No. 25-1283

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ALEXANDRIA PARROTTA

Plaintiff-Appellant

---v.---

ISLAND RESORT AND CASINO

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, No. 2:24-cv-00056
The Honorable Robert J. Jonker, Judge Presiding

PLAINTIFF- APPELLANT'S BRIEF

COLIN H. WILKIN
HURWITZ LAW PLLC
340 BEAKES ST. STE. 125
ANN ARBOR, MI 48104
(844) 487-9484
COLIN@HURWITZLAW.COM
COUNSEL FOR PLAINTIFF-APPELLANT

Date: May 20, 2025

ORAL ARGUMENT REQUESTED

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Pursuant to Fed. R. App. P. 26.1 and 6th Cir. R. 26.1, Plaintiff-Appellant Alexandria Parrotta makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? **NO**

2. Is there a publicly owned corporation, not a party to the appeal, that has a final interest in the outcome? **NO**

/s/ Colin H. Wilkin May 20, 2025
Colin H. Wilkin Date

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STATEMENT IN SUPPORT OF ORAL ARGUMENT

Pursuant to Federal Rule of Appellate Procedure 34(a)(1) and Sixth Circuit Rules 28(b)(1) and 34(a), Plaintiff-Appellant Alexandria Parrotta requests oral argument. Plaintiff-Appellant believes that this Court would benefit from a discussion of the interesting procedural and factual record, particularly given that the lower court denied oral argument and granted Defendant-Appellee's Motion to Dismiss without an opportunity to question the parties.

JURISDICTIONAL STATEMENT

I. District Court Jurisdiction

Plaintiff-Appellant's claim against Defendant-Appellee arose out of Defendant-Appellee's violation of the Fair Labor Standards Act of 1938 ("FLSA"). Accordingly, the United States District Court for the Western District of Michigan had original federal question jurisdiction pursuant to 28 U.S.C. § 1331.

II. Appellate Jurisdiction

The United States Court of Appeals for the Sixth Circuit has jurisdiction over appeals from the District Court for the Western District of Michigan and over appeals of "final decisions" pursuant to 28 U.S.C. § 1291. This Appeal arises out of the District Court's February 27, 2025 Order [**Order Approving and Adopting**, RE 15] approving and adopting the Magistrate's January 16, 2025 Report and Recommendation [**Report and Recommendation**, RE 12]. The Order granting Defendant-Appellee's Motion to Dismiss constituted a final order. Plaintiff-Appellant timely filed her Notice of Appeal on March 21, 2025. **Notice of Appeal**, RE 17, Page ID # 252.

STATEMENT OF ISSUES PRESENT FOR REVIEW

I. Whether Plaintiff-Appellant's FLSA claim against Defendant-Appellee Island Resort and Casino was improperly dismissed for lack of subject matter jurisdiction deriving from Defendant-Appellee's purported sovereign immunity.

Plaintiff-Appellant Answers "Yes."

STATEMENT OF THE CASE

I. CONCISE STATEMENT OF RELEVANT FACTS.

Defendant-Appellee in this matter is Island Resort and Casino. **Plaintiff's First Amended Complaint**, RE 7, Page ID # 47. Defendant-Appellee is a hotel and casino headquartered in Harris, Menominee County, Michigan. *Id.* at ¶3. Upon the filing of Plaintiff-Appellant's First Amended Complaint, Defendant-Appellee filed a motion to dismiss focused solely on an alleged lack of subject matter jurisdiction. **Motion to Dismiss for Lack of Jurisdiction**, RE 9. Defendant-Appellee claimed that Plaintiff-Appellant's First Amended Complaint [RE 7] should be dismissed "because this court lacks subject matter jurisdiction over all claims on the basis of Tribal Sovereign Immunity." **Brief in Support of Motion**, RE 9, Page ID # 63. Defendant-Appellee also claimed that "Plaintiff's first amended complaint should be dismissed under the Triable Exhaustion Doctrine." *Id.*

Although Defendant-Appellee's Motion to Dismiss did not challenge the adequacy of Plaintiff-Appellant's allegations, a short recitation of the facts may be helpful. Alexandira Parrotta ("Plaintiff-Appellant") worked as an Executive Chef for Island Resort and Casino ("Defendant") between August 2014 and October 26, 2023 before she was forced to resign. First Amended Complaint, RE 7, Page ID # 48, ¶1; ¶13. Prior to her termination Plaintiff-Appellant was earning $52,000.00 per year and consistently working at least forty-five hours per week. *Id.* at ¶14-15.

Defendant-Appellee never paid Plaintiff-Appellant overtime compensation for hours worked in excess of forty hours per week. *Id.* at ¶15. Despite Plaintiff-Appellant's job title of "Executive Chef," her job responsibilities were effectively those of a Line Cook, a position classified as non-exempt. *Id.* at ¶16. Plaintiff-Appellant's job responsibilities consisted mainly of non-managerial tasks including counting inventory, placing orders with vendors, washing dishes, and preparing food. *Id.* at ¶17. Plaintiff-Appellant did not have authority to make any hiring or firing decisions. *Id.* Plaintiff-Appellant's job duties did not require advanced knowledge of a predominantly intellectual character, nor did those duties require consistent exercise of discretion and judgement. *Id.* at ¶18. In 2023, Plaintiff-Appellant informed her manager that she was pregnant and that she intended to take maternal leave to care for her child. *Id.* at ¶22. Plaintiff-Appellant applied for and was granted the requested leave. *Id.* In July 2023, Plaintiff-Appellant's maternal leave began and she gave birth to her child. *Id.* at ¶23. In October 2023, Plaintiff-Appellant returned to work following her maternal leave. *Id.* at ¶24. Upon her return, Plaintiff-Appellant was informed by Director of Food and Beverage, Steven Gakstatter, that she would be required to work noon until 8:00 P.M. with no opportunity to adjust her schedule. *Id.* at ¶25. The next day, Plaintiff-Appellant met with Mr. Gakstatter in order to request the same flexible schedule that she was given prior to her leave in order to nurse her newborn baby. *Id.* at ¶26. Mr. Gakstatter refused and demanded

that Plaintiff-Appellant resign. *Id.*at ¶27. As a result of Mr. Gakstatter's coercion, Plaintiff-Appellant resigned on October 26, 2023. *Id.* at ¶28.

Defendant-Appellant claims that the Federal Court System lacks subject matter jurisdiction over Plaintiff-Appellant's claims; however, Defendant-Appellee's own Constitution clearly abrogates the sovereign immunity issue when a Federal Status applies to the tribe. Specifically, Article V – Powers of the Council §(12) of the Constitution and Bylaws of the Hannahville Indian Community [of] Michigan [Approved July 23, 1936] [Amended April 15, 2020; Approved May 6, 2020] states that Defendant reserves the right "[t]o make rules for its own procedure and the conduct of its business of governing the Community, and to delegate to committees of the Council any of the foregoing powers, reserving the right to review any action taken under such delegated powers." **Hannahville Indian Community Constitution**, RE 10-1, Page ID # 113. Importantly, Article V - (12) §2. states explicitly "[t]he Council shall ***not exercise any of the foregoing powers so as to conflict with any laws of the United States which apply to the Hannahville Indian Community***." *Id*. (emphasis added).

II. PROCEDURAL HISTORY.

Plaintiff-Appellant filed her Complaint in the Western District of Michigan on April 11, 2024. **Complaint with Jury Demand**, RE 1. On May 24, 2024, Defendant-Appellee filed their First Motion to Dismiss. **First Motion to Dismiss**,

RE 6. On June 10, 2024, Plaintiff-Appellant filed her First Amended Complaint. First Amended Complaint, RE 7. Just ten days later Defendant-Appellee filed a Motion to Dismiss for lack of jurisdiction and a supporting Brief. **Motion to Dismiss**, RE 8; **Brief in Support**, RE 9. Plaintiff-Appellant then filed a Response in Opposition on July 15, 2024. **Response in Opposition**, RE 10. On July 29, 2024 Defendant-Appellee filed their Reply Brief. **Response in Support of Motion**, RE 11. On January 16, 2025 the Trial Court's Report and Recommendation was entered by the Magistrate Judge who agreed with Defendant-Appellee's position and recommended dismissal for lack of subject matter jurisdiction. **Report and Recommendation**, RE 12. On January 30, 2025, Plaintiff-Appellant filed and objection to the Magistrate's R&R. **Objection**, RE 13. Defendant-Appellee then filed their Response to Objection on February 13, 2025. **Response to Objection**, RE 14. On February 27, 2025 the Trial Court entered an order approving and adopting the Magistrate's R&R, the Trial Court then entered Judgement in favor of Defendant-Appellee. **Order Approving and Adopting**, RE 15; **Judgment**, RE 16. On March 21, 2025 Plaintiff-Appellant filed her Notice of Appeal and the present proceeding began. **Notice of Appeal**, RE 17.

SUMMARY OF ARGUMENT

Plaintiff-Appellant's claims arise out of Defendant-Appellee's alleged violation of the Fair Labor Standards Act ("FLSA"). At the district court Defendant-

Appellee alleged that, due to the tribe's status as a federally protected Indian Tribe, Plaintiff-Appellant's claims are barred due to a lack of subject matter jurisdiction. Plaintiff-Appellant does not argue that Indian Tribes do not enjoy sovereign immunity. Instead, it is Plaintiff-Appellant's position that Defendant-Appellee's Constitution explicitly abrogates the tribes immunity with regard to "any laws of the Unity States which apply" to it. While the district court correctly determined that the "FLSA does apply to [Defendant-Appellee]," the district court disagreed with Plaintiff-Appellant's assertion that the tribe waived its immunity. However, the Defendant-Appellee's Constitution is clear and explicit in abrogating immunity as to "any laws of the United States which apply." If, as the district court found, "the FLSA does apply to [Defendant-Appellee]," than under any objective interpretation the Constitutional language, Defendant-Appellee has waived immunity as to Plaintiff-Appellant's FLSA claim. To hold otherwise would deviate from the language of Defendant-Appellee's Constitution in contravention of legal authority stating that Defendant-Appellee's Constitutional provisions are to be given their plain and ordinary meaning. *Martin v. Hunter's Lessee*, 14 U.S. 304, 326, 1 Wheat. 304, 4 L.Ed. 97 (1816); *Paulson v. City of San Diego*, 294 F.3d 1124, 1129 (9th Cir. 2002). There is nothing ambiguous about Defendant-Appellee's Constitutional language, so if this Court agrees with the district court that the FLSA applies to Defendant-Appellee under the circumstances presented in this case, reversal is

warranted.

STANDARD OF REVIEW

This Court reviews a lower court's "grant of a motion to dismiss and reconsideration of that dismissal de novo." *Bouye v. Bruce*, 61 F.4th 485, 489 (6th Cir. 2023).

ARGUMENT

Defendant-Appellee is a resort and casino owned and operated by the Hannahville Indian Community ("HIC"). Defendant-Appellee has waived their sovereign immunity with regard to "any laws of the United States which apply to the Hannahville Indian Community. Hannahville Indian Community Constitution, RE 10-1, Page ID #113. Thus, if the FLSA applies to the tribe then the district court's dismissal of Plaintiff-Appellant's complaint was improper. A federal statute of general applicability that is silent on the issue of applicability to Indian tribes will not apply to Defendant if: (1) the law "touches exclusive rights of self-governance in purely intramural matters"; (2) the application of the law to the tribe would "abrogate rights guaranteed by Indian treaties"; or (3) there is proof "by legislative history or some other means that Congress intended [the law] not to apply to Indians on their reservation." Not only does the FLSA apply to Defendant, but Plaintiff-Appellant should be permitted to bring private suit against Defendant based on the

language of Defendant's own Constitution which explicitly waives any claim of sovereign immunity in cases where federal law "applies" to the tribe.

I. DEFENDANT-APPELLEE WAIVED SOVEREIGN IMMUNITY WITH REGARD TO ANY FEDERAL LAW THAT "APPLIES" TO THE TRIBE.

The district court improperly held that "the tribe's statement that it would not 'exercise any of the foregoing powers so as to conflict with any of the laws of the United States which apply' to the tribe does not constitute a clear waiver of immunity." Report and Recommendation, RE 12, Page ID # 195. Further, the district court held that "[a]t most, the tribe ***implies*** a willingness to submit to applicable federal laws." *Id.* Despite the district court's view of Defendant's Constitutional provisions as an implied willingness, the language of the relevant provision is unambiguous. The language is an "unequivocal . . . and clear" desire to comply with applicable federal law. Specifically, Article V – Powers of the Council §(12) of the Constitution and Bylaws of the Hannahville Indian Community [of] Michigan [Approved July 23, 1936] [Amended April 15, 2020; Approved May 6, 2020] states that Defendant reserves the right "[t]o make rules for its own procedure and the conduct of its business of governing the Community, and to delegate to committees of the Council any of the foregoing powers, reserving the right to review any action taken under such delegated powers." RE 10-1, Page ID # 113. Critically, Article V -12 §2. states explicitly "[t]he Council ***shall not*** *exercise any of the*

foregoing powers so as to conflict with any laws of the United States which apply to the Hannahville Indian Community." *Id*. This provision states, unambiguously, that where a federal law is applicable to Defendant-Appellee, Defendant-Appellee will not exercise any power through its counsel conflicting with that law. While the district court held that Defendant-Appellee's Constitutional provision simply expressed an "implied willingness" to comply, the language of the provision itself it clear, unambiguous, and dispositive on this issue. The "shall not" language found within Article V – 12 §2 does not simply imply a willingness, rather, it affirmatively restricts the tribe from taking any action that may conflict with applicable federal law.

Erroneously, the district court relied heavily on the "Tribal Sovereignty Code" produced by Defendant-Appellee. Specifically, the district court held that "HIC's Tribal Sovereignty Code contains no blanket express waiver allowing suit by private parties under the FLSA." RE 12, Page ID # 195. The district court reasoned that "the Code sets out that any waiver by the tribe must be set out in a 'formal, written resolution of the Tribal Council.'" *Id.* The district court too hastily dismissed the Tribe's Constitution, which was amended to include the relevant provisions on April 15, 2020, while simultaneously lifting up what has to be classified as an inferior controlling document, which was not created until two years later in 2022. RE 10-1, at #113-114; *Id.* at # 193. Defendant-Appellee's Constitution is clearly a "formal,

written resolution of the Tribal Council" which expressly and unambiguously waives the Tribe's immunity when federal laws apply. Furthermore, Defendant-Appellee admitted in their Response to Plaintiff-Appellant's Objection that the language in question was included in the Tribe's Constitution because it was a requirement to receive the federal recognition that provides immunity in the first place. Meaning, the Tribe meant what it said in its Constitution and does not deserve a "get out of jail free card" from the courts. Specifically, Defendant-Appellee stated that "the language in the Tribe's Constitution . . . was included for purposes of federal recognition." RE 14, Page ID # 216. This admission alone highlights the issue. Without agreeing to be bound and complying with federal law, Defendant-Appellee would not have been federally recognized. However, when the time comes to be held accountable for violations of federal law, Defendant-Appellee attempts to ignore those same Constitutional provisions by claiming that they do not fully apply. Simply put, Defendant-Appellee wishes to profit from and employ non-tribal individuals, all while violating federal wage laws that they are bound to comply with. The district court's opinion allows the Tribe to get away with this paradoxical exception, but the express language of the Constitution does not lend itself to such an erroneous misinterpretation of what is clear and unambiguous. Plaintiff-Appellant is not looking to stretch the meaning of the Tribe's Constitution—she is simply asking for it to be given its ordinary meaning.

II. THE FLSA IS A STATUTE OF GENERAL APPLICABILITY AND APPLIES TO DEFENDANT.

The Sixth Circuit supports Plaintiff-Appellant's position that the FLSA applies to Defendant-Appellee. "The FLSA is a statute of general applicability[,]" and "[s]uch generally applicable statutes typically apply to Indian tribes." *Snyder v. Navajo Nation*, 382 F.3d 892, 894– 95 (9th Cir. 2004). A federal statute of general applicability that is silent on the issue of applicability to Indian tribes ***will not apply to Defendant*** if: (1) the law "touches exclusive rights of self-governance in purely intramural matters"; (2) the application of the law to the tribe would "abrogate rights guaranteed by Indian treaties"; or (3) there is proof "by legislative history or some other means that Congress intended [the law] not to apply to Indians on their reservation." *Donovan v. Coeur d'Alene Tribal Farm*, 751 F.2d 1113, 1116 (9th Cir. 1985). "In any of these three situations, Congress must *expressly* apply a statute to Indians before we will hold that it reaches them." *Id.*

The Sixth Circuit in *Natl. Lab. Rel. Bd. v. Little River Band of Ottawa Indians Tribal Govt.*, 788 F.3d 537, 551 (6th Cir. 2015) accepted the *Coeur d'Alene* analysis by holding:

> We find that the *Coeur d'Alene* framework accommodates principles of federal and tribal sovereignty. *See Mashantucket Sand & Gravel,* 95 F.3d at 179; *Pueblo of San Juan,* 276 F.3d at 1206 (Murphy, J., dissenting) ("A limited notion of tribal self-governance preserves federal supremacy over Indian tribes while providing heightened protection for tribal regulation of purely intramural

> matters. Any concerns about abrogating tribal powers ... are fully addressed by the *Coeur d'Alene* exceptions."). The *Coeur d'Alene* framework reflects the teachings of *Montana, Iowa Mutual*, and *Santa Clara Pueblo:* ***there is a stark divide between tribal power to govern the identity and conduct of its membership, on the one hand, and to regulate the activities of non-members, on the other.*** The *Coeur d'Alene* framework begins with a presumption that generally applicable federal statutes also apply to Indian tribes, reflecting Congress's power to modify or even extinguish tribal power to regulate the activities of members and non-members alike. *See* 751 F.2d at 1115; *cf. Montana,* 450 U.S. at 557, 101 S.Ct. 1245. The exceptions enumerated by *Coeur d'Alene* then supply Indian tribes with the opportunity to show that a generally applicable federal statute should not apply to them. The first exception incorporates the teachings of *Iowa Mutual* and *Santa Clara Pueblo* that if a federal statute were to undermine a central aspect of tribal self-government, then a clear statement would be required. By this mechanism, the *Coeur d'Alene* framework preserves "the unique trust relationship between the United States and the Indians." *Grand Traverse Band,* 369 F.3d at 971 (quoting *Blackfeet Tribe,* 471 U.S. at 766, 105 S.Ct. 2399). ***We therefore adopt the Coeur d'Alene framework to resolve this case.***

Id. (emphasis added). The *Natl. Lab. Rel. Bd. v. Little River Band of Ottawa Indians Tribal Govt.* panel also recognized that courts throughout the country have applied generally applicable federal statutes to Indian Tribes using the same analysis.

> Our sister circuits have employed the framework set forth in *Coeur d'Alene* to conclude that aspects of inherent tribal sovereignty can be implicitly divested by comprehensive federal regulatory schemes that are silent as to Indian tribes. *See, e.g., Menominee Tribal Enters. v. Solis,* 601 F.3d 669, 674 (7th Cir.2010) (holding that OSHA applied to tribe's operation of a sawmill and related commercial activities); *Fla. Paraplegic Ass'n v. Miccosukee Tribe of*

> *Indians,* 166 F.3d 1126, 1128–30 (11th Cir.1999) (holding Title III of the Americans with Disabilities Act applied to tribe's restaurant and gaming facility); *Reich v. Mashantucket Sand & Gravel,* 95 F.3d 174, 177–82 (2d Cir.1996) (holding that OSHA applied to Indian tribe's construction business which operated only within confines of reservation); *Smart v. State Farm Ins. Co.,* 868 F.2d 929, 932–36 (7th Cir.1989) (applying Employee Retirement Income Security Act to tribal employee benefits plan because statute did not affect tribe's ability to govern itself in intramural matters); *see also Navajo Tribe v. NLRB,* 288 F.2d 162, 165 (D.C.Cir.1961) (holding that NLRA applies to employers located on reservation lands); *cf. EEOC v. Fond du Lac Heavy Equip. & Constr. Co.,* 986 F.2d 246, 249 (8th Cir.1993) (holding that Age Discrimination in Employment Act, although generally applicable to Indian tribes, does not apply to employment discrimination action involving member of Indian tribe, tribe as employer, and reservation employment because "dispute involves a strictly internal matter" and application would affect "tribe's specific right of self-government")

Natl. Lab. Rel. Bd. v. Little River Band of Ottawa Indians Tribal Govt., 788 F.3d 537, 551 (6th Cir. 2015).

A. Application of the FLSA in this Matter does not "touch exclusive rights of self-governance in purely intramural matters"

The first exception applies "only in those rare circumstances where the immediate ramifications of the conduct are felt primarily within the reservation by members of the tribe and where self-government is clearly implicated." *Snyder v. Navajo Nation*, 382 F.3d 892, 895 (9th Cir. 2004). "The tribal self-governance exception is designed to except internal matters such as the conditions of tribal

membership, inheritance rules, and domestic relations from the general rule that otherwise applicable federal statutes also apply to Indian tribes." *Natl. Lab. Rel. Bd. v. Little River Band of Ottawa Indians Tribal Govt.,* 788 F.3d 537, 552 (6th Cir. 2015). The first exception does not apply in this case because Defendant-Appellee's casino enterprise is not a "purely intramural matter" nor does it involve issues of tribal membership, inheritance rules, or domestic relations. *Coeur d'Alene,* at 1116. Defendant-Appellee is engaged in routine activities of a commercial character. "The right to conduct commercial enterprises free of federal regulation is not an aspect of tribal self-governance." *Little River Band of Ottawa Indians Tribal Govt.* 788 F.3d at 553 (*See, e.g., Fla. Paraplegic Ass'n,* 166 F.3d at 1129 (finding tribal gaming facility "does not relate to the governmental functions of the Tribe"); *Chao v. Spokane Tribe of Indians*, No. CV-07-0354-CI, 2008 WL 4443821, at *5 (E.D. Wash. Sept. 24, 2008) (the Court finds the FLSA does not touch upon primarily intramural matters because the Casino employs, and is open to, both tribal members and non-members). "Indian tribes are not shielded from general federal statutes because the application of those statutes may incidentally affect the revenue streams of tribal commercial operations that fund tribal government." *Little River Band of Ottawa Indians Tribal Govt.* 788 F.3d at 553. In 2022, Defendant-Appellee, Island

Resort & Casino reported net earnings of approximately $59,637,900.[1] Plaintiff-Appellant is not a member of the tribe and works for a restaurant that primarily services non-members. RE 7, Page ID # 55, ¶40. Application of the FLSA to the tribe would not "abrogate rights guaranteed by Indian Treaties. *Little River Band of Ottawa Indians Tribal Govt.* 788 F.3d at 553.

The Supreme Court has long been suspicious of tribal authority to regulate the activities of non-members and is apt to view such power as implicitly divested, even in the absence of congressional action. *Little River Band of Ottawa Indians Tribal Gov't.* 788 F.3d at 544 (citing *Plains Commerce Bank v. Long Family Land & Cattle Co.,* 554 U.S. 316, 327 (2008)). Defendant-Appellee's "power to regulate the activities of non-members is constrained, extending only so far as 'necessary to protect tribal self-government or to control internal relations.'" *Little River Band of Ottawa Indians Tribal Gov't*. 788 F.3d at 544 (citing *Montana v. United States,* 450 U.S. 544, 564 (1981)). Plaintiff-Appellant is not a member of the Hannahville Indian Community and she performed job duties entertaining primarily non-tribal customers in a capacity that does not protect tribal self-government or control tribal internal relations. In addition, Plaintiff-Appellant is a former "employee" within the meaning of the Fair Labor Standards Act of 1938 ("FLSA"), 29 U.S.C. § 201 *et seq*.

[1] https://www.michigan.gov/mgcb/-/media/Project/Websites/mgcb/Tribal-Gaming/AnnualReports/2022-Tribal-Gaming-Annual-Report-Final-4623.pdf?rev=6d7f0711fc594c52afb08cfec8b01db0&hash=FA45D7B59ECC6A3EE8526C392313B137

Defendant-Appellee was and continues to be an "enterprise engaged in interstate commerce or in the production of goods" within the meaning of 29 U.S.C. § 203. As such, the FLSA, in this scenario, does not impinge upon Defendant-Appellee's right to "self-government" and Defendant-Appellee is not entitled to dismissal under the first *Coeur d'Alene* exception.

B. The "Treaty Rights" Exception.

The second *Coeur d'Alene* test states statutes of general applicability do not apply to Indian Tribes absent a clear expression of Congressional intent where the application of the law to the tribe would "abrogate rights guaranteed by Indian treaties." Plaintiff-Appellant is unable to locate with reasonable effort any treaty. The Court in *Coeur d'Alene* held that where no treaty exists between the United States and the specific tribe in question the "exception is … unavailable." 751 F.2d at *1118. (the Farm cannot avail itself of the "treaty rights" exception and must rely exclusively on the "aspects of tribal self-government" exception.) "[T]here is no treaty between the Coeur d'Alene Tribe and the United States government. Nor can the Farm point to any document to which the United States is a signatory that specifically guarantees the Tribe's right to exclude non-Indians." *Coeur d'Alene* at *1117. Because Defendant has not produced evidence of any treaty "guaranteeing the Tribe's right to exclude non-Indians," they are unable to avail themselves of the second *Coeur d'Alene* exception. *See F.T.C. v. AMG Services, Inc.*, No. 2:12-CV-

00536-GMN, 2013 WL 7870795, at *19 (D. Nev. July 16, 2013), *report and recommendation adopted*, No. 2:12-CV-00536-GMN, 2014 WL 910302 (D. Nev. Mar. 7, 2014) (As the FTC Act is one of general applicability, is silent on the issue of applicability to Indian tribes, and none of the defendants argue that a *Donovan* exception applies, that is the end of the inquiry).

C. The "Other Indications" Exception.

The third *Coeur d'Alene* exception requires some proof "by legislative history or some other means that Congress intended [the law] not to apply to Indians on their reservation." Without any such proof, there can be no argument that the FLSA does not apply to Indian Tribes. Defendant-Appellee similarly cannot avail themselves of its protection. Moreover, this proposition is well established. *See Reich v. Mashantucket Sand & Gravel*, 95 F.3d 174, 177 (2d Cir. 1996) (OSHA is silent as to Indians, thereby eliminating the third [*Coeur d'Alene* exception].) *See Little River Band of Ottawa Indians Tribal Govt.* 788 F.3d at 553 (Nor is there proof "that Congress intended not to apply [the FLSA] to Indians on their reservation.) Since the FLSA is silent as to Indians, Defendant cannot avoid this Court's jurisdiction within the third *Coeur d'Alene* exception.

The case law is clear that the FLSA applies to Defendant-Appellee because none of the *Coeur d'Alene* exceptions apply to it and the FLSA is a statute of general applicability.

III. FLSA JURISDICTIONAL PROVISIONS REQUIRE THE MATTER TO BE HEARD IN FEDERAL COURT

29 U.S.C. § 216(b) states in relevant part that "[a]n action to recover the liability prescribed in the preceding sentences may be maintained against any employer (including a public agency) in ***any Federal or State court*** of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated." Unambiguously, the FLSA limits suits to federal or state courts under 29 U.S.C. § 216(b). Because the FLSA clearly applies to Defendant and Defendant itself agreed not to exercise "any of the foregoing powers so as to conflict with ***any*** laws of the United States which apply to the Hannahville Indian Community" the FLSA's jurisdictional rules require this matter to be heard in the present forum. Defendant-Appellee's tribal court jurisdiction is limited by federal statute as well as their own constitution. Maintaining this action in a jurisdiction or locale other than federal or state court would violate the FLSA's jurisdictional prohibitions as well as Defendant-Appellee's own Constitution.

IV. TRIBAL EXHAUSTION DOCTRINE DOES NOT BAR THE SUIT.

At the district court, Defendant-Appellee argued that "principles of comity also compel this Court to dismiss the instant action under the tribal exhaustion doctrine." Brief in Support of Motion, RE 9, Page ID # 81. Contrary to Defendant-Appellee's belief, Plaintiff-Appellant does not "bear the burden of proof" for

Defendant-Appellee's reliance on the exhaustion rule under Rule 12(b)(1). As the Supreme Court stated, the exhaustion rule does "not deprive the federal courts of subject-matter jurisdiction. Exhaustion is required as a matter of comity, not as a jurisdictional prerequisite. In this respect, the rule . . . renders it appropriate for the federal courts to decline jurisdiction in certain circumstances." *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16 n. 8 (1987). Here, Defendant-Appellee provides no reason that the Court should decline to exercise its subject matter jurisdiction. Defendant-Appellee contends that "[t]he operation of the casino clearly has an impact on the economic interests and welfare of the HIC and the HIC has the power to regulate the activities of Plaintiff operating on HIC lands." RE 9, Page ID. # 84. But Defendant-Appellee has submitted no admissible evidence in support of its contention and Defendant-Appellee's conclusory arguments are not a factual basis to apply the exhaustion rule.

Lacking evidentiary support, Defendant-Appellee relied on inapposite legal support from *Madewell*, 730 F. Supp. 2d at 487-489. In *Madewell*, this Court held that the tribal court had a colorable basis to exert civil jurisdiction over a personal injury claim. But this case is much different from a run-of-the mill slip and fall case. This action involves a federal question (FLSA wages) arising out of Defendant-Appellee's actions, as an employer, against a non-Indian Plaintiff, who serviced mostly non-Indian casino guests. Numerous courts have rejected the exhaustion

rule, opting to exercise their jurisdiction in cases analogous to the instant matter. *See, e.g., Hines v. Grand Casinos of La., LLC–Tunica-Biloxi*, No. 01-30692, 2002 WL 180364, at *1-3 (5th Cir. Jan. 4, 2002) (holding that exhaustion rule does not require dismissal of discrimination case because the terms of the management agreement with the tribe gave casino operator "exclusive responsibility" to select, control, and discharge employees at the casino and the tribe's interests were not implicated, although they paid the employee's salary, given the operator was the employer as a matter of law); *Johnson v. Harrah's Kan. Casino Corp.*, No. 04-4142-JAR, 2006 WL 463138, at *10 (D.Kan. Feb. 23, 2006) (declining to dismiss discrimination suit based on considerations of comity because the case did not implicate tribal law or policy warranting application of the exhaustion doctrine).

The exhaustion rule also does not apply here because the FLSA limits suits to federal or state courts under 29 U.S.C. § 216(b). Thus, tribal court's jurisdiction is limited by a federal statute and Defendant-Appellee agreed, within the text of its own Constitution, that it shall not exercise any of the foregoing powers so as to conflict with any laws of the United States which apply to the Hannahville Indian Community. RE 10-1. Again, maintaining this action in a jurisdiction or locale other than federal or state court would violate the FLSA's jurisdictional prohibitions as well as Defendant-Appellee's own Constitution, which is a basis to decline application of the exhaustion rule. *Nat'l Farmers Union Ins. Cos. v. Crow Tribe of*

Indians, 471 U.S. 845, 857 n.21. (1985).

Moreover, given the Tribe's inherent bias (Defendant-Appellee's claim that the Tribe has an economic interest implicated by this case), the assertion of tribal jurisdiction is motivated by bad faith. Defendant-Appellee's prior assertion of the rule is a transparent attempt to bring this matter before a more favorable venue where the Tribe can decide whether it owes current and former employees overtime wages. As the Supreme Court has long held:

> 'Comity,' in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard . . . to the rights of its own citizens or of other persons who are under the protection of its laws."

Hilton v. Guyot, 159 U.S. 113, 163-64 (1895). In this particular case, the principles of comity underlying the exhaustion rule warrant this Court exercising jurisdiction over this matter. The Tribe, through its Constitution, intended Defendant-Appellee to be bound statutorily to applicable federal law. Thus, it is the rights and laws of this jurisdiction and its citizens, not the Tribe, which requires this matter be heard in this federal court. The district court's dismissal of Plaintiff's case was improper considering the Tribes explicit waiver.

CONCLUSION

For these reasons, Plaintiff-Appellant seeks reversal of the District Court's

Opinion and Order.

Respectfully Submitted,

HURWITZ LAW PLLC

/s/ *Colin H. Wilkin*
Colin H. Wilkin (P86243)
Attorney for Plaintiff-Appellant
340 Beakes Ste. 125
Ann Arbor, MI 48104
(844) 487-9484
colin@hurwitzlaw.com

Dated: May 20, 2025

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 5,069 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii). This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14-point, Times New Roman font.

Respectfully Submitted,

HURWITZ LAW PLLC

/s/ *Colin H. Wilkin*
Colin H. Wilkin (P86243)
Attorney for Plaintiff-Appellant
340 Beakes Ste. 125
Ann Arbor, MI 48104
(844) 487-9484
colin@hurwitzlaw.com

Dated: May 20, 2025

CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2025, I caused to be filed the foregoing *Brief of Plaintiff-Appellant Alexandria Parrotta* electronically with the Clerk of the Court. Notice of this filing will be sent to all attorneys of record by operation of the Court's electronic filing system. Parties may access this filing through the court's system.

Respectfully Submitted,

HURWITZ LAW PLLC

/s/ *Colin H. Wilkin*
Colin H. Wilkin (P86243)
Attorney for Plaintiff-Appellant
340 Beakes Ste. 125
Ann Arbor, MI 48104
(844) 487-9484
colin@hurwitzlaw.com

Dated: May 20, 2025

No. 25-1283

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ALEXANDRIA PARROTTA

Plaintiff-Appellant

---v.---

ISLAND RESORT AND CASINO

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN, No. 2:24-cv-00056
The Honorable Robert J. Jonker, Judge Presiding

ADDENDUM TO PLAINTIFF- APPELLANT'S BRIEF

COLIN H. WILKIN
HURWITZ LAW PLLC
340 BEAKES ST. STE. 125
ANN ARBOR, MI 48104
(844) 487-9484
COLIN@HURWITZLAW.COM
COUNSEL FOR PLAINTIFF-APPELLANT

Date: May 20, 2025

DESIGNATION OF RELEVANT DISTRICT COURT DOCUMENTS

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