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Karla J. Kraft, State Bar No. 205530
kkraft@stradlinglaw.com
Sean Thomas Lobb, State Bar No. 324213
stlobb@stradlinglaw.com
STRADLING YOCCA CARLSON & RAUTH,
A Professional Corporation
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660-6422
Telephone: (949) 725-4000
Facsimile: (949) 725-4100

Attorneys for Defendant
The Honorable ANN C. MOORMAN,
Judge of the Superior Court of California,
County of Mendocino

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

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

Plaintiff,

vs.

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
Assigned to Hon. Jon S. Tigar

DEFENDANT JUDGE MOORMAN'S REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT

[Related to ECF No. 95]

Date: December 15, 2022
Time: 2:00 p.m.
Judge: Hon. Jon S. Tigar
Location: Remote via ZOOM
https://cand-uscourts.zoomgov.com/j/1619067542?pwd=YktBS2VoNm1JYW9xMS91dk9rUzZudz09
Webinar ID: 161 906 7542
Password: 959588

Complaint Filed: January 31, 2022
Trial Date: Not set

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I. INTRODUCTION

In opposition to the motion to dismiss of the Honorable Ann C. Moorman, Judge of the Superior Court of California, County of Mendocino ("Judge Moorman"), plaintiff Coyote Valley Band of Pomo Indians ("Plaintiff") wholesale copied and pasted previously rejected arguments from its reply in support of its motion for preliminary injunction (ECF No. 58). The Court has already considered and correctly rejected these arguments, and Plaintiff's attempt to rehash them here is unavailing because they are not responsive to the arguments in Judge Moorman's Motion. None of Plaintiff's newly added, irrelevant allegations in the Second Amended Complaint (ECF No. 93 at 6-13, 18-21, 32-24, 40-41, "SAC") remedy the deficiencies identified in the Court's August 12, 2022 Order Granting Motions to Dismiss and Terminating Remaining Motions (ECF No. 89).

This Court still lacks jurisdiction over this dispute under multiple doctrines established by the United States Supreme Court: the *Rooker-Feldman* doctrine, *Younger* Abstention, the *Colorado River* doctrine, and judicial immunity. Additionally, Plaintiff's claims are barred by the Eleventh Amendment and the Anti-Injunction Act. Plaintiff's opposition does nothing to alter this conclusion. For each and all of these reasons, Plaintiff's SAC must be dismissed for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1).

II. ARGUMENT

A. The *Rooker-Feldman* Doctrine Bars The SAC, Without Exception

In Plaintiff's Combined Opposition to Motions to Dismiss (ECF No. 103, "Opp."), Plaintiff recycles its previously rejected arguments as to why the *Rooker-Feldman* doctrine does not apply—and even attempts to address arguments from Judge Moorman's opposition to Plaintiff's Motion for a Preliminary Injunction that are not currently before the Court. *Compare* Opp. at 11-21 *with* ECF No. 58 at 14-18. Notably, Plaintiff does not address or distinguish *any* of the case law on the *Rooker-Feldman* doctrine cited in Judge Moorman's Motion to Dismiss (ECF No. 95 at 9-11), nor does Plaintiff address the Court's prior finding that "the Tribe impliedly concedes that this case presents exactly the circumstance that is forbidden by the *Rooker-Feldman* doctrine." ECF No. 89 at 4. Instead, Plaintiff reargues that three "exceptions"

to the *Rooker-Feldman* doctrine apply. But these "exceptions" either do not exist or are inapplicable.

First, Plaintiff erroneously asserts that the *Rooker-Feldman* doctrine "does not bar jurisdiction" "where the federal plaintiff . . . [complains] of a legal injury caused by an adverse party." Opp. at 16 (quoting *Noel v. Hall*, 341 F.3d 1148, 1163 (9th Cir. 2003)). "This is precisely what the Tribe alleges in the SAC — despite agreeing to be subject to the Tribe's laws and the Tribe's jurisdiction, Findleton disregarded the Claims Ordinance and is actively contravening the Tribal Court's binding and enforceable orders." By making this argument, Plaintiff omits a crucial part of the holding from *Noel*: "where the federal plaintiff does not complain of a legal injury caused by a state court judgment, but rather of a legal injury caused by an adverse party, *Rooker-Feldman* does not bar jurisdiction." *Noel*, 341 F.3d at 1163. Here, as plaintiff has argued and as alleged in the SAC, Plaintiff *does* complain of a legal injury caused by a state court judgment. (ECF No. 58 at 14; Opp. at 8; SAC at 16-25, 30-31.) As the Court previously and correctly held, this case presents exactly the circumstance that is forbidden by the *Rooker-Feldman* doctrine. *See e.g.*, *Kinney v. Cuellar, No. 18-cv-01041-EMC*, 2018 WL 2463120, at *3 (N.D. Cal. June 1, 2018) (identifying the quote from *Noel* as an example of "what may constitute a 'forbidden de facto appeal'").

Second, Plaintiff re-argues that the *Rooker-Feldman* doctrine does not apply here because "application of the *Rooker-Feldman* doctrine would foreclose the *Wilson* comity framework." Opp. at 18. But as the Court previously concluded, it need not conduct a comity analysis because the tribal court did not exist when the state court case was filed, nor did it exist five years after filing. *See Krempel v. Prairie Island Indian Cmty.*, 125 F.3d 621, 622 (8th Cir. 1997) (finding that the comity exhaustion requirement did not apply where no tribal court existed "at the time that [the plaintiff] brought his suit against [the defendants]); *Johnson v. Gila River Indian Cmty.*, 174 F.3d 1032, 1036 (9th Cir. 1999) (citing *Krempel* approvingly and holding that if a "functioning" court "does not exist, exhaustion is per se futile"). Plaintiff does not dispute that the tribal court was not in existence when the state court case was filed, and the California Court of Appeal expressly held such as well. *See Findleton v. Coyote Valley Band of Pomo*

Indians, 69 Cal. App. 5th 736, 757 (2021) ("Tribe then sued AAA (and Findleton) in a **tribal court that did not exist when Findleton filed this case** and persuaded it to issue a TRO and injunction to prohibit AAA from proceeding with the mediation/arbitration the superior court had ordered") (emphasis added).

Plaintiff argues that *Krempel* does not foreclose application of the comity framework because Findleton failed to exhaust tribal remedies to which he expressly agreed. Opp. at 11. But Plaintiff misreads *Krempel*: the case explicitly states: "exhaustion would not be required where it would be 'futile because of the lack of an adequate opportunity to challenge the [tribal] court's jurisdiction." *Krempel*, 125 F.3d at 622. That is the exact situation here. Exhaustion of the tribal court would be futile because no tribal court existed. Plaintiff then contends that even though a tribal court was not in existence at the time, a claims ordinance gave a tribal council adjudicatory authority. Opp. at 11-12, 15. But *Krempel* rejected this very same line of reasoning:

> In the present case, at the time that Krempel brought his suit against the Community and Burr, it is undisputed that no tribal court existed. As the district court recognized, the Community's **Tribal Council did not contract to provide judges for the tribal court until 36 days after service of Krempel's complaint** and 15 days after its removal. The tribal court did not become fully operational until more than two months after removal. In fact, Krempel challenges whether the tribal court has ever become operational. Case law supports the notion that if there is **no functioning tribal court**, exhaustion would be futile and therefore would not be required.

Krempel, 125 F.3d at 622 (emphasis added); *Johnson*, 174 F.3d at 1036. Plaintiff cites to *Knighton v. Cedarville Rancheria of N. Paiute Indians*, 922 F.3d 892, 906 (9th Cir. 2019) for the proposition that courts should look to tribal law in existence at the time, not to whether a tribal court was in existence at the time. Opp. at 11-12. *Knighton*, however, makes no such statement, and it is a case where the court did not address comity, let alone the *Rooker-Feldman* doctrine.

Lastly, Plaintiff reasserts that because the state court lacks subject matter jurisdiction over the proceeding, this case falls under a separate *Rooker-Feldman* exception "when the state proceeding is a legal nullity and void ab initio." Opp. at 16 (quoting *In re Pavelich*, 229 B.R. 777, 783 (B.A.P. 9th Cir. 1999)). Although the Bankruptcy Appellate Panel of the Ninth Circuit has recognized such an exception, it characterized it as "narrow," applying it to enforce a

1 bankruptcy discharge against a contrary state court judgment. *See Pavelich*, 229 B.R. at 783
2 (*Rooker-Feldman* did not strip bankruptcy court of jurisdiction to decide whether state court
3 proceeding was void ab initio due to violating bankruptcy court's discharge order). The basis of
4 the exception is that when the state court contravenes a federal bankruptcy court discharge order,
5 the federal court "need not engage in any form of review of the state decision in order to
6 determine that the state court impermissibly encroached upon the exclusive federal jurisdiction . .
7 . state court decisions that deal with matters related to bankruptcy are considered void ab initio,
8 thereby obviating any need for appeal to the *Rooker-Feldman* doctrine." Benjamin Margulis,
9 *The Bankruptcy Hegemon: Section 524(a) and Its Effect on State and Federal Comity*, 31
10 Cardozo L. Rev. 905, 930 (2010) (emphasis omitted). Because Plaintiff cites no authority
11 extending this exception to facts like those present here, the Court should decline to apply it. *See*
12 *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1139 (9th Cir. 2004) (exception applies in
13 circumstances where "[a plaintiff] does not seek to set aside the judgments of the [state] courts . .
14 . based on alleged legal errors by those courts . . . . [but instead] seeks to set aside these
15 judgments based on the alleged extrinsic fraud by defendants that produced those judgments");
16 *Dencer v. Cal. State Bar*, No. 2:16-CV-03190-SVW-AJW, 2016 WL 6520140, at *4 (C.D. Cal.
17 Oct. 26, 2016) (confining the exception to "state proceedings that violate an express order of a
18 federal court, or that were obtained through fraud"), *aff'd*, 713 F. App'x 617 (9th Cir. 2018).

19 As this Court previously ruled, *Worldwide Church of God v. McNair*, 805 F.2d 888, 890
20 (9th Cir. 1986) applies here. There, McNair, the former wife of a Worldwide Church of God
21 ("Church") minister filed suit in California state court against the minister, the Church, and the
22 Church's Director of Pastoral Administration (collectively "Church Defendants") for defamation
23 and related claims. 805 F.2d at 889. The matter went to trial, and a jury awarded her $1,260,000
24 in compensatory and punitive damages. *Id.* at 890. The Church Defendants then filed suit
25 against McNair in federal district court, asking "the district court to declare the state trial court
26 verdict unconstitutional and to enjoin state court enforcement of the judgment." *Id.* They argued
27 that their allegedly defamatory statements "were part of a doctrinal pronouncement to ministers
28 made in a private ecclesiastical forum" and therefore constitutionally protected as expressions of

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religious belief. *Id.* The district court dismissed the complaint on *Younger* abstention grounds, reasoning that "the state appellate court would consider the federal constitutional issues on appeal, and . . . the state had a vital interest in fashioning a law of defamation." *Id.*

The Ninth Circuit affirmed on *Rooker-Feldman* grounds, explaining that the doctrine could apply "even when the challenge to the state court decision involves federal constitutional issues." *Id.* at 891. The key question was whether the constitutional challenge "require[d] review of a final state court decision in a particular case." *Id.* In *McNair*, the answer was yes. The Church Defendants (who were plaintiffs in the district court) argued that the allegedly defamatory remarks about McNair were privileged because they "constituted part of their religious beliefs." *Id.* at 892. To evaluate this claim, "[t]he district court would be required to review the state court's decision regarding application of the plaintiffs' federal constitutional theories to the particular factual circumstances of th[e] case." *Id.* at 893. Because "the district court could not evaluate the plaintiffs' constitutional claims without conducting a review of the state court's legal determinations and the jury's verdict," the Ninth Circuit affirmed the district court's dismissal of the action. *Id.* at 892-93. Here, Plaintiff again asks the district court to evaluate the state court's "erroneous" rulings on "subject-matter jurisdiction" because those rulings have caused Plaintiff legal injury. Opp. at 8, 16-17. This the Court cannot do.

Plaintiff again relies on out-of-circuit precedent, *Ute Indian Tribe of the Uintah & Ouray Reservation v. Lawrence*, 22 F.4th 892, 897 (10th Cir. 2022), in arguing that *Rooker-Feldman* does not preclude this Court's jurisdiction. Opp. at 17-18, 20-21. In addition to not having any binding effect, the *Ute Indian Tribe* case is simply inapposite. The appellees in *Ute Indian* did not raise the many doctrines and bars that are applicable in this case: the *Rooker-Feldman* doctrine, *Younger* abstention, the *Colorado River* doctrine, judicial immunity, the Eleventh Amendment, and the Anti-Injunction Act. *Ute Indian*, 22 F.4th at 908 n.17. Further, the facts of that case are substantially different. There, after a state court judge denied the tribe's motion to dismiss the state court action, the tribe waited one year to file its federal case. *Id.* at *4. Here, Plaintiff waited a decade after the state court litigation started to file this case in federal court, all

1 the while committing "flagrant, repeated, and continuous" violations of state court orders. *See*
2 *Findleton*, 69 Cal. App. 5th at 740.

3 Conspicuously absent from Plaintiff's opposition is any attempt to address persuasive
4 authority that applies *Rooker-Feldman* in strikingly similar circumstances. In *Rosebud Sioux*
5 *Tribe v. Duwyenie*, No. CV 09-1660-PHX-MHM, 2010 U.S. Dist. LEXIS 60679, at *9 (D. Ariz.
6 June 18, 2010), the court granted a defendant judge's motion to dismiss in a similar case against
7 a tribe in part under the *Rooker-Feldman* doctrine. There, after the state court had ruled on the
8 underlying case, the tribe filed a case in federal court, "seeking a de facto appellate ruling that
9 the Gila County Superior Court impinged on its sovereign immunity." *Id.* at *9-10. But the
10 federal district court found that, "This court is not the proper forum for such a request." *Id.* at
11 *10 (citing *Confederated Tribes of Colville Reservation v. Superior Court of Okanogan Cty.*, 945
12 F.2d 1138 (9th Cir. 1991)). The court explained that the Ninth Circuit has emphasized that the
13 "core inquiry" of the *Rooker-Feldman* doctrine is "whether the federal action is a de facto appeal
14 from a final state court judgment." *Rosebud*, 2010 U.S. Dist. LEXIS 60679, at *10-11. The
15 court observed:

16 The tribe seeks a declaration that "the Gila County **Superior Court infringed**
17 **upon the sovereignty** of the Rosebud Sioux Tribe" and **seeks to have the Tribal**
Court's bench warrant enforced against Duwyenie. This relief is necessarily
18 incompatible with the state court ruling. "*Rooker-Feldman* looks to federal law to
determine whether the injury alleged by the federal plaintiff resulted from the
19 state court judgment itself or is distinct from that judgment." *Bianchi v.*
Rylaarsdam, 334 F.3d 895, 900 (9th Cir. 2003). "If the injury alleged resulted
20 from the state court judgment itself, *Rooker-Feldman* directs that the lower
federal court lacks jurisdiction." *Id. at 901.* "[U]nlike res judicata, the *Rooker-*
21 *Feldman* doctrine is not limited to claims that were actually decided by state
courts, but rather it precludes review of all "state court decisions in particular
22 cases arising out of judicial proceedings even if those challenges allege that the
state court's action was unconstitutional." *Id.* **Because the state proceeding**
23 **itself is what gives rise to the Tribe's alleged claims, allowing the Tribe's**
claims to survive would violate the principles of federalism and comity that
24 gave rise to the *Rooker-Feldman* doctrine.

25 As the Ninth Circuit explained in *Bianchi*, "[i]t is difficult to imagine what
remedy the district court could award in this case that would not eviscerate the
26 state court's judgment." 334 F.3d at 902. "The **integrity of the judicial process**
depends on federal courts respecting final state court judgments and
27 **rebuffing de facto appeals** of those judgments to federal court." *Id.*

28

> Entertaining the Tribe's claim would **necessarily require the Court to review and invalidate the state court decision, a result that is inconsistent with the *Rooker-Feldman* doctrine**. *Bianchi*, 334 F.3d at 896. Because the Court cannot grant the relief that the Tribe seeks without "undoing" the decision of the state court, the "principles of federalism and comity that underlie the *Rooker-Feldman* doctrine" would appear to require that this case be dismissed. *Id.* at 902.

Id. at *11-13 (emphasis added). Here, the Court should dismiss this action under the *Rooker-Feldman* doctrine because the Court could not grant the relief Plaintiff seeks without "undoing" the decision of the state court.

Relatedly, Plaintiff appears to argue that its second cause of action for "Recognition and Enforcement [sic] the Second Tribal Court Permanent Injunction" cannot be dismissed because it "pertains to matters that are not at issue in the State Court Proceedings, including whether Findleton is obligated to comply with the Coyote Valley Enforcement of Judgments Ordinance." Opp. at 27. This argument, however, is also misplaced. First, the second cause of action in the SAC remains nearly identical to the second cause of action from the First Amended Complaint, which the Court previously dismissed. Second, as in *Rosebud* where the plaintiff sought to have a tribal court's bench warrant enforced, entertaining Plaintiff's claim would necessarily require the Court to review and invalidate the state court decision, a result that is inconsistent with the *Rooker-Feldman* doctrine. *See Bianchi*, 334 F.3d at 896.

B. All Of Plaintiff's Claims Fail On Additional Grounds

In its order dismissing Plaintiff's First Amended Complaint, the Court did not previously reach Judge Moorman's additional arguments regarding *Younger* Abstention, the *Colorado River* doctrine, judicial immunity, the Eleventh Amendment, and the Anti-Injunction Act, but as discussed in Judge Moorman's Motion to Dismiss each of them still apply as independent, additional grounds for dismissing the SAC.

In opposition to Judge Moorman's Motion to Dismiss, Plaintiff wholesale inserts arguments from its reply in support of its motion for a preliminary injunction regarding *Younger* Abstention, the *Colorado River* doctrine, the Eleventh Amendment, and the Anti-Injunction Act. *Compare* ECF No. 58 at 18-23, 26-27 *with* Opp. at 22-26. Plaintiff does not even attempt to refute Judge Moorman's arguments regarding judicial immunity, other than one sentence stating,

"[J]udicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity." Opp. at 9. Moreover, other than the case of *Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 800, 814-16 (1976), Plaintiff fails to distinguish a single case that Judge Moorman discusses regarding these additional grounds for dismissal.

As detailed in Judge Moorman's Motion to Dismiss, dismissal is proper based on *Younger* abstention, the *Colorado River* doctrine, and judicial immunity. *See Matrai v. Hiramoto,* No. 20-cv-05241-MMC, 2020 U.S. Dist. LEXIS 234654, at *19 (N.D. Cal. Dec. 14, 2020) (dismissing case with prejudice under *Younger* abstention doctrine); *Gold Coast Search Partners LLC v. Career Partners, Inc.*, No. 19-cv-03059-EMC, 2019 U.S. Dist. LEXIS 155317, at *16-17 (N.D. Cal. Sep. 11, 2019) (declining to exercise federal jurisdiction in deference to state proceedings under *Colorado River* doctrine); *Chabrowski v. Cretan*, No. C-12-4443 EMC, 2013 U.S. Dist. LEXIS 25588, at *6-7 (N.D. Cal. Feb. 21, 2013) (granting motion to dismiss based on judicial immunity, *Younger* abstention, and *Rooker-Feldman* doctrine). Additionally, Plaintiff's claims are barred by the Eleventh Amendment and the Anti-Injunction Act. *See Koshnick v. Lynott*, No. 20-cv-13818-JXN-ESK, 2021 U.S. Dist. LEXIS 199009, at *15 (D. N.J. Oct. 15, 2021) (holding that state court judges were "cloaked with Eleventh Amendment immunity" and dismissing claims asserted against the judges); *Safapou v. Marin Cty. of Cal.,* No. 15-cv-04603-JST, 2015 U.S. Dist. LEXIS 137106, at *3 (N.D. Cal. Oct. 7, 2015) (dismissing case under Anti-Injunction Act).

C. Leave To Amend Should Be Denied

The allegations in the SAC cannot be cured to properly allege subject-matter jurisdiction. Because filing a fourth version of this complaint would be futile, dismissal should be without leave to amend. *See Ashelman v. Pope*, 793 F.2d 1072, 1078 (9th Cir. 1986) (affirming district court's dismissal of amended complaint with prejudice where allegations against state court judge could not overcome lack of subject-matter jurisdiction); *Javidi v. Superior Court*, No. 21-cv-05393 SBA, 2022 U.S. Dist. LEXIS 117812, at *9 (N.D. Cal. July 5, 2022) (granting motion to dismiss without leave to amend and terminating state court judges as defendants where district court lacked subject matter jurisdiction under *Rooker-Feldman* doctrine).

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III. CONCLUSION

For each and all of these reasons, Judge Moorman respectfully requests that the Court dismiss the SAC, without leave to amend.

Dated: October 13, 2022

STRADLING YOCCA CARLSON & RAUTH, P.C.

By: */s/ Karla J. Kraft*
Karla J. Kraft
Sean Thomas Lobb
Attorneys for Defendant
The Honorable Ann C. Moorman,
Judge of the Superior Court of California,
County of Mendocino