

1 JAMES F. KING, SBN 41219
 2 STEPHEN F. JOHNSON, SBN 205244
 3 MICHAELYN P. WIPF, SBN 300428
 4 ALLISON M. MACHI, SBN 331349
 5 MANNON, KING, JOHNSON & WIPF, LLP
 6 Savings Bank Building, Suite 304
 7 Post Office Box 419
 8 Ukiah, California 95482
 9 Telephone: (707) 468-9151
 10 Facsimile: (707) 468-0284

11 Attorneys for defendant Savings Bank of
 12 Mendocino County

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COYOTE BAND OF POMO
 INDIANS, a federally recognized
 Indian tribe,

Plaintiff,

vs.

ROBERT FINDLETON, dba Terre
 Construction and On-Site Equipment;
 ANN C. MOORMAN, Judge of the
 Superior Court, etc.; and SAVINGS
 BANK OF MENDOCINO COUNTY,
 a California corporation, et al.,

Defendants.

No. 4:22-cv-00607-JST

SAVINGS BANK'S MEMORANDUM
 OF POINTS AND AUTHORITIES IN
 SUPPORT OF MOTION TO DISMISS
 PURSUANT TO RULE 12(b)(1)

Hearing date: March 24, 2022
 Time: 2:00 p.m.
 Courtroom: 6 — Oakland

Bank submits the following points and authorities in support of its motion to dismiss this action pursuant to F.R.Civ.P. Rule 12(b)(1):

FACTS

Bank is a California corporation authorized to do business by the Superintendent of the State Banking Department, with its principal place of business in Ukiah, Mendocino County. Bank does not maintain a branch office or other business presence on the Coyote Valley Reservation. Bank has never agreed to submit to the jurisdiction of the tribal court.

1 jurisdiction over the case at bench.

2 The *Coeur D'Alene* court held that federal question jurisdiction does not exist “merely
3 because an Indian tribe is a party.” Rather, a “specific rule of federal common law under
4 which the Tribe’s case arises” must be articulated. (*Coeur D'Alene*, 933 F. 3d at 1055.) In
5 *Coeur D'Alene*, the tribe sought to enforce a tribal court judgment against a non-member
6 with respect to the non-member’s encroachment onto tribal land. (*Id.*, at 1054.) The court
7 found jurisdiction because of these facts, and confined its holding to “the facts presented.”
8 (*Id.*, at 1059.) Here, no encroachment onto tribal land is alleged. The case involves funds
9 voluntarily deposited into bank accounts in an off-reservation, non-tribal bank pursuant to
10 an agreement under which Tribe acknowledged that its funds could be subject to judicial
11 process.

12 In *Ute Indian Tribe*, a non-Indian sued the tribe in a state court for breach of a contract
13 involving mining revenue; the circuit court determined that the tribe had not consented to
14 state jurisdiction. Here, by comparison, Tribe engaged in protracted litigation in state court,
15 which led to a determination that it had consented to suit in state court. After multiple
16 appeals, that determination has become final.

17 Bank agrees with the position taken by Findleton with respect to the jurisdictional
18 issue in its motion to dismiss. (See Findleton’s memorandum of points and authorities in
19 support of its motion to dismiss, pages 6-9.)

20 **II. Bank Should Be Awarded Attorney Fees**

21 Tribe’s representatives signed standard signature cards and account agreements in
22 connection with its funds deposited with Bank. (Declaration of James F. King in support of
23 motion to dismiss.) The Master Agreement between Bank and its customers includes the
24 following covenant and condition, under the title **Attorneys’ Fees** on page 11:

25 “You agree to be responsible for, and to reimburse us for, the amount of all
26 costs and expenses, including attorneys’ fees, that we incur in connection with:
27 . . . ; (2) any subpoena, attachment, levy, or other legal process served on your
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1 account or in the contesting of such legal process; or (3) any dispute between
2 you and any other person or entity over the ownership or rights to your account
3 in which we are involved only as the Bank of deposit.”

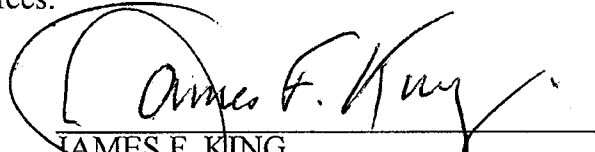
4 California law allows contracting parties to provide for attorney fee awards in actions
5 between them: “Except as attorney’s fees are specifically provided for by statute, the measure
6 and mode of compensation of attorneys and counselors at law is left to the agreement,
7 express or implied, of the parties.” (Code of Civil Procedure § 1021.)

8 If the court grants Bank’s motion to dismiss, it should award Bank its reasonable
9 attorney fees incurred in defending this action. (F.R.Civ.P. Rule 54(d)(2).)

10 **CONCLUSION**

11 There is no federal question before the court. The action should be dismissed and
12 Bank should be awarded its attorney fees.

13 DATED: February 15, 2022



14
15 JAMES F. KING
Mannon, King, Johnson & Wipf, LLP

16 Attorneys for defendant Savings Bank
17 of Mendocino County

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PROOF OF SERVICE
 United States District Court
 Northern District of California
 No. 4:22-cv-00607-JST

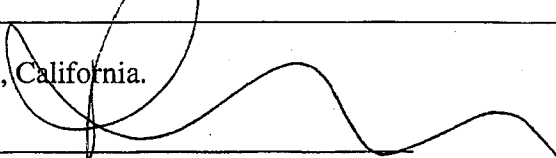
I declare that I am over the age of 18 years, employed in the County of Mendocino, and not a party to the within action; my business address is P.O. Box 419, 200 N. School Street, Room 304, Ukiah, CA 95482.

On February 15, 2022, I served the **SAVINGS BANK'S NOTICE OF MOTION TO DISMISS ACTION PURSUANT TO RULE 12(b) FRCivP FOR LACK OF JURISDICTION, DECLARATION OF JAMES F. KING IN OPPOSITION TO PLAINTIFF'S MOTIONS FOR PRELIMINARY INJUNCTION AND DEPOSIT OF FUNDS, SAVINGS BANK'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS PURSUANT TO RULE 12(b)(1)** on the interested parties in this action by placing the original true copies thereof, as follows:

SEE ATTACHED SERVICE LIST

<input checked="" type="checkbox"/>	By E-SERVICE. Pursuant to California Rules of Court Rule 2.251(c), adopted effective July 1, 2013, I am e-Serving the above-listed document(s) to the electronic service address(es) on the attached Service List and e-Filing the document(s) using one of the court's approved electronic service providers. A true and correct copy of the e-Service transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
<input checked="" type="checkbox"/>	By MAIL. TO ONLY: KARLA KRAFT AND SEAN LOBB. Counsel for defendant Hon. Ann Moorman. I am readily familiar with this law firm's practice for collection and processing of documents for mailing with the U. S. Postal Service. The above-listed document(s) will be deposited with the U. S. Postal Service on the same day shown on this affidavit, to the addressee(s) on the attached Service List in the ordinary course of business. I am the person who sealed and placed for collection and mailing the above-listed document(s) on this date at Ukiah, California, following ordinary business practices.
<input type="checkbox"/>	By E-MAIL. I emailed above-listed document(s) to the e-mail address(es) of the address(es) on the attached Service List. A true and correct copy of the e-mail transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
<input type="checkbox"/>	By OVERNIGHT DELIVERY. The above-listed document(s) will be deposited with an Overnight Delivery Service on the same day shown on this affidavit, in the ordinary course of business. I am the person who sealed and placed for collection and overnight delivery the above-listed document(s) on this date at Ukiah, California, to the addressee(s) on the attached Service List following ordinary business practices. A true and correct copy of the overnight delivery service transmittal will be attached to the above-listed document(s) and produced if requested by any interested party.
<input type="checkbox"/>	By PERSONAL SERVICE. I caused to have hand delivered, the above-listed document(s) to the parties indicated on the service list.
<input checked="" type="checkbox"/>	(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 15, 2022, at Ukiah, California.


 Rochelle Miller, Legal Assistant

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SERVICE LIST
United States District Court
Northern District of California
No. 4 :22-cv-00607-JST

Little Fawn Boland, Esq.
Counsel of Record, Defendant Coyote Valley Band of Pomo Indians Ceiba Legal, LLP
35 Miller Avenue, No. 143
Mill Valley, CA 94941
Email: littlefawn@ceibalegal.com

Keith Anderson, Esq.
Counsel of Record, Defendant Coyote Valley Band of Pomo Indians Ceiba Legal, LLP
35 Madrone Park Circle
Mill Valley, CA 94941
Email: keith@ceibalegal.com and attorneykeithanderson@gmail.com

Todd S. Kartchner
Christopher L. Callehan
Fennemore Craig, P.C.
2394 E. Camelback Road Suite 600
Phoenix, AZ 85016
Email: tkartchner@fclaw.com
Email: callehan@fclaw.com

Scott David Crowell
1487 W. State Route, 89A Suite 8
Sedona, AZ 86336
Email scottcrowell@hotmail.com

Dominic G. Flamiano, Esq.
NorCal Logistics Lawyers Group, PC
2575 Collier Canyon Road
Livermore, CA 94551
Email: dominic@domflamlaw.com and domflam@hotmail.com

Karla Kraft, Esq.
Sean Lobb
660 Newport Center Drive Suite 1600
Newport Beach, CA 92660
Email: kkraft@stradlinglaw.com
Email: stlobb@stradlinglaw.com