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Robert Findleton

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

REPLY MEMORANDUM OF POINTS AND
AUTHORITIES TO TRIBE'S RESPONSIVE
OPPOSITION TO DEFENDANT ROBERT
FINDLETON'S MOTION TO DISMISS
PURSUANT TO FRCP 12(b)(1) and (6)

Date: May 26, 2022

Time: 2:00 p.m.

Judge: Hon. Jon S. Tigar

Re: ECF 42, 61

I. INTRODUCTION

Defendant Robert Findleton (Findleton) replies to Plaintiff Coyote Valley Band of Pomo Indians' (Tribe) Opposition to Findleton's Motion to Dismiss under FRCP 12(b)(1) and 12(b)(6) by stating the obvious, the wrong the Tribe seeks to rectify is not any wrong Findleton has done but rather the 'wrong' done by state trial court orders and judgments, upheld on appeal, finding waiver of tribal sovereign immunity by express consent by words, deeds, documents and actions. The Tribe does not agree with those orders and judgments, which, in the light of *Findleton III* and the Tribe's refusal to timely comply on remand with remittitur orders, are clearly law of the case and must be accepted.

Instead, the Tribe seeks to re-litigate settled issues in this forum. *Rooker-Feldman* clearly bars such review in the District Court of prior state court judgments. If there were any doubt as to whether this Court should entertain the Tribe's forum shopping, a brief survey of the appellate argument in *Findleton III* shows the utter contempt with which the Tribe and its counsel have held the judicial and arbitral process.

II. ARGUMENT

A. The Wrong The Tribe Seeks Corrected Are The Findings By The Trial Court, Upheld On Appeal, Of Tribal Waiver of Sovereign Immunity And Consent To Arbitrate Disputes About the Construction and Equipment Contracts

In the Tribe's Response In Opposition To Defendants' Motions To Dismiss (Opposition), the Tribe focuses on the "State Court Orders" which State Court "continues to act without congressional authorization to exercise subject-matter jurisdiction and in plain disregard for the Tribe's sovereignty and sovereign immunity." (Opposition at 2:15-17). A superior court in the state of California is not reliant upon the congress of these United States to grant it authority.

1 California superior courts are granted subject matter jurisdiction by the California Constitution
 2 art. VI, §10. Once such general subject matter jurisdiction attaches, it remains over all
 3 subsequent proceedings until entry of final judgment. Cal.C.C.P. §410.50, subd. (b); *Serrano v.*
 4 *Stefan Merli Plastering Co.*, 162 Cal.App.4th 1014, 1031 (2008).

6 The so-called conflict was created by the Tribe after Findleton petitioned to compel
 7 arbitration on March 23, 2012 and is disposed of by the *Findleton III* court, as summarized below
 8 in a survey of the oral argument.

9 With respect to granting leave to amend, there is no showing, nor can there be one made,
 10 that it is possible to amend the pleadings to overcome the bar of *Rooker-Feldman*. The state
 11 court trial and appellate orders and judgments are law of the case. Those are the very orders the
 12 Tribe seeks to review in this federal district court.

14 Amendment would be futile where the basic thrust of the Tribe's federal filing is that the
 15 state court got it wrong and they deserve this federal forum to rectify the matter. Under what
 16 possible set of factual circumstances can the Tribe amend where the relief it seeks, federal court
 17 district review of prior state court judgments, is the classic statement of the *Rooker-Feldman*
 18 doctrine? The burden is on the Tribe to present facts that would make a material difference if
 19 allowed leave to amend. The Tribe has made no such showing in fact.

22 B. *Rooker-Feldman* Is Directly Applicable, A District Court Has No Subject
 23 Matter Jurisdiction To Review State Court Judgments

24 Under the *Rooker-Feldman* doctrine, a federal district court has no authority to review the
 25 final determinations of a state court in judicial proceedings. *Fleming v. Gordon & Wong Law*
 26 *Group, P.C.*, 723 F.Supp.2d 1219, 1222 (N.D.Cal. 2010), citing *Rooker v Fidelity Trust Co.*, 263 U.S.
 27 413, 415-416 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 476 (1983).
 28

District courts are barred, under the *Rooker-Feldman* doctrine, not only from direct appeal of a state court decision, but also ‘the de facto equivalent’ of such an appeal. *Cooper v Ramos*, 704 F.3d 772, 777 (9th Cir. 2012); *Henrichs v. Valley View Development*, 474 F.3d 609, 613 (9th Cir. 2007); *Bianchi v. Rylaarsdam*, 334 F.3d 895, 900 (9th Cir. 2003).

C. The Conduct Of This Decade Old Litigation Has Been Outrageous And Must
Come To A Just Termination

This matter arose ten years ago by the filing in state court of a petition to compel contractually agreed to arbitration. The Tribe’s conduct of that litigation in the course of those ten years is best summed up by Presiding Justice Kline in the oral argument in *Findleton III*:

Justice Kline: Well, Ms. Boland, I want to say something about, about the AAA’s closure of this case. My own view is that the conduct of the Tribe has been scandalous in many particulars. But for you to raise the fact of the AAA’s closure of the case after you threatened it, after the Tribe threatened it by going public with their – with an attack on that nonprofit institution seems to me to be outrageous.

Transcript of September 22, 2021 Oral Argument in *Findleton III* (“Transcript”), attached as Exhibit A to Request for Judicial Notice under Evid.Rule 201(b)(2)(RFJN)) at 7:1-10 and Video of September 22, 2021 Oral Argument (“Video”), attached as Exhibit B to RFJN timestamp 5:57-6:31.

Twisting actual facts into a tribal fantasy, the Tribe argues that AAA ‘voluntarily’ closed the arbitration, in other words, it was not the Tribe’s pressure which closed the contractually chosen forum for dispute resolution. At oral argument, Ms. Boland, counsel for the Tribe, had the unmitigated gall to say that AAA “chose voluntarily to close the case.” (Transcript 10:14-15, Video 10:30-35). Justice Stewart’s reply to Ms. Boland is illuminating:

Justice Stewart: Voluntarily, that's a really interesting way of thinking of something as voluntarily when you've been threatened and enjoined. That doesn't sound very voluntary.

Transcript 10:17-21, Video 10:30-37.

The Tribe's argument for failure to comply with the trial court's order compelling arbitration is that they are bound by a tribal court order to the contrary. As Justice Stewart noted, this is an illogical argument because the Tribe created the tribal court, after Mr. Findleton filed his petition for arbitration on March 23, 2012. The Tribe initiated that action in tribal court and can dismiss it and comply with state court orders. Justice Stewart noted: "In other words, why is it not entirely within the Tribe's power to comply with the trial court's orders and it simply chooses not to because it doesn't want to?" (Transcript 15:3-6, Video 16:13-25).

CONCLUSION

Findleton respectfully submits that his motion to dismiss be granted without leave to amend where the Tribe's action to subvert state trial court judgments and to enforce 'tribal court' orders to the contrary is barred by the *Rooker-Feldman* doctrine because a district court does not sit in direct review of state court judgments.

Date: March 29, 2022

NORCAL LOGISTICS LAWYERS GROUP, PC

By: _____/s/_____
Dominic G. Flamiano

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