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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,

Defendants.

Case No. 3:22-cv-00607

MOTION FOR PRELIMINARY INJUNCTION AND REQUEST FOR EXPEDITED BRIEFING

Judge: Hon. Laurel Beeler
Date: March 10, 2022
Time: 9:30 am

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED that, on March 10, 2022 at 9:30 am, Plaintiff Coyote Valley Band of Pomo Indians (the "Tribe") will move for a preliminary injunction pursuant to Federal Rules of Civil Procedure 65 against Defendants Robert Findleton ("Findleton"), doing business as Terre Construction and On-Site Equipment, and the Honorable Ann C. Moorman, in her official capacity as Judge of the Superior Court of Mendocino County, California (the "State Court"). For the reasons set forth in the accompanying Memorandum of Points and Authorities, the Tribe seeks a preliminary injunction from this Court (1) enjoining the State Court proceedings styled as *Findleton v. Coyote Valley Band of Pomo Indians*, Case No. SCUK CVG 12-59929 and (2) enjoining Findleton and anyone acting in concert with him from violating the Coyote Valley Tribal Court's (the "Tribal Court") orders in the proceedings styled as *Coyote Valley Band of Pomo Indians et al. v. American Arbitration Association et al.*, Case No. CV-2017-01103-CO. In view of Findleton's efforts to collect monetary awards the State Court entered against the Tribe, which include but are not limited to attempts to garnish the Tribe's assets and a debtor's exam of the Tribe set for February 25, 2022, **the Tribe respectfully requests that the Court set an expedited briefing schedule on this Motion and enter appropriate orders to preserve the status quo pending a decision on the merits.**

DATED this 31st day of January, 2022.

CEIBA LEGAL, PC

By: _____
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MEMORANDUM OF POINTS AND AUTHORITIES

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I. INTRODUCTION

The Tribe is trapped in a catch-22, caught between two courts. The State Court ordered the Tribe to take actions that plainly contravene the Tribal Court's orders and entered sanctions against the Tribe for complying with the Tribal Court's orders. The Tribe's compliance with the State Court orders would subject the Tribe to sanctions from the Tribal Court for violation of the Tribal Court orders.

The dispute underlying the courts' competing orders arises from two contracts between the Tribe and Findleton, pursuant to which Findleton agreed to perform construction and construction-related services solely on tribal land. In those contracts, Findleton expressly agreed to the Tribe's jurisdiction and to avoid dispute resolution in the State Court. Yet, despite the plain language of the contracts, this matter is being litigated in two forums: (1) the State Court, where Findleton filed suit even though it lacks subject-matter jurisdiction, and, in any event, is a forum the parties expressly agreed would be unavailable; and (2) the Tribal Court, which has jurisdiction and is a forum to which Findleton expressly agreed. Although the Tribal Court has jurisdiction and is the parties' chosen forum, the State Court has repeatedly sanctioned the Tribe for complying with the Tribal Court's orders, including $98,805 in monetary sanctions. Thus, in addition to enforcing the express language of the parties' agreements and upholding binding U.S. Supreme Court and Ninth Circuit precedent relating to subject-matter jurisdiction, this case is about upholding the Tribal Court's legitimacy and preserving the Tribe's sovereignty and sovereign immunity.

The facts and issues in this case are substantially the same in all material respect to those in *Ute Indian Tribe of the Uintah and Ouray Reservation v. Lawrence (Lawrence II)*, __ F.4th __, 2022 WL 53421 (10th Cir. 2022), in which the Tenth Circuit invoked Ninth Circuit and U.S. Supreme Court precedent to conclude that the Utah state court lacks subject-matter jurisdiction over a non-Indian's contract claims against a federally recognized Indian tribe. This Motion is based on the same binding precedent, which establishes that without an express grant of subject-matter jurisdiction from Congress, state courts—including the Defendant State Court—lack subject-matter jurisdiction over a civil suit by a non-Indian against Indian Tribes arising out of a transaction on the reservation. *Lawrence II*, 2022 WL 53421, at *9 (holding that the district court abused its discretion in denying the Ute Tribe's request for a preliminary injunction against state-court proceedings involving a non-

Indian's contract claims over which the state-court lacked jurisdiction); *see also, e.g.*, *Pan Am. Co. v. Sycuan Band of Mission Indians*, 884 F.2d 416, 418 (9th Cir. 1989) ("Absent congressional or tribal consent to suit, state and federal courts have no jurisdiction over Indian tribes."); *Cardin v. De La Cruz*, 671 F.2d 363, 366 (9th Cir. 1982) (absent congressional action subjecting the Tribe to the adjudicatory authority of other forums, such disputes are exclusively the province of tribal courts, citing *Williams v. Lee*, [358 U.S. 217 (1959)]), Based on this binding precedent, this Motion raises two straightforward issues: (1) whether judicial orders the Tribal Court entered against Findleton and others are entitled to recognition and enforcement by this Court under comity principles; and (2) whether the State Court lacks subject-matter jurisdiction over Findleton's claims.

On the first issue, the Tribal Court's orders are entitled to recognition and enforcement because, "[a]s a general rule, federal courts must recognize and enforce tribal court judgments under principles of comity," *AT&T Corp. v. Coeur d'Alene Tribe*, 295 F.3d 899, 903 (9th Cir. 2002), and no exception to this general rule applies here. *See also Coeur d'Alene Tribe v. Hawks*, 933 F.3d 1052, 1057 (9th Cir. 2019). On the second issue, the State Court lacks subject-matter jurisdiction over Findleton's claims because Congress has not authorized it to exercise subject-matter jurisdiction over a civil suit between a non-Indian and an Indian tribe involving a transaction on tribal land. By executing the agreements underlying this dispute—both of which are transactions on tribal land—Findleton expressly agreed to be subject to the laws and jurisdiction of the Tribe. Further, the parties' agreements expressly reserve the Tribe's immunity from suit in state court, which also deprives the State Court of jurisdiction. For the reasons set forth below, the Court should grant the Tribe's request for a preliminary injunction.

As discussed in the contemporaneously filed Motion for Leave to Deposit Property with the Court, Findleton is presently pursuing collection of the State Court's sanctions and other monetary judgments and, on January 21, 2022, filed a motion seeking an additional $2,940,000 in sanctions against the Tribe. Additional collections-, sanctions-, and contempt-related actions are calendared in the State Court. Verified Compl. ("Compl.") ¶¶ 121–134. **Accordingly, the Tribe respectfully requests that the Court set an expedited briefing schedule on this Motion and enter appropriate orders to preserve the status quo pending a decision on the merits.**

. . .

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II. FACTUAL BACKGROUND

The Tribe is a federally recognized Indian tribe with a reservation in Mendocino County, California (the "Coyote Valley Reservation"). Compl. ¶ 1. On October 4, 2007, the Tribe and Findleton, the latter doing business as Terre Construction, executed AIA Document A107 – 1997 ("AIA Agreement") under which Findleton agreed to perform construction services for the Tribe on the Coyote Valley Reservation. *Id.* ¶¶ 21–23 & Ex. B at 1. By executing the AIA Agreement, Findleton expressly agreed that "the sovereign immunity of the [Tribe] shall not be waived for disputes or other matters related to th[e] Agreement." *Id.* ¶ 26 & Ex. B § 9.10.8. The AIA Agreement further provides that "[n]o term or provision in th[e] Agreement shall be construed as a waiver of the [Tribe's] sovereign immunity." *Id.* ¶ 25 & Ex. B § 9.10.8. In a similar vein, Section 18.1.2 states that Findleton "agrees to the jurisdiction of the [Tribe]" and that the Agreement "shall be governed by the [Tribe's] law." *Id.* ¶ 27 & Ex. B § 18.1.2. As a further indication of his consent to the Tribe's jurisdiction, Findleton expressly agreed to the assessment of a Tribal construction tax and that state sales tax would not apply. *Id*. at § 8.3.1(H), (J). The parties subsequently executed amendments to the AIA Agreement, and each states that "[a]ll terms and conditions of the original [AIA Agreement] shall apply to this Amendment and to the additional work [it] describes." *Id.* ¶¶ 28, 29–33 & Ex. C.

On November 7, 2007, the Tribe and Findleton, the latter doing business as On-Site Equipment, executed a Master Rental Contract Rental Agreement ("Rental Agreement") for leasing of construction equipment for use on the Coyote Valley Reservation. *Id.* ¶ 38 & Ex. E. Section 1 of the Rental Agreement states that Findleton will "deliver, store and lease equipment" to the Tribe at a "site within the Coyote Valley Indian Reservation," and under the heading "Situs of Agreement," Section 22(E) provides that the Rental Agreement "shall be deemed to have been negotiated and executed within the Coyote Valley Indian Reservation." *Id.* ¶ 40 & Ex. E at §§ 1, 22(E). The Rental Agreement also contains express reservations of the Tribe's sovereign immunity, with language that is nearly identical to the counterparts in the AIA Agreement. *Id.* ¶¶ 41–42 & Ex. E.

On August 19, 2008, Findleton sent a letter to the Tribe proposing that the AIA Agreement be amended a third time ("Third AIA Amendment") under the condition that the Tribe "issue a tribal Resolution . . . [with] 'limited waiver of sovereign immunity' wording which allows Terre

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Construction remedy within the U.S. Federal Court system." *Id.* ¶¶ 29–31 & Ex. C. On August 27, 2008, after the parties executed the Third AIA Amendment, the Tribe's Tribal Council adopted Resolution No. CV-08-20-08-03 ("Resolution 08-03") by which the Tribe "consent[ed] to a limited waiver of Sovereign Immunity . . . [that] is limited to . . . ***avoid dispute resolution in state courts***." *Id.* ¶¶ 34–36 & Ex. D (emphasis added). Resolution 08-03 was intended to align with the "limited waiver of sovereign immunity" Findleton proposed, and the Tribe did not waive sovereign immunity to civil suit in any state court by adopting the Resolution. *Id.* ¶ 37.

On March 23, 2012, after a dispute arose between the parties, Findleton filed a Petition to Compel Mediation and Arbitration in State Court. *Id.* ¶ 50 & Ex. AA. Findleton appealed after the State Court granted the Tribe's ensuing Motion to Quash, which was based on three defenses: (1) sovereign immunity; (2) lack of subject-matter jurisdiction; and (3) failure to exhaust tribal remedies. *Id.* ¶ 51. In *Findleton v. Coyote Valley Band of Pomo Indians (Findleton I)*, the Court of Appeal reversed and concluded that the Tribe waived sovereign immunity by adopting Resolution 08-03. 205 Cal. Rptr. 3d 699 (App. 2016). The court expressly declined to address any other issues, however, and instead "remand[ed] the case to the [State Court] for further proceedings." *Id.* at 719.

On remand, the State Court entered the April 24, 2017 "Order Compelling Mediation" finding that "[t]here is nothing about the [State Court proceedings] that impinges on tribal sovereignty" and that "[w]hen a tribe waives its sovereign immunity it, in effect, consents to state court jurisdiction." Compl. ¶ 57 & Ex. I. *But see, e.g.*, *Alvarado v. Table Mountain Rancheria*, 509 F.3d 1008, 1016 (9th Cir. 2007) ("[T]he absence of immunity does not establish the presence of subject matter jurisdiction."). On that basis, the State Court concluded that it had jurisdiction and ordered the Tribe to submit to mediation. *Id.* Notably, neither the State Court nor the Court of Appeal addressed the Tribe's arguments that the State Court lacks subject-matter jurisdiction. Compl. ¶ 58 & Ex. I.

On January 20, 2017, before the State Court issued the Order Compelling Mediation or made any substantive jurisdictional rulings, the Tribe filed a Petition for Tribal Court Review (the "Petition")

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in the Tribal Court.[1] *Id.* ¶ 60. Six days later, the Tribal Court granted the Tribe's Petition and concluded that the Tribe made a "colorable claim that [the Tribal Court] has both subject matter jurisdiction over the dispute, and personal jurisdiction over Findleton." *Id.* ¶ 61 & Ex. J. On July 6, 2017, the Tribal Court issued an opinion (the "Petition Opinion") in which it concluded that the California State Court lacks subject-matter jurisdiction and that the Tribe did not waive sovereign immunity. *Id.* ¶¶ 65–67 & Ex. L. In the Petition Opinion, the Tribal Court observed that Findleton failed to cooperate with Tribal Court proceedings, including by failing to "follow court orders" and "communicate in any way with the court or its staff." *Id.* ¶ 60 & Ex. L.

Despite the Tribal Court's Petition Opinion, on August 17, 2017 the American Arbitration Association ("AAA") informed the Tribe that, at Findleton's request, it would proceed with mediation and arbitration pursuant to the State Court's Order Compelling Mediation. *Id.* ¶ 69. On September 15, 2017, after the 3AAA refused to dismiss mediation and arbitration proceedings, the Tribe filed a Motion for Temporary Restraining Order and Preliminary Injunction in the Tribal Court seeking to enjoin AAA and Findleton from proceeding with mediation and arbitration. *Id.* ¶ 72. The Tribal Court conducted hearings related to the Tribe's request at which the Tribe and AAA—but not Findleton—appeared on October 2 and 30, 2017, November 27, 2017, and December 14, 2017. *Id.* ¶ 77. On December 20, 2017, the Tribal Court issued an order (the "First Permanent Injunction") permanently enjoining the AAA and Findleton from initiating arbitration or otherwise enforcing the mediation and arbitration clauses in the AIA and Rental Agreements. *Id.* ¶ 78 & Ex. O. The AAA subsequently closed the mediation and arbitration proceedings. *Id.* ¶ 80 & Ex. P.

Despite the First Permanent Injunction, on June 27, 2018 Findleton filed a motion in State Court for sanctions against the Tribe for seeking the Tribal Court's involvement and failing to attend mediation and arbitration. *Id.* ¶ 85. On December 10, 2018, the State Court granted Findleton's sanctions motion, impugned the Tribal Court proceedings as "intended for the purpose of negating th[e] [State Court's] order," and ordered the Tribe to pay Findleton $86,457 in sanctions under Cal.

[1] Findleton often asserted that he would be filing suit against the Tribe in federal court, *see* Compl. ¶ 115 & Ex. U, and even sent the Tribe a notice of intent to file litigation in the federal court on November 25, 2019, *id.* ¶ 116 & Ex. V.

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Code of Civ. Proc. 128.5 and $1,500 under Cal. Code of Civ. Proc. 177.5.[2] *Id.* ¶ 86 & Ex. R. In the interim, the Court of Appeals issued *Findleton v. Coyote Valley Band of Pomo Indians (Findleton II)*, in which it repeated the State Court's assertion that "the Tribe waived its sovereign immunity *and thereby conferred jurisdiction on the superior court (as well as the state appellate courts*)." 238 Cal. Rptr. 3d 346, 352 (App. 2018).

On February 7, 2019, before the first debtor's examination to collect on the State Court's sanctions awards, the Tribe filed a Motion for Declaratory Judgment, Temporary Restraining Order, Preliminary Injunction and Permanent Injunction in the Tribal Court. Compl. ¶ 98. Among other things, the Tribe sought a declaratory judgment that the Tribe's Enforcement of Judgments Ordinance (the "Ordinance") was the exclusive means by which Findleton could enforce State Court judgments against the Tribe, and an injunction requiring Findleton to domesticate any foreign money judgments in the Tribal Court pursuant to the Ordinance before pursuing collection. *Id.* ¶ 99. The Tribe also requested that the Tribal Court enter an order enjoining Findleton, those in active concert or participation with him, and any officers, staff, and representatives of the Tribe from engaging in judgment collection proceedings in State Court, including debtor's examinations. *Id.* ¶ 100. After a hearing at which Findleton failed to appear despite being notified of the same, on April 6, 2019 the Tribal Court entered a second permanent injunction (the "Second Permanent Injunction") granting the requested relief. *Id.* ¶¶ 101–102 & Ex. T.

Notwithstanding the First and Second Permanent Injunctions (together, the "Tribal Court Orders"), and despite expressly agreeing to be subject to the Tribe's jurisdiction and laws, Findleton continues to litigate his claims in State Court and pursue collection proceedings against the Tribe without complying with the procedures set forth in the Ordinance. Moreover, on September 29, 2021, the Court of Appeals issued an opinion granting Findleton's motion to dismiss the Tribe's five pending appeals under the disentitlement doctrine. *Findleton v. Coyote Valley Band of Pomo Indians (Findleton III)*, 285 Cal. Rptr. 3d 47 (App. 2021). In doing so, the court accused the Tribe of "relitigat[ing] issues th[e] court had already decided," including "whether the California courts have jurisdiction," and

[2] On February 15, 2020 the State Court issued $11,348 in discovery sanctions as well. Compl. ¶ 89.

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decried what it described as a "flagrant disregard for the [State Court's] orders and judgments and . . . egregious obstruction of efforts to enforce them." *Id.* at 764. And on January 7, 2022, the State Court issued a Notice to Appear and Produce Documents in Lieu of Subpoena at Debtor's Examination to Tribal Council Chairman Michael Hunter; Vice-Chairman Richard Campbell Jr.; Tribal Historian and Fiscal Manager Margaret Olea; and Treasurer Amanda Pulawa. Compl. ¶ 121 & Ex. W. **These debtor's exams are scheduled for February 25, 2022**.

As set forth in the contemporaneously filed Motion for Leave to Deposit Property with the Court, the State Court has entered $298,514.80 in monetary awards and statutory interest against the Tribe, and on January 20, 2022 Findleton sought garnishment of the Tribe's assets to collect on the State Court's monetary awards. Compl. ¶ 128 & Exs. Y & Z. The next day, Findleton filed a Motion for Sanctions and Contempt of Court for Violating December l3, 2019 Order to Compel Production seeking an additional $2,940,000 in sanctions against the Tribe and its legal counsel in the State Court Proceedings for the Tribe's refusal to disregard the Tribal Court's orders and produce documents relating to tribal assets. The hearing on the January 21, 2022 Motion is set for **February 18, 2022**. Findleton also filed a separate Motion for Sanctions and Contempt of Court for Violation of April 24, 2017 Order to Compel Arbitration and Litigation Misconduct based on the Tribe's seeking the Tribal Court's involvement in this dispute. Compl. ¶ 126. The hearing on that Motion is set for **March 25, 2022**. These hearings are in addition to many other impending actions set forth in the State Court's latest Case Management Order, which is attached to the Verified Complaint as **Exhibit X**.

III. JURISDICTION AND STANDARD

The Court has jurisdiction over the Tribe's claims under 28 U.S.C. §§ 1331, 1362. *See Hawks*, 933 F.3d at 1057; *Ute Indian Tribe of the Uintah & Ouray Rsrv. v. Lawrence (Lawrence I)*, 875 F.3d 539, 543 (10th Cir. 2017). Courts in the Ninth Circuit must enter a preliminary injunction when, as here, the plaintiff satisfies one of two alternative tests. Under the first alternative, injunctive relief should be granted when the plaintiff demonstrates the following: (1) a likelihood of success on the merits; (2) a likelihood that the plaintiff will suffer irreparable harm absent an injunction; (3) the balance of equities tips in the plaintiff's favor; and (4) injunctive relief is in the public interest. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). Alternatively, courts in

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the Ninth Circuit grant injunctive relief when the plaintiff shows "there are at least serious questions on the merits" and the "balance of hardships tips sharply in its favor." *Id.* at 1135; *see also id.* (stating that the trial court "did not apply the 'serious questions' test" and therefore "made an error of law in denying [a] preliminary injunction"). Thus, the Court should grant the Tribe's Motion because, for the reasons below, the Tribe satisfied both tests.

. . .

IV. ARGUMENT

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

"As a general rule, federal courts must recognize and enforce tribal court judgments under principles of comity." *AT&T Corp.*, 295 F.3d at 903; *accord Hawks*, 933 F.3d at 1057. There are three limited exceptions to this general rule. *See FMC Corp. v. Shoshone-Bannock Tribes*, 942 F.3d 916, 930 (9th Cir. 2019) (describing three exceptions that apply for lack of jurisdiction, lack of due process, and equitable grounds). None of them apply here. The Tribal Court has personal and subject-matter jurisdiction and did not deny Findleton due process, and there are no equitable grounds justifying refusal to recognize and enforce the Tribal Court Orders. The Tribe is likely to succeed on the merits of its claims because no grounds exist for the Court to refuse to enforce the Tribal Court orders. *See id.* at 944 (enforcing a tribal court judgment in the absence of any exceptions to enforcement).

1. The Tribal Court Has Jurisdiction Under *Montana v. United States*.

To have jurisdiction over a controversy between a tribe and a nonmember, the tribal court must have regulatory and adjudicatory jurisdiction over the tribe's claims. *Id.* at 931. As to regulatory jurisdiction, in *Montana v. United States,* 450 U.S. 544, 565 (1981), the Supreme Court recognized that "a tribe retains the inherent sovereign authority to 'regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases or other arrangements.'" *See also Knighton v. Cedarville Rancheria of N. Paiute Indians*, 922 F.3d 892, 895 (9th Cir. 2019) ("[A] tribe's regulatory power over nonmembers on tribal land . . . derives separately from its inherent sovereign power to protect self-

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government and control internal relations."). "[C]onsent may be established 'expressly or by [the nonmember's] actions,'" and a nonmember consents to tribal jurisdiction when it "should have reasonably anticipated that [its] interactions might 'trigger' tribal authority." *Water Wheel Camp Rec. Area, Inc. v. LaRance*, 642 F.3d 802, 817–18 (9th Cir. 2011) (alterations original) (quoting *Plains Com. Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 337 (2008)). Even without a consensual relationship, the Tribe has jurisdiction over the activities of non-Indians on Indian lands where such activities directly affect "the tribe's inherent powers to protect the welfare of its members and preserve the integrity of its government." *Knighton*, 922 F.3d at 900; *accord Montana*, 450 U.S. at 566. Once a consensual relationship is established, the conduct is subject to the Tribe's adjudicatory authority even when the tribal court was established after the conduct that is the subject of the dispute occurred. *Knighton,* 922 F.3d at 897 (concluding that a tribal court had jurisdiction even though it was created nine months after a non-Indian's employment relationship ceased).

As to adjudicatory jurisdiction, "where tribes possess authority to regulate the activities of nonmembers, '[c]ivil jurisdiction over [disputes arising out of] such activities presumptively lies in the tribal courts.'" *Strate v. A-1 Contractors*, 520 U.S. 438, 440 (1997) (alterations original) (quoting *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 18 (1987)); *accord FMC Corp.*, 942 F.3d at 941. Considering "the nature of the tribal sovereign interests, long-standing principles of Indian law, and congressional interest in tribal self-government," when a tribe has regulatory jurisdiction over a nonmember's conduct, the tribe also has adjudicatory jurisdiction over disputes arising out of that conduct. *FMC Corp.*, 942 F.3d at 941. "Any other conclusion would impermissibly interfere with the tribe's inherent sovereignty, contradict long-standing principles the Supreme Court has repeatedly recognized, and conflict with Congress's interest in promoting tribal self-government." *Water Wheel*, 642 F.3d at 816.

The Tribal Court has jurisdiction to issue the Tribal Court Orders by virtue of the Tribe's regulatory jurisdiction over Findleton, who expressly agreed to be subject to the Tribe's regulatory and adjudicatory authority. The AIA Agreement provides, among other things, that it "shall be governed by the law of the [Tribe]," and that Findleton "agrees to the jurisdiction of the [Tribe]." Compl. ¶ 24 & Ex. B at § 18.1.2. Provisions in the Agreement stating that Findleton agrees to a Tribe-imposed construction tax and that state sales tax does not apply further underscore his consent to the Tribe's

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jurisdiction. *See* Compl. ¶ 27 & Ex. B. Notably, Findleton took the position that the AIA and Rental Agreements should be read together, Compl. ¶ 44, and so his express consent to jurisdiction in the AIA Agreement extends to matters relating to the Rental Agreement. *See Findleton II*, 238 Cal. Rptr. 3d at 351 (describing Findleton's argument that the AIA and Rental agreements "should be 'considered as one agreement,' and their provisions should be treated as 'merge[d].'" (alteration original)).

The Tribe also has regulatory and adjudicatory jurisdiction because Findleton should have anticipated that entering into a contractual relationship with the Tribe for construction work on tribal land "might trigger tribal authority." *Water Wheel*, 642 F.3d at 817. Indeed, the AIA Agreement pertains to the construction of a gaming facility, related infrastructure improvements, and ancillary work on tribal land, *see* Ex. B to Compl. at 1, and the AIA and Rental Agreements both state that "[n]o term or provision [they contain] shall be construed as a waiver of the [Tribe's] sovereign immunity," *id.* § 9.10.8; *accord* Ex. E to Compl. at § 22(D). Additionally, the Rental Agreement expressly states that it "shall be deemed to have been negotiated and executed within the Coyote Valley Indian Reservation." Ex. E to Compl. at § 22(E). Because Findleton agreed to these and other terms and conditions and performed the construction work on tribal land, the Tribe has regulatory and adjudicatory jurisdiction over his conduct and related disputes.

2. The Tribal Court Afforded Findleton Due Process.

Although federal courts reject tribal judgments when the defendant "was not afforded due process of law," *Wilson v. Marchington*, 127 F.3d 805, 811 (9th Cir. 1997), federal courts "must 'be careful to respect tribal jurisprudence' as well as tribes' customs and traditions," *FMC Corp.*, 942 F.3d at 942. Moreover, "[e]xtending comity to tribal judgments is not an invitation for [federal courts] to exercise unnecessary judicial paternalism in derogation of tribal self-governance." *Id.* Hence, in the comity context, all due process requires is "that there has been an opportunity for a full and fair trial before an impartial tribunal that conducts the trial upon regular proceedings after proper service or voluntary appearance of the defendant, and that there is no showing of prejudice in the tribal court or in the system of governing laws." *Wilson*, 127 F.3d at 811.

By his failure to appear in the Tribal Court, Findleton waived the opportunity to be heard by the Tribal Court—an impartial tribunal—before that court entered the Tribal Court Orders. *See, e.g.*,

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United States v. Amwest Sur. Ins. Co., 54 F.3d 601, 602 (9th Cir. 1995) ("A waiver is an intentional relinquishment or abandonment of a known right or privilege."). Indeed, although he was served with copies of all filings and had advance notice of all hearings in the Tribal Court Action, and despite expressly "agree[ing] to the jurisdiction of the Coyote Valley Band of Pomo Indians," Ex. B to Compl. at § 18.1.2, Findleton failed to appear at the October 2, 2017 hearing on the Tribe's TRO/PI Motion and March 18, 2019 hearing on the Tribe's request for a permanent injunction. Findleton also did not appear for other hearings in the Tribal Court pertaining to the Tribe's request for injunctive relief, including hearings on October 30, 2017, November 27, 2017, and December 14, 2017. Except for a Motion to Dismiss for Lack of Jurisdiction Findleton filed on February 8, 2017, which was denied by the Tribal Court, Findleton refused to participate in any hearings before the Tribal Court. Compl. ¶¶ 63, 73, & 77. The Tribal Court entered $1,000 in sanctions against him as a result. Compl. ¶ 77. Further, the Tribal Court is an impartial tribunal, and the only prejudice to Findleton in connection with the Tribal Court arises from his conduct. Hence, the Tribal Court afforded Findleton due process, but he rejected it by his repeated failures to appear and participate in Tribal Court proceedings.

3. There Are No Equitable Grounds Upon Which The Court May Decline To Recognize And Enforce The Tribal Court Orders.

Although federal courts have discretion to "decline to recognize and enforce a tribal judgment on equitable grounds," *Wilson*, 127 F.3d at 810, none of the circumstances the Ninth Circuit expressly recognized apply. The Tribal Court Orders were not obtained by fraud, do not "conflict[] with another final judgment that is entitled to recognition," and are not "inconsistent with the parties' contractual choice of forum." *Id.* Recognition of the Tribal Court Orders and the sovereignty and sovereign immunity principles upon which they are based is not "against the public policy of the United States or the forum state in which recognition of the judgment is sought." *Id.*; *see also Somportex Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 440 (3d Cir. 1971) ("Comity should be withheld only when its acceptance would be contrary or prejudicial to the interest of the nation called upon to give it effect."). Because there are no equitable grounds that weigh against comity, the Tribe is likely to prevail on its claims for recognition and enforcement of the Tribal Court Orders.

a. Tribal Court: The Parties' Contractual Forum.

Recognition and enforcement of the Tribal Court Orders is *consistent* with the parties'

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contractual choice of forum because, as discussed, Findleton expressly "agree[d] to the jurisdiction of the [Tribe]," and the AIA Agreement expressly states that it "shall be governed by the law of the [Tribe]." Ex. B to Compl. at § 18.1.2. Moreover, an Order from this Court recognizing and enforcing the Tribal Court Orders is also consistent with the parties' contractual choice of forum. Indeed, in connection with the Third AIA Amendment, Findleton demanded that the Tribe "issue a Tribal Resolution" that would "include the 'limited waiver of sovereign immunity wording' which allows Terre Construction remedy within the U.S. Federal Court system." Ex. C to Compl. at 2. Because Findleton consented to the Tribe's jurisdiction and demanded that the U.S. federal court system be an available forum, an order from this Court recognizing and enforcing the Tribal Court Orders is not "inconsistent with the parties' contractual choice of forum." *Wilson*, 127 F.3d at 810.

b. The State Court Lacks Jurisdiction.

Recognition and enforcement of the Tribal Court Orders also does not "conflict[] with another final judgment that is entitled to recognition," *id.*, because the State Courts lack subject-matter jurisdiction over Findleton's claims against the Tribe. In *Lawrence II*, the Tenth Circuit reversed the district court and granted the Ute Indian Tribe's request for a permanent injunction against pending state-court proceedings involving Lynn Becker's contract claims against the Ute Tribe. 2022 WL 53421 *passim*. As with this dispute, the *Lawrence II* dispute "spawned lawsuits in federal, state, and tribal court," including a federal action the Ute Tribe filed *after* the Utah state court denied its motion to dismiss. *Id.* at *2. In the federal action, the Ute Tribe sought to permanently enjoin the state-court proceedings on grounds that the state court lacked subject-matter jurisdiction. *Id.* The district court denied the Tribe's motion on various grounds, including that the Tribe "had not shown a substantial likelihood of success on its claim that federal law precludes the state court from exercising jurisdiction over Becker's lawsuit." *Id.* at *3. After a protracted procedural history involving four separate appellate opinions issued over the space of seven years, the Tenth Circuit concluded that the Utah state court lacked jurisdiction over Becker's claims, reversed the district court, and ordered the district court to "enter an order ***permanently*** enjoining Becker's lawsuit in Utah state court." *Id.* at *12 (emphasis added).

Starting from the premise that "when a case brought against a tribe or its members 'aris[es]

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from conduct in Indian country,' state courts lack jurisdiction 'absent clear congressional authorization,'" the *Lawrence II* court first examined "whether Becker's claims arose on the reservation." *Id.* at *3–4 (quoting *Navajo Nation v. Dalley*, 896 F.3d 1196, 1204 (10th Cir. 2018)). Although the court acknowledged that "some of the underlying events took place off the reservation," it nonetheless concluded that "Becker's case is . . . 'appropriately characterized as litigation arising in [an] Indian reservation.'" *Id.* at *6. In summarizing the basis of this conclusion, the court emphasized that Becker's relevant conduct was related to the Ute Tribe's interests at all times:

> [B]oth parties signed the [underlying] Agreement on the reservation, and the Tribe necessarily performed its duties there. And crucially, even though Becker performed his duties off the reservation about half of the time, his work was always in service of his role managing tribal mineral resources located on the reservation. For these reasons, we conclude that no 'substantial part' of the conduct supporting Becker's claims occurred off the reservation.

Id. (quoting *Fisher v. Dist. Ct. of Mont.*, 424 U.S. 382, 389 (1976) (per curiam)). Thus, "[b]ecause Becker's claims against the Tribe arose on the reservation, the court explained, "the Utah state court could exercise jurisdiction over the dispute only with 'clear congressional authorization.'" *Id.* (quoting *Dalley*, 896 F.3d at 1204).

In addressing that issue, the court first analyzed and rejected the district court's conclusion that the state court had jurisdiction under 25 U.S.C. § 1322. *Id.* "States may only assume jurisdiction under § 1322(a)," the court explained, "with the consent of the tribe occupying the particular Indian country . . . which would be affected by such assumption." *Id.* at *7 (quotation marks omitted) (quoting 25 U.S.C. § 1322(a)). Thus, "because the Tribe ha[d] never consented to Utah courts exercising § 1322 jurisdiction," the *Lawrence II* court agreed with the Ute Tribe's argument that § 1322 "does not supply the Utah state court with jurisdiction." *Id.* at *6–7.

The *Lawrence II* court next rejected the district court's conclusion, which Becker echoed on appeal, that "the Tribe's purported waiver of sovereign immunity rendered the [consent] requirement [in § 1322] inapplicable." *Id.* at *8. Invoking Ninth Circuit precedent that remains good law, the court explained that "tribal 'sovereign immunity and a court's lack of subject-matter jurisdiction are different animals.' Waiving sovereign immunity simply renders a party 'amenable to suit in a court properly possessing jurisdiction; it does not guarantee a forum.'" *Id.* at *9 (first quoting *Lawrence I*,

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875 F.3d at 545, and then quoting *United States v. Park Place Assocs., Ltd.*, 569 F.3d 907, 923 (9th Cir. 2009)). In other words, as the Ninth Circuit admonished in *Alvarado*, "the absence of immunity does not establish the presence of subject matter jurisdiction." 509 F.3d at 1016; *accord Lawrence II*, 2022 WL 53421, at *9 (quoting *Alvarado* for the same proposition).

Having concluded that the Utah state court lacked jurisdiction over Becker's claims, the *Lawrence II* court considered—and granted—the Tribe's request that the court "order the district court to enter a permanent injunction against the state-court proceedings." 2022 WL 53421, at *10. In doing so, the court acknowledged that this remedy "will leave Becker unable to sue the Tribe in state court, but emphasized that is "'something [he] ha[d] no legal entitlement to do in the first place,' given [the court's] conclusion that Congress has not authorized jurisdiction." *Id.* at *11 (alterations original) (quoting *Ute Indian Tribe of the Uintah & Ouray Resrv. v. Utah*, 790 F.3d 1000, 1005 (10th Cir. 2015)). Notably, in granting the Tribe's request for a permanent injunction, the court rejected the proposition that "abstention is warranted" because "the parties have litigated extensively in the state district court, as well as in the Utah appellate courts, and the case is ready for trial." *Id.* at *14–15 (Briscoe, J., dissenting).[3] In doing so, the court emphasized that "[b]ecause [it] conclude[d] that the Utah state court lacks jurisdiction, *abstention is not an option.*" *Id.* at *10 n.17 (emphasis added); *see also Arizona v. San Carlos Apache Tribe of Ariz.*, 463 U.S. 545, 560 (1983) ("[A] dismissal or stay of the federal suits would have been improper if there was no jurisdiction in the concurrent state actions to adjudicate the claims at issue in the federal suits.").

(1) No Congressional Authorization.

In the case at hand, as in *Lawrence II*, the California state court lacks jurisdiction over the Tribe because Findleton's claims arise out of obligations incurred on and pertaining to tribal land, and conduct exclusively on the same, such that the State Court lacks subject-matter jurisdiction absent an express authorization from Congress. *See, e.g.*, *Alvarado*, 509 F.3d at 1016 ("[For a tribunal to have]

[3] The dissenting opinion rejected the district court's conclusion that *"Younger* abstention was appropriate." *Lawrence II* at *14; *see also id.* ("I am not persuaded that Becker's state court proceeding—which involves a civil dispute between private parties over a written contract—falls into any of th[e] narrow [*Younger*] categories."). Notably, Findleton asserted abstention defenses in the State Court as precluding the Tribe's federal lawsuit, but those defenses were also raised and rejected in *Lawrence II*.

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subject matter jurisdiction in an action against a sovereign, in addition to a waiver of sovereign immunity, there must be statutory authority vesting [the tribunal] with subject matter jurisdiction."); *Cardin v. De La Cruz*, 671 F.2d 363, 366 (9th Cir. 1982) (observing that, in *Williams v. Lee*, 358 U.S. 217 (1959), the Supreme Court "held that tribal courts had exclusive jurisdiction over a civil suit by a non-Indian against reservation Indians arising out of a transaction on the reservation.").

As with the contract in *Lawrence II*, the AIA Agreement pertains to matters exclusively within tribal lands:

> [T]he project is: *(Name and location)*
>
> Improvement/widening of North State Street, relocation of a portion of the existing Bureau of Indian Affairs Road for the purpose of site preparation, and certain infrastructure improvements related to the [Tribe]'s construction of a new gaming facility and other ancillary work . . . .
> Coyote Valley Indian Reservation

Ex. B to Compl. at 1. The Third AIA Amendment echoes this description and confirm that Findleton's contractual obligations were to be performed "at the Coyote Valley Indian Reservation." Ex. C to Compl. at 1. Similar provisions in the Rental Agreement further underscore that Findleton's claims arise out of conduct exclusively on tribal land. Representative is Section 22(E), which bears the heading "Situs of Agreement," states that it "shall be deemed to have been negotiated *and* executed within the Coyote Valley Indian Reservation." Ex. E to Compl. at 6. The Agreement also defines the "On-Site Location" as "the site within the Coyote Valley Indian Reservation from which [Findleton] shall deliver, store and lease equipment to the [Tribe]." *Id.* at 1.

The Petition to Compel Mediation and Arbitration Findleton filed in the State Court confirms that his claims arise out of conduct exclusively on tribal lands. For instance, Paragraph 2 of the Petition expressly alleges that the purpose of the AIA Agreement "was the construction of certain roads, earth-moving, the construction of underground utilities[,] and other matters *on Tribal land* located north of Ukiah, Mendocino County, California." Ex. AA to Compl. at 2 ¶ 2 (emphasis added). Likewise, Paragraph 3 of the Petition confirms the purpose of the Rental Agreement "was for the supply of equipment/machinery *to the Tribal lands* located north of Ukiah, Mendocino County, California." *Id.* ¶ 3 (emphasis added). Moreover, in *Findleton III* the California Court of Appeal acknowledged that the AIA Agreement, Third AIA Amendment, and Rental Agreement "all relate to the Tribe's casino and

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infrastructure development project." 238 Cal. Rptr. 3d at 351. Thus, as in *Lawrence II*, Findleton's claims arise out of contractual obligations incurred on and pertaining to tribal lands, and conduct exclusively on the same, such that the State Court lacks jurisdiction over Findleton's claims absent express congressional authorization to the contrary.

There is no such congressional authorization. As with the Utah state court in *Lawrence II*, 25 U.S.C. § 1322 does not vest the State Court with subject-matter jurisdiction over Findleton's claims because the Tribe never consented to state-court jurisdiction as 25 U.S.C. § 1326 requires. Similarly, although California is one of the states to which Congress granted "jurisdiction over civil causes of action between Indians or to which Indians are parties," 28 U.S.C § 1360(a), Congress did not grant the courts of any state subject-matter jurisdiction over civil causes of action against Indian tribes. Indeed, in *Bryan v. Itasca County*, the U.S. Supreme Court rejected the proposition that Congress intended for 28 U.S.C. § 1360 to subordinate Indian tribes "to the full panoply of civil regulatory powers . . . of state and local governments" and observed that "any conferral of state jurisdiction over the tribes themselves" is "notably absent" from the statute. 426 U.S. 373, 388 (1976). The Supreme Court has also made clear that 28 U.S.C. § 1360 preserves tribal sovereign immunity and does not change the long-established policy of guarding tribal sovereignty. *Three Affiliated Tribes of Ft. Berthold Rsvn. v. World Eng'g*, 476 U.S. 877, 892 (1986) ("We have never read [28 U.S.C. § 1360] to constitute a waiver of tribal sovereign immunity, nor found [it] to represent an abandonment of the federal interest in guarding Indian self-governance.").

In the absence of express congressional authorization, an Indian Tribe cannot "selectively consent," by way of a waiver of immunity in a contract like the AIA Agreement, to '"a state's exercise of . . . jurisdiction' over a specific legal action." *Lawrence II*, 2022 WL 53421, at *19. The only way a state court may assert jurisdiction for claims involving an Indian tribe arising arise out of obligations incurred on, and pertaining to, tribal land is through an express authorization from Congress as to the subject matter of the claim *in addition to* an express waiver of sovereign immunity. *E.g. Alvarado*, 509 F.3d at 1016 ("To confer subject matter jurisdiction in an action against a sovereign, in addition to a waiver of sovereign immunity, there must be statutory authority vesting [the tribunal] with subject matter jurisdiction."). Accordingly, any disagreement between the Tribal Court and the State Court as

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to whether the Tribe waived its immunity is inapposite; as the Supreme Court made clear in *Bryan*, Congress never conferred subject-matter jurisdiction on the State Court to adjudicate, in any form, Findleton's claims against the Tribe.

Notably, the State Court's Order Compelling Mediation—which is in direct conflict with the Tribal Court Orders and Petition Opinion—is based on the flawed logic that the Tribe consented to State Court jurisdiction "when it agreed to arbitrate its disputes with Findleton" because "[w]hen a tribe waives sovereign immunity it, in effect, consents to state court jurisdiction." Ex. I to Compl. at 2 ¶ ix. The State Court's conclusion is not merely wrong as a matter of contractual interpretation; it plainly contravenes binding precedent. In *Park Place Associates*, the Ninth Circuit described equating sovereign immunity with subject-matter jurisdiction as a mistake that courts should avoid committing. 563 F.3d at 923. "Although the concepts are related," the court explained, "sovereign immunity and subject matter jurisdiction present distinct issues." *Id.* In other words, contrary to the State Court's reasoning, "the absence of immunity does not establish the presence of subject matter jurisdiction." *Alvarado*, 509 F.3d at 1016; *accord Park Place Assocs.*, 563 F.3d at 923 (quoting *Alvarado* for the same proposition). Because Findleton's claims arise out of a transaction and conduct on the Coyote Valley Reservation, and because Congress did not authorize the State Court to exercise jurisdiction over Findleton's claims, the State Court lacks jurisdiction even if the Tribe had waived sovereign immunity (it did not).[4]

(2) No Waiver Of Sovereign Immunity.

Even if the State Court has subject-matter jurisdiction (*Bryan*, *Alvarado*, and *Park Place Associates* make clear that it does not), the California State Court lacks jurisdiction over Findleton's claims nonetheless because the Tribe did not waive sovereign immunity to suit in any state court. "It is settled that a waiver of sovereign immunity 'cannot be implied but must be unequivocally expressed,'" *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978) (quoting *United States v. Testan*, 424 U.S.

[4] *Lawrence II* concluded that the Utah state court lacked jurisdiction even though the underlying contract (1) provided that all disputes arising out of the Agreement would be governed by Utah state law, (2) waived any requirement that disputes be brought in Tribal court, and (3) purported to waive the Ute Tribe's sovereign immunity. 2022 WL 53421, at *12. In contrast, Findleton's contracts with the Tribe provided for tribal law and federal law, tribal jurisdiction, and expressly state that the Tribe did not waive its immunity and that disputes are not to be resolved in California state court.

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392, 399 (1976)), such that a tribe's "sovereign immunity from suit remains intact unless the [t]ribe has clearly and unequivocally waived it[,]" *Nanomantube v. Kickapoo Tribe*, 631 F.3d 1150, 1152 (10th Cir. 2011); *accord, e.g.*, *Maxwell v. Cnty. of San Diego*, 708 F.3d 1075, 1087 (9th Cir. 2013) ("Waivers of tribal sovereign immunity must be explicit and unequivocal."). Further, "[b]ecause a waiver of immunity 'is altogether voluntary on the part of [a tribe], it follows that [a tribe] may prescribe the terms and conditions on which it consents to be sued, and the manner in which the suit will be conducted.'" *Mo. River Servs., Inc. v. Ohama Tribe of Neb.*, 267 F.3d 848, 852 (8th Cir. 2001) (quoting *Am. Indian Agric. Credit Consortium, Inc. v. Standing Rock Sioux Tribe*, 780 F.2d 1374, 1378 (8th Cir. 1985)); *accord Oglala Souix Tribe v. C & W Enters., Inc.*, 542 F.3d 224, 231 (8th Cir. 2008) ("A sovereign tribe has full authority to limit any waiver of immunity to which it consents.").

When examining whether and to what extent a tribe waived sovereign immunity in connection with a contract, courts will not "ignor[e] the clear content of the[] agreements" or "infer that the [tribe] intended the exact opposite of what it said" in the agreements. *Maxwell*, 708 F.3d at 1087. Thus, when a tribe "does consent to suit, any conditional limitation it imposes on that consent must be strictly construed and applied." *Namekagon Dev. Co. v. Bois Forte Rsvn. Hous. Auth.*, 517 F.2d 508, 509 (8th Cir. 1975); *see also United States v. Nordic Village Inc.*, 503 U.S. 30, 34 (1992) ("[T]he [sovereign]'s consent to be sued 'must be construed strictly in favor of the sovereign' and not 'enlarge[d] . . . beyond what the language requires.'" (citations omitted) (third alteration original)); *Grand Canyon Skywalk Dev., LLC v. Hualapai Indian Tribe of Ariz.*, 966 F. Supp. 2d 876, 882–83 (D. Ariz. 2013) (same). This is consistent with the "strong presumption against waivers of immunity." *Pan Am. Co.*, 884 F.2d at 419.

The State Court lacks jurisdiction over the Tribe, such that the State Court's orders are not entitled to recognition, because the Tribe did not consent to suit in any state court. Section 9.10.8 of the AIA Agreement states that "[n]o term or provision in [the] Agreement shall be construed as a waiver of the sovereign immunity of the Coyote Band of Pomo Indians" and further provides that "[t]he Parties specifically agree that the sovereign immunity of the Coyote Valley Band of Pomo Indians ***shall not be waived*** for disputes or other matters related to th[e] Agreement." Compl. ¶ 21 & Ex. B § 9.10.8 (emphasis added). Likewise, Section 22 of the Rental Agreement contains identical

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language, including the statement that "the Parties specifically agree that the sovereign immunity of [the] Coyote Valley Band of Pomo Indians ***shall not be waived*** for disputes or other matters related to th[e] Agreement." Compl. ¶ 38 & Ex. E at 6 (emphasis added). Thus, because this Court will not "ignor[e] the clear content of these agreements" or "infer that the [Tribe] intended the exact opposite" of what the agreements say, *Maxwell*, 708 F.3d at 1087, neither the AIA Agreement nor the Rental Agreement can be construed as a waiver of the Tribe's sovereign immunity in any state court.

To be sure, the State Court found that the Tribe consented to a limited waiver of sovereign immunity in connection with the Third AIA Amendment, but even if Resolution 08-03 is a valid waiver, it expressly states that the waiver does not extend to state courts. As part of his August 2008 proposal to amend the AIA Agreement a third time, Findleton stated that Terre Construction would require the Tribe to "issue a Tribal Resolution" that would "include the 'limited waiver of sovereign immunity wording' which allows Terre Construction remedy within the U.S. Federal Court system." Ex. C to Compl. at 2. Consistent with his August 2008 proposal, Resolution 08-03 states that the Tribe "consents to a limited waiver of sovereign immunity . . . [that] is limited to," among other things, "***avoid dispute resolution in state courts***." Ex. D to Compl. at 2 (emphasis added). Thus, because the Tribe's waiver of sovereign immunity must be "strictly construed," *Namekagon Dev. Co.*, 517 F.2d at 509, and cannot be "enlarge[d] . . . beyond what the language requires," *Nordic Village Inc.*, 503 U.S. at 34 (alteration original), the Court cannot construe the Findleton's August 2008 proposal or Resolution 08-30 as a waiver of the Tribe's immunity from suit in California state court.

Thus, the Tribal Court Orders do not conflict with any judgments or orders that are entitled to recognition—the State Court does not have jurisdiction over the Tribe, which never waived immunity to suit in any state court.

(3) Public Policy Favors Comity.

Recognition and enforcement of the Tribal Court Orders is consistent with the public policy, to which "Congress is committed[,] [. . .] of supporting tribal self-government and self-determination." *Nat'l Farmers Union*, 471 U.S. at 856. This policy, in addition to the "'federal policy of deference to tribal courts[,]' . . . encompasses the development of the entire tribal court system." *Water Wheel*, 642 F.3d at 808 (quoting *Iowa Mut. Ins.*, 480 U.S. at 16–17). Moreover, California courts recognize that the

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"policy of leaving Indians free from state jurisdiction and control is deeply rooted in this nation's history," *Boisclair v. Super. Ct.*, 801 P.2d 305, 309 (Cal. 1990) (quoting *McClanahan v. Ariz. State Tax Comm'n*, 411 U.S. 164, 168 (1973)), and "has two independent but interrelated bases: federal preemption *and* the internal sovereign rights of Indian tribes," *id.* Consistent with these overriding policies, the California Supreme Court "steadfastly recites that Native American Indian tribes 'enjoy broad sovereignty from lawsuits' and 'may . . . exercise sovereign power over non-Indians who enter tribal land.'" *Middletown Rancheria of Pomo Indians v. W.C.A.B.*, 71 Cal. Rptr. 2d 105, 110 (App. 1998) (quoting *Boisclair*, 801 P.2d at 73). Thus, considering the deep-rooted policies of recognizing and encouraging tribal sovereignty, self-government, and self-determination, and inasmuch as the Tribe did not waive sovereign immunity in any state court, and because Congress never authorized the California State Court to exercise subject-matter jurisdiction over Findleton's claims, public policy favors recognizing and enforcing the Tribal Court Orders.

B. THE TRIBE WILL SUFFER IRREPARABLE HARM, AND THE BALANCE OF EQUITIES FAVORS THE TRIBE, IF THE TRIBAL COURT'S ORDERS ARE NOT ENFORCED AND THE STATE COURT ENJOINED FROM DISREGARDING THE TRIBE'S SOVEREIGNTY AND SOVEREIGN IMMUNITY.

A party seeking an injunction must establish that irreparable harm in the absence of preliminary relief is likely. *Winters v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). When analyzing whether to grant a preliminary injunction, courts analyze whether "the balance of hardships tips sharply in the plaintiff's favor." *Alliance for the Rockies*, 632 F.3d at 1135. Both elements are satisfied here.

Courts conclude that infringing on tribal sovereignty constitutes irreparable harm, both with respect to injunctive relief and in other contexts. *See, e.g.*, *Confederated Tribes & Bands of Yakama Nation v. Yakima Cty.*, 963 F.3d 982, 989 (9th Cir. 2020) ("[I]nfringement on . . . tribal sovereignty and the right to self-government . . . is sufficiently concrete, particularized, and imminent to show injury in fact."); *Lawrence II*, 2022 WL 53421, at *11 ("[B]ecause the Tribe, with its sovereign status, should not be compelled to expend time and effort on litigation in a court that does not have jurisdiction, it satisfies the second requirement of irreparable harm." (quotation marks omitted)); *Wyandotte Nation v. Sebelius*, 443 F.3d 1247, 1255 (10th Cir. 2006) ("[A]n invasion of tribal sovereignty can constitute irreparable injury."). Indeed, in *Lawrence II*, the court concluded that the

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Utah state court's infringement on the Ute Tribe's sovereignty "satisfies the . . . requirement of irreparable harm." 2022 WL 53421, at *11. This not only establishes that the Tribe will suffer irreparable harm absent a preliminary injunction, but also that the balance of hardships tips in its favor.

Without the preliminary injunction, the Tribe is faced with the prospect of continued interference with its self-governance and will continue to be "forced to expend time and effort on litigation in a court that does not have jurisdiction over it." *Seneca-Cayuga Tribe of Okla. v. State of Okla.*, 874 F.2d 709, 716 (10th Cir. 1989); *accord Lawrence II*, 2022 WL 53421, at *11 (recognizing that compelling a sovereign tribe to expend time and effort in a tribunal that lacks jurisdiction constitutes irreparable harm). Moreover, even though it lacks jurisdiction over the Tribe, the State Court refused to acknowledge the Tribal Court's jurisdiction and entered sanctions against the Tribe for asserting and taking measures to preserve its "immunity 'from judicial attack' absent consent to be sued." *See Kiowa*, 523 U.S. at 757. Absent injunctive relief, Findleton's and the State Court's disregard for the Tribe's sovereignty and sovereign immunity will continue unabated.

The Court of Appeal's opinion in *Findleton III* underscores the State Court's disregard for the Tribe's sovereignty and the established principle that "tribal courts ha[ve] exclusive jurisdiction over a civil suit by a non-Indian against reservation Indians arising out of a transaction on the reservation." *Cardin*, 671 F.2d at 366 (citing *Williams*, 358 U.S. 217). In *Findleton III*, the Court of Appeals impugned the Tribe for not "voluntarily dismiss[ing] the tribal court proceeding" and insisted that the Tribe should yield to the State Court's bidding: "The Tribe is not duty bound to continue flouting the superior court order compelling mediation and arbitration. It is fully within the Tribe's own control whether to do so." 285 Cal. Rptr. 3d at 69. Likewise, although Findleton expressly agreed to be subject to the Tribe's jurisdiction, and despite long-established Supreme Court precedent regarding tribal courts' jurisdiction over the activities of non-Indians on tribal lands, *see, e.g.*, *Iowa Mut. Ins. Co.*, 480 U.S. at 18, the Court of Appeal accused the Tribe of using the Tribal Court "as a shield to avoid the consequences of its ongoing noncompliance with presumptively valid superior court rulings." *Findleton III*, 285 Cal. Rptr. 3d at 765.

Considering that Congress never authorized the State Court to exercise subject-matter jurisdiction over the dispute with Findleton, the Court of Appeal's disregard for the Tribe's

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sovereignty and the Tribal Court's legitimacy is remarkable. *See, e.g.*, *Iowa Mut. Ins. Co.*, 480 U.S. at 18 ("Tribal authority over the activities of non-Indians on reservation lands is an important part of tribal sovereignty[,] [and] [c]ivil jurisdiction over such activities presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or federal statute."). That the Court of Appeal stated Findleton's state-court action "did not interfere with the Tribe's sovereignty," *Findleton II*, 238 Cal. Rptr. 3d at 355, and invoked the disentitlement doctrine because the Tribe purportedly "flouted the superior court's authority," *Findleton III*, 285 Cal. Rptr. 3d at 69, further underscores the Court of Appeal's indifference for the Tribe's sovereignty. Thus, absent injunctive relief from this Court, the State Court will continue disregarding the Tribe's sovereignty and Tribal Court's legitimacy—including by ordering the Tribe to submit to a debtor's exam on February 25, 2022. *See* Compl. ¶¶ 121–123 & Ex. W.

The sanctions the State Court entered against the Tribe for invoking and seeking to protect its sovereignty underscores that the balance of hardships tips sharply in the Tribe's favor. Even though the Tribe never waived sovereign immunity, and even in the absence of a congressional authorization to exercise subject-matter jurisdiction over civil claims between a non-Indian and an Indian tribe arising on tribal lands, the State Court nonetheless sanctioned the Tribe for seeking the Tribal Court's involvement and for complying with the ensuing Tribal Court Orders. The State Court's repeated incursions on the Tribe's sovereignty and sovereign immunity from Findleton's claims have already harmed the Tribe, and further incursions will only exacerbate that harm—harm that cannot be repaired.

Unlike the Tribe, which did not consent to suit in the State Court, Findleton expressly agreed to subject himself to the Tribe's jurisdiction and to be bound by tribal law. *See* Ex. B to Compl. at § 18.1.2 ("The Contract shall be governed by the law of the [Tribe]. If such law does not cover a particular issue, federal law shall govern. The Contractor [Findleton] agrees to the jurisdiction of the [Tribe]."). Because Findleton disregarded the contractual terms and conditions to which he agreed by filing suit against the Tribe in State Court, it is not inequitable or a hardship for this Court to issue a preliminary injunction that is consistent with the parties' agreements. Indeed, the only hardship Findleton will face is complying with the Tribal Court Orders rather than pursuing claims in the State Court, but the latter is "something [he] ha[d] no legal entitlement to do in the first place." *Lawrence*,

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2022 WL 53421, at *11 (alterations in original). Thus, any such hardship to Findleton flows from the contractual terms and conditions to which he agreed and not the preliminary injunction the Tribe seeks here. Inasmuch as Congress did not authorize the State Court to exercise jurisdiction over Findleton's claims, that "harm does not outweigh the damage to tribal sovereignty that would result from denying the injunction." *Id.*

C. GRANTING A PRELIMINARY INJUNCTION SERVES THE PUBLIC INTERESTS OF ENFORCING BINDING AGREEMENTS, UPHOLDING CONGRESSIONAL INTENT REGARDING TRIBAL SOVEREIGNTY AND SUBJECT-MATTER JURISDICTION, AND DEFERENCE TO TRIBAL COURTS.

Finally, courts must consider whether injunctive relief would serve the public interest. *Alliance for the Wild Rockies*, 632 F.3d at 1135. As discussed, recognition and enforcement of the Tribal Court Orders is consistent with federal and California policy, both of which recognize, value, and protect tribal sovereignty and sovereign immunity. *See, e.g.*, *Nat'l Farmers Union*, 471 U.S. at 856 (describing Congress' commitment to supporting tribal self-government and self-determination); *Boisclair v. Super. Ct.*, 801 P.2d at 309 (acknowledging the "deeply rooted" policy of "leaving Indians free from state jurisdiction and control"). Indeed, a preliminary injunction in connection with an action to recognize and enforce the Tribal Court Orders aligns with the California Supreme Court's steadfast position that "Native American Indian tribes 'enjoy broad sovereignty from lawsuits' and 'may . . . exercise sovereign power over non-Indians who enter tribal land.'" *Middletown Rancheria*, 71 Cal. Rptr. 2d at 110 (quoting *Boisclair*, 801 P.2d at 73). And because Congress did not authorize the State Court to exercise subject-matter jurisdiction over Findleton's claims, a preliminary injunction is consistent with the longstanding principle that "tribal courts had exclusive jurisdiction over a civil suit by a non-Indian against reservation Indians arising out of a transaction on the reservation." *Cardin*, 671 F.2d at 366 (citing *Williams*, 358 U.S. 217 (1959)); *see also Iowa Mut. Ins. Co.*, 480 U.S. at 14 ("[A]bsent governing acts of Congress, the question has always been whether state action infringed on the right of reservation Indians to make their own laws and be ruled by them.")

Granting the Tribe's request for a preliminary injunction also promotes the public policy of enforcing valid and binding agreements. *See* Restatement (Second) of Contracts § 178 (1981); *see also Textron Fin. Corp. v. Unique Marine, Inc.*, No. 08-10082-CIV-MOORE, 2008 WL 4716965, at *9

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(S.D. Fla. Oct. 22, 2008) ("[T]he public is well served when courts enforce the terms of individuals' binding agreements."). As discussed, the AIA Agreement provides that it "shall be governed by the law of the [Tribe]," and that Findleton "agrees to the jurisdiction of the [Tribe]." Ex. B to Compl. at § 18.1.2. Similarly, the third amendment to the AIA Agreement, through which the Tribe agreed to a limited waiver of sovereign immunity, was limited to federal courts and expressly excluded state courts from its scope. Compl. ¶¶ 31–32 & Ex. C. Accordingly, as Findleton expressly agreed to be subject to the Tribe's jurisdiction, a preliminary injunction requiring him to comply with the Tribal Court Orders serves the public policy of enforcing binding agreements.

D. THE COURT SHOULD GRANT THE PRELIMINARY INJUNCTION BECAUSE—AT VERY LEAST—THE TRIBE HAS RAISED SERIOUS QUESTIONS GOING TO THE MERITS, AND THE BALANCE OF HARDSHIPS TIPS SHARPLY IN THE TRIBE'S FAVOR.

Under the alternative test set forth above, courts in the Ninth Circuit must grant a preliminary injunction when, in addition to showing a likelihood of irreparable harm, that the balance of hardships favors the plaintiff, and that public policy favors a preliminary injunction, the plaintiff "shows only that serious questions going to the merits were raised." *Alliance for the Wild Rockies*, 632 F.3d at 1135; *see also id.* (concluding that the district court "made an error of law" "[b]ecause it did not apply the 'serious questions' test . . . in denying [a] preliminary injunction"). The Tribe's arguments on its probability of success, *supra* at Part IV.A, establish, at a minimum, serious questions going to the merits. Indeed, in *Lawrence II*, which presented nearly identical issues and circumstances, the Tenth Circuit "ha[d] no trouble concluding that the [Ute] Tribe satsifie[d] all four requirements for a permanent injunction." 2022 WL 5342, at *11. Moreover, the State Court previously acknowledged this Court should resolve the conflict between the State Court and Tribal Court's competing orders, which underscores that the Tribe has raised serious questions going to the merits. For instance, on November 22, 2019 the State Court stated that the State Court proceedings are "at a stop" until the "federal court weigh[s] in and indicate[s] that . . . th[e] [State] [C]ourt's jurisdiction to make the orders that it made was appropriate." Compl. ¶ 116 & Ex. U at 626:10–17. The State Court also acknowledged that there are competing orders to which the Tribe is subject from "courts of concurrent jurisdiction," which placed the Tribe in an impossible position. Compl. ¶ 116 & Ex. U at 604:21–22.

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Because the Tribe raised serious questions going to the merits and established the other required elements for a preliminary injunction, the Court should grant its request for a preliminary injunction.

V. CONCLUSION

For the foregoing reasons, the Tribe respectfully requests that the Court grant this Motion and enter an preliminary injunction (1) enjoining the State Court proceedings against the Tribe and (2) enjoining Findleton or anyone acting in concert with him from violating the Tribal Court's orders including the First Permanent Injunction and Second Permanent Injunction.

DATED THIS 31st day of January, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that, on January 31, 2022, a true and correct copy of:

MOTION FOR PRELIMINARY INJUNCTION AND REQUEST FOR EXPEDITED BRIEFING

DECLARATION OF KEITH ANDERSON

DECLARATION OF LITTLE FAWN BOLAND

[PROPOSED ORDER] PRELIMINARY INJUNCTION

was served on Defendant Findleton at rfindleton@terrecon.net electronically through the U.S. District Court for the California Northern District CM/ECF and was served on Judge Ann Morman at departmentG@mendocino.courts.ca.gov using the CM/ECF as well. It will be personally served with a proof of personal service to be filed. Courtesy copies were sent to Findleton's legal counsel, Dominic Flamiano at domflam@hotmail.com and Judge Ann Morman's Clerk at departmentG@mendocino.courts.ca.gov.

DATED: January 31, 2022

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Attorneys for the Plaintiff

By: _____
Little Fawn Boland