IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE THIRD APPELLATE DISTRICT

GREENVILLE RANCHERIA, Plaintiff and Appellant, v. ANGELA MARTIN, ANDREA CAZARES-DIEGO, ANDREW GONZALES, HALLIE HUGO, ELIJAH MARTIN, ADRIAN HUGO, AND DOES 1 THROUGH 30, Defendants and Respondents.	)	Appeal No. C096097

Appeal from Order of the Tehama County Superior Court
Case No. 21-CV-0234, The Hon. Jonathan W. Skillman, Presiding

RESPONDENTS' BRIEF

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COURT OF APPEAL THIRD **APPELLATE DISTRICT, DIVISION**

COURT OF APPEAL CASE NUMBER: CO96097

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SUPERIOR COURT CASE NUMBER: 21-cv-0234

APPELLANT/ PETITIONER: Greenville Rancheria

RESPONDENT/ REAL PARTY IN INTEREST: Angela Martin, Andrea Casares-Diego, Andrew Gonzales, Hallie Hugo, Elijah Martin, Adrian Hugo, et al.

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Date: January 11, 2023

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INTRODUCTION

A faction of Greenville Rancheria's Tribal Council has filed this matter in the name of Greenville Rancheria ("Appellant"). The defendants in this matter include Greenville Rancheria Chairwoman Angela Martin and thirty-six members of the Tribe, both named and unnamed ("Defendants"). The land upon which the trespass is alleged to have occurred is tribally-owned land and the trespass is alleged to have been committed by tribal members of Greenville Rancheria.

This dispute is styled as a "trespass" claim, but that is not what it is. Appellant does not represent or speak for the majority of the Greenville Rancheria ("Tribe"), a federally recognized Indian Tribe and sovereign government. Appellant acknowledges that the Defendants in this matter are members of the Greenville Rancheria (Appellant's Opening Brief ("Appellant's Br."), p. 12). Appellant further admits that the lead Defendant in this matter – Angela Martin – was elected as Chairperson of Greenville Rancheria in June of 2021. (*Ibid.*)

This lawsuit has been brought in bad faith during the midst of a complete breakdown in governance at Greenville Rancheria, which is clear from a reading of the "facts" alleged by Appellant in its Verified Emergency Complaint for Trespass and Injunctive Relief ("Complaint"). Because Appellant inappropriately asked the lower court to choose a side during a Tribal leadership and election dispute that has split the Tribe apart and because the Appellant has brought a trespass claim against other Tribal leaders and members of the Tribal community in a dispute over rightful possession, the lower court properly found that it lacked subject matter jurisdiction to consider Appellant's trespass claim. Respondents respectfully request that this Court uphold the lower court's Order of Dismissal.

STATEMENT OF CASE

On October 8, 2021, Appellant filed its Complaint and an *Ex Parte* Application for Temporary Restraining Order against 36 members of Greenville Rancheria, including Chairwoman Angela Martin (AA 12-64.) Appellant then subsequently filed an Opening Brief in Support of Permanent Injunction, or in the Alternate Preliminary Injunction for Trespass (AA 133-153.)

On November 8, 2022, Respondents filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. (AA 120-132.) The Respondents argued that dismissal was appropriate because (1) California courts lack jurisdiction to make trespass determinations arising from intra-Tribal leadership disputes, and (2) California courts lack jurisdiction to make trespass determinations arising from disputes about Tribal property amongst Tribal members. (AA 123-132.)

After the dispositive motions were fully briefed, in a Joint Stipulation to Clarify Hearing Process, the parties stipulated that there were no facts in dispute in the case. (AA 225:12.) On February 18, 2022, the lower court held a hearing on the parties' dispositive motions. (RT 79.) By stipulation of the parties, no evidence was offered or received during the hearing, and on the same day oral argument on the pending dispositive motions was held. (AA 225:12-14.)

The lower court entered its Order of Dismissal on April 14, 2022 (AA 231.) On April 18, 2022, Appellant filed its Notice of Appeal. (AA 233.)

STATEMENT OF FACTS

Greenville Rancheria held an election for Tribal Council members on June 23, 2021 (AA 20:21-22.) The election was contested, with nine candidates competing for five Tribal Council positions. (AA 20:22-23.) Respondent Angela Martin was elected as Tribal Chairperson. (AA 21:4-5.) The election results were ratified and sent to the U.S. Department of the Interior, Bureau of Indian Affairs ("BIA"), on August 10, 2021. Many of the Respondents were dissatisfied with the election and demanded the election results be vacated. (AA 21:11-12.)

On September 29, 2021, a group of the Respondents entered a tribally-owned property located at 1405 Montgomery Road and 1425 Montgomery Road, Red Bluff, California. (AA 15:5-9; 21-2.) The Tribal property serves the dual purposes of administration and medical clinic in one building. (AA 15:5-9.) Amongst the Respondents entering the property was Chairperson Angela Martin (AA 16:6-11.)

Upon entry into the building, Chairperson Angela Martin may have required employees to provide her addresses of members of Greenville Rancheria (AA 16:6-8.) Chairperson Angela Martin also directed employees to make copies and get envelopes. (AA 16:12-13.) Chairperson Angela Martin used the addresses and printing to "mail information to all tribal members.") (AA 16:15.) Then, on October 1, 2021, Chairperson Angela Martin required three tribal employees to have an unscheduled meeting with her. (AA 16:19-22.)

In response to the above, on October 1, 2021, other members of the Tribal Council called an *ex parte* and unnoticed meeting, affording no due process, in which they purported to suspend duly elected Chairperson Angela Martin. (AA 17:6-11.) Despite the actions of the faction of the Tribal Council, Chairperson Angela Martin continued to act as Chairperson and to direct employees (AA 17:12-14.) As a result, on October 4, 2021, the

remaining faction of the Tribal Council ordered the tribal building be closed. (AA 17:18-20.) Despite the closure actions by the faction of the Tribal Council, Chairperson Angela Martin continued to act as Chairperson and required employees to continue working. (AA 17:18-20,)

The City of Red Bluff has previously informed the Tribe that "[n]either the Red Bluff Police Department, nor Red Bluff city staff, have jurisdiction or authority to resolve this dispute." (AA 20:12-13; 39.) It is clear to the City of Red Bluff that "[t]here is obviously a dispute among tribal members as to who properly and legally controls 1405 Montgomery Road." (AA 39.)

ARGUMENT

The lack of subject matter jurisdiction cannot be waived and may be raised at any time, even for the first time on appeal. (*All. for California Bus. v. State Air Res. Bd*. (2018) 23 Cal.App. 5th 1050, 1060; *Cowan v. Superior Court* (1996) 14 Cal.4th 367, 372.) Where the evidence is undisputed, subject matter jurisdiction is a legal question subject to de novo review. (*Dial 800 v. Fesbinder* (2004) 118 Cal.App.4th 32, 42.)

The general rule is that subject matter jurisdiction is determined from the face of a well-pleaded complaint. (*Boisclair v. Superior Court* (1990) 51 Cal.3d 1140, 1156; *Oneida Indian Nation v. County of Oneida* (1974) 414 U.S. 661, 667.) In this matter, the facts relevant to subject matter jurisdiction are undisputed (AA 22:12), and based upon on a review of the face of Appellant's Complaint, the lower court properly held that it lacked subject matter jurisdiction over the matters raised within the complaint even if the allegations of the complaint were accepted as true.

I. THE LOWER COURT PROPERLY HELD THAT IT LACKED SUBJECT MATTER JURISDICTION TO MAKE TRESPASS DETERMINATIONS ARISING FROM INTER-TRIBAL LEADERSHIP DISPUTES

A. State Courts Lack Subject Matter Jurisdiction over Tribal Internal Political Matters

Unless surrendered by the tribe, or abrogated by Congress, tribes possess inherent and exclusive power over matters of self-governance. (*Timbisha Shoshone Tribe v. Kennedy* (E.D. Cal. 2009) 687 F. Supp. 2d 1171, 1185 (citing *Nero v. Cherokee Nation* (10th Cir. 1989 (892 F.2d 1457, 1463).) Federal and state courts are specifically restricted from interfering in internal political matters because doing so would "substantially interfere with a tribe's ability to maintain itself as a culturally and politically distinct entity." (*Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49, 71; see also *Boe v. Ft. Belknap Indian Cmty*. (9th Cir. 1981) 642 F.2d 276, 278 (dismissing suit brought in federal court to determine tribal election dispute); *People ex rel. Becerra v. Huber* (2019) 32 Cal.App.5th 524, 537, fn.10 (citing with approval dismissal where issues presented would require the state court to effectively "determine the outcome of a tribal election dispute . . . and thus, would ignore precedent emphasizing the need to respect tribal self-governance").) Internal matters of a tribe are generally reserved for resolution by the tribe itself, through a policy of Indian self-determination and self-government as mandated by the Indian Civil Rights Act, 25 U.S.C. §§ 1301–1341. (*Timbisha Shoshone Tribe v. Kennedy*, *supra*, 687 F. Supp. 2d at 1185.)

The Bureau of Indian Affairs ("BIA") adheres to a policy of self-determination as mandated by the Indian Civil Rights Act, 25 U.S.C. §§ 1301–1341. *Id.* "It has long been the policy of the Department of the Interior and the BIA, in promoting self-determination, not become involved

in the internal affairs of tribal governments." *Id*. As such, courts also refuse to interfere in the internal affairs of the Tribe. (See, e.g., *Timbisha Shoshone Tribe v. Kennedy*, *supra*, 687 F. Supp. 2d at 1185 (citing *Milam v. U.S. Dep't of Int.,* 10 Indian L. Rep. 3013, 3015 (D.D.C.1982) (ordinarily, disputes "involving intratribal controversies based on rights allegedly assured by tribal law are not properly the concerns of the federal courts.").)

"Tribal election disputes, like tribal elections, are key facets of internal tribal governance governed by tribal constitutions, statutes, and regulations." F. Cohen, Handbook of Federal Indian Law §4.06[1][b][ii] (2019). Furthermore, federal common law prohibits federal or state interference in these matters. *Ibid*. As a result, even federal courts, which generally have jurisdiction over Indian Country matters, consistently have held that tribal election disputes do not raise federal questions eligible for review by federal courts. (*Boe v. Ft. Belknap Indian Cmty*., *supra*, 642 F.2d at p. 279.) Thus, there is no question that state courts also may not intervene in internal government affairs, generally, or tribal election disputes, specifically.

Appellant's Opening Brief attempts to distinguish between internal tribal political disputes in which California courts may and may not intervene, suggesting that an evidentiary analysis should be conducted by courts to identify whether the leadership dispute is "genuine." (Appellant's Br. at 27-34.) First, Appellant fails to see the obvious fallacy in this assertion—in that it would require state courts to wade even more deeply into tribal political disputes. Second, Appellant's reference to a handful of national cases in which a full rival government sought authority does not offer sufficient evidence that these are the only political disputes into which a state court must decline to intervene. In fact, California state courts have consistently held that they lack jurisdiction over disputes between tribal

members and tribes in political disputes. (*Ackerman v. Edwards* (2004) 121 Cal.App. 4th 946, 954).

Public Law 280 provides that California "shall have jurisdiction over civil causes of action between Indians or to which Indians are parties." (28 U.S.C. §1360(a).) However, the U.S. Supreme Court has "explicitly denied that Public Law 280 confers jurisdiction in the states **over the tribes** (emphasis added) themselves." (*Ackerman v. Edwards*, *supra*, 121 Cal.App. 4th at p. 954.) In *Ackerman*, the Third District Court of Appeals specifically rejected the notion that Public Law 280 grants state courts jurisdiction to hear a dispute between a Tribe and one of its members. (*Id*. at pp. 953-54.)

The plaintiff in *Ackerman* argued that the role of tribal courts had been granted to the State of California by Congress pursuant to Public Law 280. (*Ackerman v. Edwards*, *supra*, 121 Cal.App. 4th at pp. 953-54). Referencing the U.S. Supreme Court's seminal decision on judicial interference in intra-tribal disputes, this Court declared that such an argument "turns *Santa Clara* on its head." (*Ibid.* (citing *Santa Clara Pueblo v. Martinez* (1978) 436 U.S. 49, 71-72).) The Court then provided the following explanation of *Santa Clara Pueblo, supra*, 436 U.S. at pp. 71-72):

> The Supreme Court discussed only tribal courts and nonjudicial tribal institutions as possessing jurisdiction over tribal matters. The Supreme Court did not leave jurisdiction open to "courts" in general or state courts in particular. The Supreme Court carefully explained its rationale for leaving disputes over the ICRA to tribal courts and institutions. This rationale does not support any conferral of jurisdiction on state courts.

(*Ackerman v. Edwards*, *supra*, 121 Cal.App. 4th at pp. 953-54.)

Clearly, Public Law 280 does not confer subject matter jurisdiction over tribes to state courts. *Ackerman* acknowledges that California courts are all in accord as to this point. (*Id.* at p. 954.) As the Fourth District Court of Appeals emphasized in *Long v. Chemehuevi Indian Reservation*, "[n]o case has been cited to us, and we have found none, which concludes or even suggests, that [Public Law 280] conferred on California jurisdiction over the Indian tribes, as contrasted with individual members of the tribes." (*Long v. Chemehuevi Indian Reservation* (1981) 115 Cal.App.3d 853, 857.)

The fact that Appellant brought this action in the name of the Greenville Rancheria does not cure this Court's lack of subject matter jurisdiction over the Greenville Rancheria because subject matter jurisdiction may not be waived. Code of Civil Procedure § 430.80 reads in pertinent part: "(a) If the party against whom a complaint or cross-complaint has been filed fails to object to the pleading, either by demurrer or answer, that party is deemed to have waived the objection unless it is an objection that the court has no jurisdiction of the subject of the cause of action alleged in the pleading or an objection that the pleading does not state facts sufficient to constitute a cause of action." Moreover, California courts have affirmed that "lack of jurisdiction is not subject to waiver and may be raised at any stage of the proceedings ...." (*Jacobs v. Retail Clerks Union, Local 1222* (1975) 49 Cal. App. 3d 959, 963.) Thus, the Court lacks jurisdiction to hear this political dispute between a tribe and its members.

B. A Review of the Face of the Appellant's Complaint Describes an Internal Tribal Political Dispute

Appellant's Opening Brief spends a protracted amount of time arguing that the lower court failed to make factual findings and that the Appellees failed to supply appropriate evidence. However, these arguments are misplaced. First, Appellant stipulated prior to oral argument on dispositive motions that "[n]o facts are in dispute in this matter" and that the

January 20, 2022 hearing would be limited to argument on the dispositive motions in the case. (AA 225:12-15.)

Moreover, as noted above, the general rule is that subject matter jurisdiction is determined from the face of a well-pleaded complaint. *Boisclair*, *supra*, 51 Cal.3d at p. 1156. Here, the Appellant's complaint very clearly describes an internal political dispute into which it sought the lower court's intervention.

Appellant's Verified Emergency Complaint for Trespass and Injunctive Relief ("Complaint") acknowledges that the so-called state "trespass" that has allegedly occurred has been carried out and done under the direction of the Chief Executive of the Tribe, Defendant and duly elected Tribal Chairperson, Angela Martin. (AA 1-45.) The Complaint describes that Chairperson Martin directed staff under her authority as elected leader of the Tribe to provide her with information and as a result, made the staff feel "very uncomfortable and flustered for the rest of the day." (Compl., ¶ 6; AA 16:6-11.) Chairperson Martin then directed employees under her authority as elected leader of the Tribe to make copies and get envelopes. (Compl., ¶ 7; AA 16:12-14.) Chairperson Martin then directed employees under her authority as elected leader of the Tribe to print address labels. (Compl., ¶ 8; AA 15:15-18.) Chairperson Martin is then alleged to have held an unscheduled meeting with some tribal employees under her authority as elected leader of the Tribe in which it is reported that the employees became concerned about their employment. (Compl., ¶ 9; AA 16:19-6:5.) The remainder of the Complaint then goes on to describe the Appellant's efforts to unilaterally nullify tribal election results in retaliation for the above-described actions and to manufacture a narrative in which Chairperson Martin's exercise of her authority as duly elected leader of the Tribe is viewed as a state-law "trespass." (Compl., ¶ 10-37; AA 17:6-20:19.) Finally, Appellant clearly resolves any question as to whether this is a matter of

internal tribal government dispute in the portion of the Complaint which details for the Court the "Background on the 2021 Tribal Council Election." (Compl., ¶ 38-41; 20:20-21:13.)

This case represents an internal tribal dispute that arose following a contested election. Appellant's Complaint did not seek to hide that fact. (AA 1-45.) The Complaint was not a good faith effort to address trespass; it was an inappropriate effort to use the state court as tool in its internal political struggle.

C. The BIA Has Not Made a "Determination" of Rightful Leadership as Inappropriately Contended by the Appellant

Appellant asserts that the BIA has already determined the current leadership of Greenville Rancheria. Appellant urges this is the case because on October 27, 2021, Troy Burdick, the Superintendent of the Central California Agency of the BIA, an official with no authority to recognize tribal governments or to render final agency decisions on behalf of the BIA, sent a letter to Crystal Rios that referred to her as the "Acting Chairwoman." (Allen Decl. ¶ 9, Ex. 3; AA 152.) This Court should be aware that the Appellant's claim that the BIA has "recognized" a new Chairwoman is false, and if proving such a legal determination was actually as easy as convincing someone in government to address a letter according to their own political preferences, chaos would prevail in Indian Country.

Even if such salutation "recognition" were cognizable, Appellant fails to factually support it. Indeed, it would appear that Appellant deliberately attempted to mislead the lower court in its suggestion that Burdick's so-called "recognition" by letter greeting was a deliberate decision made after "extensive dialogue with BIA." (Pl.'s Opp.; AA 164:20-23) That extensive dialogue, as described in the Declaration of Patty Allen, was no more than a brief email exchange. (Allen Decl. ¶ 8-11.; AA 88:20-90:3.) As Appellant admits, "[o]n October 12, 2021, BIA

Superintendent Troy Burdick emailed Greenville asking for confirmation that Crystal Rios was Acting Chairwoman," and the Superintendent's next step was in direct response to the Appellant's unilateral assurances. (AA 89:12-90:3.)

Neither the Complaint, nor the voluminous self-serving declarations filed by the Appellants, offer evidence that a decision regarding tribal leadership has been made by the BIA, nor can such a decision be assumed to have been made. If the Superintendent does at some point determine to officially recognize a new or acting Chairperson for Greenville Rancheria, he would be required to provide written notice to all interested parties and would need to include information with that written notice about the interested parties' right to appeal. (25 C.F.R. § 2.7.) Chairwoman Angela Martin would certainly be an interested party to such a decision, and she has never received such notice from the BIA. Moreover, any such decision by the Superintendent to recognize a new or acting Chairperson would not be final until all relevant administrative appeals have been conducted. (25 C.F.R. § 2.6.) Any "decision" by the Superintendent is appealable to the Regional Director of the Pacific Regional Division of the BIA. (25 C.F.R. § 2.4(a).) A decision made by the Regional Director would only then be eligible for appeal to the Interior Board of Indian Affairs ("IBIA"). (43 C.F.R. § 4331(a).) The IBIA could then consider the appeal and make a final agency decision for the Department of the Interior. (*Id*.) Thus, only decisions by the IBIA are then eligible for challenge in federal court. (25 C.F.R. § 2.6.)

This Court should refuse to become entangled in this internal political matter and should uphold the lower court's dismissal of this matter for its lack of subject matter jurisdiction to resolve the Tribe's current election and leadership disputes.

II. THE LOWER COURT PROPERLY HELD THAT IT LACKED SUBJECT MATTER JURISDICTION TO MAKE TRESPASS DETERMINATIONS ARISING FROM INTER-TRIBAL DISPUTES REGARDING INDIAN LAND

A. State Court Determinations Regarding Indian Land Are Preempted by Federal Law.

When a complaint is in an area completely preempted by federal law, the well-pleaded complaint rule is supplemented, with regard to federal-question jurisdiction, by the "complete preemption doctrine." (*Boisclair*, *supra*, 51 Cal.3d at 1156.) Under that doctrine, it is settled that "once an area of state law has been completely pre-empted, any claim purportedly based on that pre-empted state law is considered, from its inception, a federal claim, and therefore arises under federal law." (*Caterpillar, Inc. v. Williams* (1987) 482 U.S. 386, 393.) The United States Supreme Court has specified that Indian property law is one area in which the "complete preemption doctrine" is applicable. (*Boisclair*, *supra*, 51 Cal.3d at 1156.)

California courts have civil subject matter jurisdiction with respect to cases arising in Indian Country pursuant to Public Law 280, codified as 28 U.S.C. § 1360. However, this civil jurisdiction is subject to limitations. By way of limitation, Congress has specifically provided that:

> Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulations thereof.

(28 U.S.C. §1360(b).)

The Supreme Court of California has held that this subsection to Public Law 280 "precludes states from asserting jurisdiction over *disputes* concerning Indian land." (*Boisclair v. Superior Court* (1990) 51 Cal.3d 1140, 1152.) This expansive interpretation has also been adopted by numerous other courts throughout the country to prohibit state court actions related to trust property, including evictions, ejectment, quiet title, and easements. (See, e.g., *Minnesota Chippewa Tribal Hous. Auth. v. Reese* (D. Minn. 1997) 680 F. Supp. 330, 332; *State of Alaska, Dep't of Public Works v. Agli* (D. Alaska 1979) 472 F.Supp. 70; *Heffle v. State* (Alaska 1981) 633 P.2d 264.) This preclusion of state jurisdiction is appropriate whether the dispute is between the Tribe and an Indian or a non-Indian. (Compare *All Mission Indian Hous. Auth. v. Silvas* (C.D. Cal. 1987) 680 F. Supp. 330 with *Boisclair v. Superior Court*, *supra*, 51 Cal.3d at 1152.) At least one California state court of appeal has refused to hear a trespass and eviction dispute between one Tribe's tenants. (*Havasu Palms, Inc. v. Massimo* (Cal.App. 4 Dist.) 2003 WL 1735548.)

In *Boisclair,* Imperial Granite Company brought a suit asserting easement rights over Indian trust land. (*Boisclair v. Superior Court*, *supra*, 51 Cal.3d at 1144-46.) The California Supreme Court, sitting en banc, held that 28 U.S.C. § 1360(b) expresses the scope of federal preemption over Indian property disputes and, as a consequence, identifies the scope of actions that must be filed in federal court. (*Id.* at 1149-56.) The court analyzed the legislative history behind 28 U.S.C. § 1360(b) and concluded that it embodies "the principle that the exclusive federal-Indian trust relationship is best maintained by channelling [sic] all disputes about such land into federal court." (*Id.* at 1147-51; see also *Unalachtigo Band of the Nanticoke Lenni-Lenape Nation v. New Jersey* (N.J. Super. Ct. App. Div. 2005) 867 A.2d 1222, 1228-29 (deriving from 28 U.S.C. § 1360(b) and other

federal statutes "a clear understanding that Congress expressly intended to preserve exclusive federal jurisdiction over claims to Indian land, which is subject to restriction against alienation."))

Even though Appellant states that the property in question is fee land (AA 15:9-11), *Boisclair* still provides applicable guidance and considerations here where no non-Indian interests are threatened or triggered. *Boisclair v. Superior Court*, *supra*, 51 Cal.3d at 1148. Instead, the question before the Court is of an alleged trespass by tribal members on land held by a tribe. As noted in *Boisclair*:

> The basis for this exclusive federal-Indian relationship regarding Indian land derives, again, both from notions of inherent sovereignty and federal preemption. Indian sovereignty is reflected in **the unique nature of Indian title, which bestows a right not of ownership but of occupancy "**good against all but the sovereign" United States government and is recognized as the basis for exclusive federal jurisdiction over Indian property.

Id. at 1148 (emphasis added).

Although the land in question may be fee land, it is land to which a federally-recognized tribe holds title. That title is held in fee by a federally-recognized tribe on behalf of its members **WHO ARE THE TRIBE**, by and through the Tribe's Constitution. Thus, the same rights of occupancy and possession that were acknowledged in *Boisclair* are relevant here.

Appellant in this case has requested that a California state court interfere in the rights of occupancy, possession, and ownership of one Chairperson, six named defendant tribal members, and thirty unnamed tribal members, from a Tribe that has approximately 160 members; in other words, the Tribal Council faction has sought to deny occupancy, possession, and ownership of tribally-owned lands to nearly one-quarter of the Tribe (AA 1-45). Those Tribal members' rights of occupancy and possession on their lands is certainly not a matter over which a California state court may

exercise jurisdiction. The fee title serves only as a defense against trespass by the rest of the world - just as one joint tenant may not seek a trespass action against another joint tenant. This is a matter that must be resolved internally by a tribal forum, and this Court should seek to refrain from improperly imposing limitations on the possession and occupancy by tribal members of tribally-owned lands.

CONCLUSION

For the foregoing reasons, Respondents request that this Court uphold the lower court's Order of Dismissal.

Dated: January 11, 2023

Respectfully Submitted,

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By: /s/ *Rose M. Weckenmann*
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CERTIFICATION OF WORD COUNT

I, Rose M. Weckenmann, counsel for Respondent, certify this brief complies with Rule of Court 8.204(c)(1) because it contains 4,199 words, excluding the cover page, tables, signature block, permitted under Rule of Court 8.204(b). This document was prepared in Microsoft Word for Microsoft 365, and this is the word count generated by the program for this document. This brief also compiles with Rule of Court 8.204(b) because it is prepared in proportionally spaced type face using Microsoft Word for Microsoft 365 in 13 point Times New Roman font.

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/s/ *Rose M. Weckenmann*
Rose M. Weckenmann

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