KEITH ANDERSON, ATTORNEY AT LAW
35 Madrone Park Circle
Mill Valley, CA 94941
Phone: (401) 218-5401
attorneykeithanderson@gmail.com

Scott Crowell (Admitted Pro Hac Vice)
CROWELL LAW OFFICE
TRIBAL ADVOCACY GROUP LLP
1487 W. State Route 89A, Suite 8
Sedona, Arizona 86336
Phone: (425) 802-5369
scottcrowell@clotag.net

*Attorneys for Plaintiff
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

**PLAINTIFF COYOTE VALLEY BAND
OF POMO INDIANS' REPLY IN
SUPPORT OF MOTION FOR LEAVE TO
DEPOSIT PROPERTY**

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Coyote Valley Band of Pomo Indians (the “Tribe”) submits this Reply in Support of its Motion for Leave to Deposit Property with the Court [Doc. 7], which addresses the response briefs filed by Defendants Robert Findleton (“Findleton”) [Doc. 44], Hon. Ann C. Moorman (“Judge Moorman”) [Doc. 53], and Savings Bank of Mendocino County (the “Bank”) [Doc. 41].

I. INTRODUCTION

In response to the Tribe’s Motion for Leave to Deposit Funds with the Court (the “Rule 67 Motion”), Findleton and Judge Moorman assert the same arguments raised in their respective oppositions to the Tribe’s Motion for Preliminary Injunction [Doc. 8 & 9 (errata)], whether expressly (Findleton) or by incorporation (Judge Moorman). In rebuttal to those arguments, the Tribe incorporates by reference its Reply in Support of Motion for Preliminary Injunction (the “PI Reply”) [Doc. 58]. In a similar vein, the Tribe incorporates by reference the PI Reply to address the Bank’s argument that this Court lacks subject-matter jurisdiction because “there is no federal question.” Bank Resp. [Doc. 41] at 4. The Tribe also incorporates by reference the Emergency Motion for Temporary Restraining Order (“Emergency Motion”) [Doc. 27] and Renewed Emergency Motion for Temporary Restraining Order (“Renewed Emergency Motion”) [Doc. 34]. The only arguments remaining to be addressed are those the Bank raises in connection with its assertion that the funds in question “are in the hands of the sheriff.” *Id.* at 2.

Consideration of those arguments requires a brief discussion of events that have transpired since the Tribe filed the Rule 67 Motion. As set forth in the Emergency Motion and Renewed Emergency Motion, after the Tribe filed the Rule 67 Motion, and in disregard of the permanent injunctions and temporary restraining order entered by the Coyote Valley Tribal Court (the “Tribal Court”), Findleton requested, received, and served a writ of garnishment (the “First Writ”) on the Bank for collection of \$298,518.80 (the “First Garnished Funds”)¹ pursuant to the monetary awards the Mendocino County Superior Court (“State Court”) entered against the Tribe. *See* Emergency Mot. & Renewed Emergency Mot. [Docs. 27 & 34] at 2 & 4, respectively. Acting pursuant to the Writ, the Bank debited the Garnished Funds from the Tribe’s bank account on January 31, 2022, issued a

¹ This is the amount that, in its Motion, the Tribe proposed to deposit with the Court.

1 cashier's check (the "Check") for payment of the First Garnished Funds to Findleton, and delivered the
2 Check to the Mendocino County Sheriff (the "Sheriff") for delivery to Findleton. *Id.* The Tribe is
3 informed that the Check has not been delivered by the Sheriff to Findleton, and so the First Garnished
4 Funds remain in the Bank's possession, custody, or control.

5 On February 23, 2022, the State Court issued another writ of garnishment (the "Second Writ")
6 for collection of an additional \$496,367.08 (the "Second Garnished Funds"). Decl. of Keith Anderson,
7 attached as Ex. 1, at ¶ 5. Acting pursuant to the Second Writ, the Bank froze the Second Garnished
8 Funds.² *Id.* ¶ 3. The Tribe is informed and believes that the Second Garnished Funds have not been
9 debited from the Tribe's account and are still in the Bank's possession, custody, or control and that the
10 Bank will imminently issue a second cashier's check for payment of the Second Garnished Funds.
11 Findleton has another motion before the State Court for monetary awards and discovery sanctions in
12 the amount of approximately \$3M against the Tribe and today filed a separate omnibus contempt
13 motion seeking monetary damages of \$3,368,640.29 and terminating sanctions. If Findleton prevails
14 and receives monetary awards for either or both motions, the Tribe believes Findleton will seek to
15 recover them through subsequent garnishments.

16 For the reasons discussed in the Tribe's PI Motion, Emergency Motion, Renewed Emergency
17 Motion, and Rule 67 Motion [Docs. 7–9, 27, & 34], the Tribal Court has jurisdiction over disputes
18 arising out of the Tribe's agreements with Findleton, the Tribe's agreement with the Bank, and the
19 Tribe's property, including funds on deposit with the Bank. As also discussed in the same filings, the
20 Tribal Court has entered orders precluding Findleton and the Bank from pursuing collection of
21 monetary awards entered against the Tribe by the State Court and, in any event, pursuing collection of
22 the Tribe's property—including through garnishment—without domesticating any judgments and/or
23 writs of garnishment with the Tribal Court. Findleton's and the Bank's conduct in connection with the
24 First and Second Garnished Funds contravene the Tribal Court's orders, and as a result, the Tribe is
25 pursuing appropriate remedies from the Tribal Court. Nevertheless, the First and Second Garnished
26 Funds remain in the Bank's possession, custody, or control.

27
28 ² Following this action by the Bank, the Tribe and the Bank will mutually sever their relationship on
March 11, 2022.

1 **II. ARGUMENT**

2 **A. FINDLETON’S AND THE BANK’S CONDUCT AFTER THE TRIBE**
 3 **FILED THE RULE 67 MOTION UNDERSCORES THE NEED FOR THE**
 4 **COURT’S INTERVENTION**

5 Findleton’s and the Bank’s recent conduct underscores the need for the Court to grant the Tribe
 6 leave to deposit the First Garnished Funds, and now also the Second Garnished Funds. Indeed, the
 7 Court should grant the Tribe leave to deposit funds with the Court to relieve *all parties* of the burden
 8 and expense of litigating collection and enforcement of the State Court’s monetary awards. This is
 9 consistent with Rule 67’s purpose, which is to provide a remedy for “a litigant [who] wish[es] to be
 10 relieved of responsibility for a sum or thing, but continue to claim an interest in all or part of it.” Fed.
 11 R. Civ. P. 67 cmt. to 1983 am.

12 In arguing to the contrary, the Bank cites California Commercial Code § 3411 and asserts that
 13 the Bank “would expose itself to liability” if it were to “dishonor the cashier’s check.” Bank Resp.
 14 [Doc. 41] at 2. The Bank fails to acknowledge, however, that § 3411 expressly precludes liability
 15 when “the refusal of the obligated bank occurs because . . . is prohibited by law.” Cal. Comm. Code
 16 § 3411(c). The Tribal Court has entered orders that prohibit the Bank from honoring the writ of
 17 garnishment. Moreover, the injunctive relief sought by the Tribe from this Court would also prohibit
 18 the Bank from honoring the writ. Both the existing Tribal Court order and the order requested from
 19 this Court are sufficient to invoke the exception recognized in Section 3411(c). Accordingly, there is
 20 no merit to the Bank’s assertion that it would be subject to liability if it refuses payment of the Check
 21 or any future checks issued by the Bank pursuant to this Court’s orders. The Bank implicitly
 22 acknowledges this by its statement that it “has no right to disregard legal process issued by a court.”
 23 Bank Resp. [Doc. 41] at 2. The Court should reject the Bank’s arguments to the contrary and permit
 24 the deposit of any and all disputed funds with the Court pursuant to Rule 67.

25 . . .

26 . . .

27 . . .

28 . . .

1 **III. CONCLUSION**

2 For the reasons above, the Tribe respectfully requests that the Court grant the Tribe's Rule 67
3 Motion and permit the deposit of both the First and Second Garnished Funds (a total of \$794,885.88)
4 with this Court.

5 DATED this 3rd day of March, 2022.

6 CEIBA LEGAL, PC

7
8
9 By: 

Little Fawn Boland (SBN 240181)

10 KEITH ANDERSON, ATTORNEY AT LAW
11 Keith Anderson (SBN 282975)

12 FENNEMORE CRAIG, P.C.

Todd S. Kartchner (SBN 250215)
Chris Callahan (Pro Hac Vice forthcoming)

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15 TRIBAL ADVOCACY GROUP LLP
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