1 2 3 4 5 6 7 8 9	JAMES F. KING, SBN 41219 STEPHEN F. JOHNSON, SBN 205244 MICHAELYN P. WIPF, SBN 300428 ALLISON M. MACHI, SBN 331349 MANNON, KING, JOHNSON & WIPF, LLP Savings Bank Building, Suite 304 Post Office Box 419 Ukiah, California 95482 Telephone: (707) 468-9151 Facsimile: (707) 468-0284 Attorneys for defendant Savings Bank of Mendocino County UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA
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12	COYOTE BAND OF POMO) No. 4:22-ev-00607-JST INDIANS, a federally recognized)
13	Indian tribe, SAVINGS BANK'S MEMORANDUM OF POINTS AND AUTHORITIES IN
14	Plaintiff, SUPPORT OF MOTION TO DISMISS PURSUANT TO RULE 12(b)(1)
1.5	vs.
	ROBERT FINDLETON, dba Terre) Time: 2:00 p.m.
16	ANN C. MOORMAN, Judge of the)
17	Superior Court, etc.; and SĀVINGS) BANK OF MENDOCINO COUNTY,)
18	a California corporation, et al.,
19	Defendants.
20	
21	Bank submits the following points and authorities in support of its motion to dismiss
22	this action pursuant to F.R.Civ.P. Rule 12(b)(1):
23	FACTS
24	Bank is a California corporation authorized to do business by the Superintendent of
25	the State Banking Department, with its principal place of business in Ukiah, Mendocino
26	County. Bank does not maintain a branch office or other business presence on the Coyote
27	Valley Reservation. Bank has never agreed to submit to the jurisdiction of the tribal court.
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Until recently, Bank had no involvement in the longstanding litigation between the Coyote Valley Band of Pomo Indians (Tribe) and judgment creditor Findleton. (History summarized in *Findleton v. Coyote Valley Band of Pomo Indians* (2021) 69 Cal. App. 5th 736.) Bank takes no position regarding the merits of that litigation, but agrees with Findleton that this case must be dismissed for lack of federal question jurisdiction.

Tribe has maintained checking and deposit accounts with Bank for some time. On January 13, 2022, writs of execution and notices of levy were served on Bank as a result of judgments issued in favor of Findleton in California state litigation. Bank promptly sent notices of garnishment to the Tribe. After Tribe received them, it obtained an order from the judge of its tribal court restraining Bank "from garnishing the funds in any of the Tribe's accounts held at the Bank . . . until further notice from this court."

Bank filed an objection to the tribal court's jurisdiction. It then delivered a cashier's check to the sheriff for the funds subject to levy. In doing so, it considered codefendant Judge Moorman's denial of Tribe's applications for stay of execution of the writs of execution. Bank is informed, and counsel for Tribe admits, that the sheriff is currently in possession of Bank's cashier's check. The sheriff has not been named as a party to this action.

ARGUMENT

I. There Is No Federal Question Before The Court

The Tribe asserts that this court has jurisdiction under 28 U.S.C. §§ 1331 (federal question) and 1362 (Indian tribe federal question). Both statutes require that the action or controversy arise "under the Constitution, laws, or treaties of the United States."

Tribe's first amended complaint (FAC) fails to point to any federal Constitutional provision, statute or treaty, but instead cites two circuit decisions: *Coeur D'Alene Tribe v. Hawks* (9th Cir. 2019) 933 F. 3d 1052 (*Coeur D'Alene*), and *Ute Indian Tribe of the Uintah & Ouray Reservation v. Lawrence* (10th Cir. 2022) 18-4013 (*Ute Indian Tribe*) as support for its assertion that there is federal question jurisdiction. Neither case supports federal question

jurisdiction over the case at bench.

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

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

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

II. Bank Should Be Awarded Attorney Fees

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

"You agree to be responsible for, and to reimburse us for, the amount of all costs and expenses, including attorneys' fees, that we incur in connection with:
...; (2) any subpoena, attachment, levy, or other legal process served on your

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 action			
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 agreemen			
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 17	Attorneys for defendant Savings Bank of Mendocino County			
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1		PROOF OF SERVICE United States District Court	
2		Northern District of California No. 4:22-cv-00607-JST	
3		I declare that I am over the age of 18 years, employed in the County of Mendocino,	
4	and r Stree	not a party to the within action; my business address is P.O. Box 419, 200 N. School et, Room 304, Ukiah, CA 95482.	
5	D. C.	On February 15, 2022, I served the SAVINGS BANK'S NOTICE OF MOTION TO	
7	DISMISS ACTION PURSUANT TO RULE 12(b) FRCivP FOR LACK OF JURISDICTION, DECLARATION OF JAMES F. KING IN OPPOSITION TO		
8		INTIFF'S MOTIONS FOR PRELIMIARY INJUNCTION AND DEPOSIT FO DS, SAVINGS BANK'S MEMORANDUM OF POINTS AND AUTHORITIES IN	
9		PORT OF MOTION TO DISMISS PURSUANT TO RULE 12(b)(1) on the ested parties in this action by placing \square the original \boxtimes true copies thereof, as follows:	
10		SEE ATTACHED SERVICE LIST	
11	X	By E-SERVICE. Pursuant to California Rules of Court Rule 2.251(c), adopted	
12 13		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.	
.5 .6 .7	X	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.	
9 20		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.	
21 22 23 24		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.	
25		By PERSONAL SERVICE. I caused to have hand delivered, the above-listed document(s) to the parties indicated on the service list.	
26	X	(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.	
27		Executed on February 15, 2022, at Ukiah, California.	
		Rochelle Miller, Legal Assistant	
		PROOF OF SERVICE	
- 11			

Case 4:22-cv-00607-JST Document 45-2 Filed 02/15/22 Page 6 of 6 1 SERVICE LIST United States District Court 2 Northern District of California No. 4:22-cv-00607-JST 3 Little Fawn Boland, Esq. 4 Counsel of Record, Defendant Coyote Valley Band of Pomo Indians Ceiba Legal, LLP 35 Miller Avenue, No. 143 5 Mill Valley, CA 94941 Email: <u>littlefawn@ceibalegal.com</u> 6 7 Keith Anderson, Esq. Counsel of Record, Defendant Coyote Valley Band of Pomo Indians Ceiba Legal, LLP 8 35 Madrone Park Circle Mill Valley, CA 94941 9 Email: keith@ceibalegal.com and attorneykeithanderson@gmail.com 10 Todd S. Kartchner 11 Christopher L. Callehan Fennemore Craig, P.C. 12 2394 E. Camelback Road Suite 600 Phoenix, AZ 85016 13 Email: tkartchner@fclaw.com Email: ccallahan@fclaw.com 14 15 Scott David Crowell 1487 W. State Route, 89A Suite 8 16 Sedona, AZ 86336 Email scottcrowell@hotmail.com 17 18 Dominic G. Flamiano, Esq. NorCal Logistics Lawyers Group, PC 19 2575 Collier Canyon Road Livermore, CA 94551 20 Email: dominic@domflamlaw.com and domflam@hotmail.com 21 Karla Kraft, Esq. 22 Sean Lobb 660 Newport Center Drive Suite 1600 23 Newport Beach, CA 92660 Email: kkraft@stradlinglaw.com 24 Email: stlobb@stradlinglaw.com 25 26 27 28 PROOF OF SERVICE

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