IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA (SOUTHWESTERN DIVISION)

JAY MEILSTRUP,	)	
	)	
Plaintiff,	)	Case No. 1:25-cv-00162
	)	
v.	)	
	)	
STANDING ROCK SIOUX TRIBE,	)	
STANDING ROCK TRIBAL COUNCIL	)	
And RYAN HERTLE,	)	
	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

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INTRODUCTION

Plaintiff entered into a contract for a senior management position with the Tribe's casino. When his wife had a medical issue, he abandoned his job and moved back to Pennsylvania. That may be understandable. But he now brings suit against the Tribe, claiming unspecified breaches of contract and violations of state law and based upon an unexplained assertion that his state law claims raise a "federal question."

But, as Plaintiff expressly agreed to in his contract with the Tribe, any claim related in any way to his employment can only be brought in the Tribe's Court. As is all too common for tribes, Plaintiff now wants to avoid the forum to which he agreed. As discussed below, for multiple independent reasons, Plaintiff must abide by his contractual choice of a tribal forum.

STATEMENT OF FACTS

The Tribe employed Jay Meilstrup as the CEO/General Manager of the tribally owned Prairie Knights Casino. Tribal casinos are heavily regulated by the Indian Gaming Regulatory Act (IGRA), and the Tribe's gaming laws, regulations, and employment regulations. Contract ¶ 2.2. (Attached hereto as Exhibit 1). Mr. Meilstrup's employment was further governed by all other terms of the contract between the Tribe and Meilstrup.

The contract was entered into on the Tribe's Reservation, Contract ¶11, and the contract expressly provides that the terms are construed under the Tribe's laws and that any "cause of action arising out of or relating to this Contract, or any other cause of action pertaining to Employee's employment as General Manager of the Casino" can only be brought in the Tribe's Court. Contract ¶¶ 9.6, 12 (emphasis added). Plaintiff also expressly agreed that the Tribe was only waiving sovereign immunity for claims up to the amount of the contract. He expressly agreed that claims for punitive, exemplary, or other damages against the Tribe were prohibited, and that the waiver was expressly limited to suits in the Standing Rock Sioux Tribe's Court. Contract ¶18.

Meilstrup has not filed any claim in the Tribe's Court, nor did he file an administrative employment grievance with the Tribe. He therefore has not exhausted tribal court remedies.

Meilstrup chose not to go to work, and he was terminated. He had failed to attend work between December 7 and December 13, 2024, and again between February 15 and February 23. 2025. Despite Meilstrup not having any accumulated leave, the Tribe chose to pay him. Ex. 2.[1]

Defendant then abandoned his job on or about February 27, and in mid-March he told the Tribe that if it did not ratify his decision to take leave without pay, he would terminate his employment. In his complaint, Meilstrup asserts that he contacted some members of the Tribe's governing body and claims he had been approved for long term leave from his position. As a matter of solely tribal law, unreviewable by this Court, Meilstrup was NOT approved for leave, and in fact Meilstrup did not submit a proper request for leave. In his own complaint he admits facts which the Tribe found dispositive under the Tribe's laws for its decision to terminate Plaintiff for taking unauthorized leave, leaving the Tribe's Casino without its General Manager for a month. Plaintiff sent an email to two of the Executive Committee members of the Tribal Council "requesting unpaid leave." He claims that one or more members of the Tribe's governing body were willing to approve his leave. But a majority did not approve, and then when belatedly asked to retroactively ratify his unauthorized leave, they decided to terminate his employment instead. Ex. 3

As the Casino general manager, Meilstrup had the contractual duty to know, Contract ¶¶2.1, 6, 9.3, and the Tribe believes he does know, the proper procedure for requesting leave. But whether or not he knew is immaterial for current purposes, similar to ignorance of the law not

[1] Based upon the undersigned's personal knowledge, Exhibit 2 is a printout from tribal payroll records kept in the regular course of business, and therefore can be considered by the Court.

being an excuse. The Tribe's governing body, — the whole of that body, not just those that Meilstrup chose to email, concluded that Meilstrup had been absent without leave for a month and it terminated his employment on March 25, 2025, for cause as permitted by paragraph 8.2 of the contract. Compl. ¶XII. It subsequently determined that based upon the fact, the termination was for gross misconduct.

Meilstrup was timely provided notice regarding COBRA. Compl. §XIV.

Meilstrup admits that the Tribe determined that Meilstrup was terminated for gross misconduct. Under ERISA, he is therefore not eligible for continued coverage.

DISCUSSION OF LAW

Because this is a suit against the Tribe, Tribal Council members, and a tribal employee in his official capacity, Plaintiff must allege and prove facts establishing: (1) subject-matter jurisdiction, (2) a waiver of sovereign immunity, and (3) the existence of a cause of action. *El Paso Nat. Gas Co. v. United States*, 750 F.3d 863, 892 (D.C. Cir. 2014). "[T]ribal sovereign immunity and a court's lack of subject-matter jurisdiction are different animals." *Ute Indian Tribe of the Uintah & Ouray Rsrv. v. Lawrence*, 22 F.4th 892, 906 (10th Cir. 2022). Indeed, the question of subject matter jurisdiction is "wholly distinct" from the defense of sovereign immunity. *Blatchford v. Native Village of Noatak*, 501 U.S. 775, 786-87 n. 4 (1991); *see also United States v. Park Place Assocs., Ltd.*, 563 F.3d 907, 923-924 (9th Cir. 2009) ("sovereign immunity and subject matter jurisdiction present distinct issues."); *Alvarado v. Table Mountain Rancheria*, 509 F.3d 1008, 1016 (9th Cir. 2007) ("To confer subject matter jurisdiction in an action against a sovereign, *in addition to a waiver of sovereign immunity*, there must be statutory authority vesting a district court with subject matter jurisdiction.") (emphasis added); *Quality Tooling, Inc. v. United States*, 47 F.3d 1569, 1574-75 (Fed. Cir. 1995) ("The inquiry … is not whether there is one, jurisdiction, or the other, a waiver of immunity, but whether there is both…"). *C.f. Nucor Corp.*

v. Nebraska Pub. Power Dist., 891 F.2d 1343, 1346 (8th Cir.1989) (applying same requirement of a basis for jurisdiction and a basis for waiver of immunity for claims against the United States)

Plaintiff has failed to meet any one of these three independent requirements, and therefore his claims must be dismissed.

Yet more simply Plaintiff's suit must be dismissed because there is at least a colorable question of whether his claims must be brought in the Tribe's Court. In fact, it is absolutely clear that the claims must be brought in the Tribe's Court, but under the current posture the material legal question is whether there is a colorable question of tribal court jurisdiction. There is, and therefore Plaintiff cannot bring this federal court suit because he has not exhausted tribal court remedies, and the Tribal Court has not created the factual record that would be used for any subsequent federal court suit.

I. PLAINTIFF'S COMPLAINT MUST BE DISMISSED FOR FAILURE TO EXHAUST TRIBAL COURT REMEDIES.

The Tribe's Court has jurisdiction over claims by a plaintiff who entered into a consensual relationship with the Tribe. Because Plaintiff has not exhausted tribal court remedies for his claims, this Court need only determine that there is a colorable question of tribal court jurisdiction. Here, there is plainly far more than a colorable question. Plaintiff entered into a written consensual contractual relationship with the Tribe, for a senior management position at the Tribe's on-Reservation casino. Making this case yet more simply, Plaintiff contractually agreed that claims related to his employment must be brought in tribal court, and that the contract is interpreted under the Tribe's laws. Contract ¶12. His current case should be dismissed.

A. PLAINTIFF HAS NOT EXHAUSTED TRIBAL COURT REMEDIES.

To exhaust tribal court remedies, a tribal court party must obtain a *final merits decision* from the Tribe's highest court. *Iowa Mutual Ins. Co. v. LaPlante*, 480 U.S. 9, 16-17 (1987); *Nat'l*

Farmers Union Ins. Cos. v. Crow Tribe, 471 U.S. 845, 857 (1985). Plaintiff does not allege, nor could he allege, that he has exhausted tribal court remedies. He has not filed any suit in the Tribe's Court, nor has he filed an administrative appeal with any tribal forum.

B. BECAUSE THERE IS AT LEAST A COLORABLE QUESTION OF TRIBAL COURT SUBJECT MATTER JURISDICTION, PLAINTIFF IS REQUIRED TO EXHAUST TRIBAL COURT REMEDIES.

The tribal exhaustion requirement was confirmed by the U.S. Supreme Court in *National Farmers Union Insurance,* 471 U.S. at 855–56. In *National Farmers Union Insurance*, a Crow Indian minor sued a school district in tribal court after being struck by a motorcycle in a school parking lot located on state-owned land within the exterior boundaries of the Crow Indian Reservation. The defendant school district filed an action in federal court challenging the jurisdiction of the tribal court. The Supreme Court acknowledged that the federal court challenge had serious implications relating to long-held sovereign interests of the tribe, stating that:

> the existence and extent of a tribal court's jurisdiction will require a careful examination of tribal sovereignty, the extent to which that sovereignty has been altered, divested, or diminished, as well as a detailed study of relevant statutes, Executive Branch policy as embodied in treaties and elsewhere, and administrative or judicial decisions.

Id. at 855-56.

The Supreme Court concluded that the Tribe must have the initial authority, exclusive of the federal courts, to reach a determination on such matters directly involving the jurisdiction and sovereign authority of the Tribe:

> Congress is committed to a policy of supporting tribal self-government and self-determination. That policy favors a rule that will provide the forum whose jurisdiction is being challenged the first opportunity to evaluate the factual and legal bases for the challenge. Moreover the orderly administration of justice in the federal court will be served by allowing a full record to be developed in the Tribal Court before either the merits or any question concerning appropriate relief is addressed. ….Exhaustion of tribal court remedies, moreover, will encourage tribal courts to explain to the parties the precise basis for accepting jurisdiction, and will

> also provide other courts with the benefit of their expertise in such matters in the event of further judicial review.

Id. at 856-57.

In its analysis, the Supreme Court invoked not only the federal policy supporting tribal self-government, but also the related pragmatic consideration of allowing tribes the opportunity to use their expertise in resolving matters that are of distinctly critical importance to them and produce a factual record that provides the facts that are to be used in any later federal court case. This dual basis for requiring tribal exhaustion was confirmed by the Supreme Court two years later in *Iowa Mutual Insurance*, 480 U.S. at 16, where the Court found that "the federal policy supporting tribal self-government directs a federal court to stay its hand in order to give the tribal court a full opportunity to determine its own jurisdiction." In support of this statement, the Court reasoned that "[a]djudication of such matters by any nontribal court also infringes upon tribal lawmaking authority, because tribal courts are best qualified to interpret and apply tribal law." *Id*.

In pre-exhaustion review, this Court only asks whether there is a *"colorable question"* for tribal court subject matter jurisdiction. If there is a colorable question, the federal court *must* require exhaustion of tribal court remedies. *Stock West Corp. v. Taylor*, 964 F.2d 912, 920-21 (9th Cir. 1992). When determining whether there is a colorable question, the Court is not bound by the facts in the Plaintiff's federal court complaint. *See* §II.B*, infra; Norton v. Ute Indian Tribe*, 862 F.3d 1236 (10th Cir. 2017), *cert. denied* 138 S.Ct. 1001 (2018)

This Court's review, both in pre-exhaustion and in post-exhaustion review, is narrowly and strictly limited to the question of whether the final decision of the Tribe's Court exceeds a *federally imposed limitation on Tribal Court subject matter jurisdiction*. *E.g., Iowa Mutual Ins. Co, 480 U.S. at 18*; *Nat'l Farmers Union Ins.*, 471 U.S. at 856.

Applying these standards to the current case could hardly be any easier. There is plainly much more than a "colorable question" that the Tribal Court has subject matter jurisdiction. In fact, Plaintiff does not even have a colorable argument that the Tribal Court lacks jurisdiction under the first exception in *Montana v. United States*, 450 U.S. 544, 564 (1981) (*Montana*) and there is at least a colorable question that the Tribe's Court has jurisdiction under the second *Montana* exception.[2]

Montana "is the pathmarking case concerning tribal civil authority over nonmembers." *Strate v. A-1 Contractors*, 520 U.S. 438, 445 (1997). *Montana* mandates that tribes retain inherent sovereign power to regulate: (1) "the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases or other arrangements" [the first *Montana* exception], and (2) the conduct of non-Indians that "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe [the second *Montana* exception]." 450 U.S. 544, 565-66 (1981).

First, it is undisputed that Plaintiff entered into – and maintained for five months, a "consensual relationships" with the Tribe, to perform senior management services for the Tribe's on-Reservation casino.

An alternative way to look at this, which also obviously leads to the same result is that the *Montana* cases equate a tribe's authority to adjudicate with its authority to regulate. *E.g.*, *Attys Process & Invest. v. Sac and Fox Tribe of the Mississippi in Iowa,* 609 F.3d 927, 938 (8th Cir. 2010). As is readily obvious, and as expressly recognized by Congress in the IGRA, a tribe has

[2] The second *Montana* exception requires a fact-intensive inquiry into the harm which a Plaintiff's conduct will have on the Tribe. Here, the Tribe has a colorable claim that Plaintiff's failure for a month to perform his essential lead role with the Tribes' heavily regulated gaming facility conduct meets the standard for jurisdiction under the second *Montana* exception.

the duty and broad powers to regulate its *own casino* and management officials in the casino. 25 U.S.C. §§ 2710, 2711.

Second, Plaintiff seeks to infringe the Tribe's sovereign immunity because any alleged waiver of the Tribe's sovereign immunity is limited to suits in tribal court and under tribal law. "Few aspects of the Tribe's political integrity and economic security are more important than its sovereign immunity from suit. For this reason, determining whether a tribe has waived its immunity from suit is precisely the type of question that should be determined by the Tribal Court." *Confederated Tribes of Grand Ronde v. Strategic Wealth Mgmt. Inc.*, No. C-04-08-003, 2005 WL 6169140 (Grand Ronde Tribal Ct. Aug. 5, 2005). *See also Davis v. Mille Lacs Band of Chippewa Indians*, 193 F.3d 990, 992 (8th Cir. 1999) ("[T]he Supreme Court has stated that the issue of a tribe's sovereign immunity is the very kind of question that is to be decided in the first instance by the tribal court itself.") (citing *National Farmers Union,* 471 U.S. at 855–56). Plaintiff's assault on the Tribe's sovereign immunity is a threat to its political integrity and thus creates a second, independently sufficient basis for subject matter jurisdiction under the second *Montana* prong. As relevant here, there is at least a colorable claim for tribal court subject matter jurisdiction under the second *Montana* exception, and therefore Plaintiff is required to exhaust tribal court remedies because of both the first and second *Montana* exceptions. *See, e.g.*, *Attorneys Process and Investigative Services, Inc. v. Sac and Fox Tribe of the Mississippi in Iowa*, 809 F. Supp. 916, 928 (N.D. Iowa 2011).

II. PLAINTIFF FAILED TO MEET ITS BURDEN TO PLEAD AND ITS SEPARATE BURDEN TO PROVE A WAIVER OF THE TRIBE'S SOVEREIGN IMMUNITY.

A. PLAINTIFF FAILED TO PLEAD A WAIVER OF SOVEREIGN IMMUNITY.

A plaintiff has the duty to plead, and then to prove, that this Court has jurisdiction and that there is a waiver of the Tribe's sovereign immunity from suit. The requirement that a plaintiff

plead and prove a basis for bringing a claim against a sovereign is an important protection of the sovereign and of sovereign immunity from suit. As discussed below, sovereign immunity is an immunity from suit, and the protection of immunity is lost when the sovereign must go to the expense of responding to complaints for which there is no waiver.

> The requirement that a plaintiff plead an alleged waiver of tribal sovereign immunity is analogous to federal court holdings that the jurisdictional allegations in an original action or a counterclaim against the United States must include a reference to the statute containing an express or implied waiver of the government's immunity from suit. It is the consent to be sued that defines the federal court's jurisdiction to entertain a suit against the United States.

Charles Alan Wright and Arthur A. Miller, *Fed. Prac. & Proc. Civ.* § 1212 (3rd ed.) "Pleading Jurisdiction—When the United States Is a Party." *See also* Robert L. Haig, *Bus. & Com. Litig. in Fed. Cts.* §120.29 (3rd ed.) ("The plaintiff must allege that the governmental entity's sovereign immunity has been waived as per the applicable statutory provisions … As to the existence of immunity, plaintiffs must either allege in the complaint that the immunity does not apply, that it has been waived, or that a specific statutory exception to governmental immunity applies.").

> As a sovereign, the United States "is immune from suit save as it consents to be sued ... and the terms of its consent to be sued in any court define that court's jurisdiction to entertain the suit." *United States v. Testan*, 424 U.S. 392, 399 (1976) (quoting *United States v. Sherwood*, 312 U.S. 584, 586 (1941)). The plaintiff in a suit against the United States is therefore required to set forth in the complaint the specific statute containing a waiver of the government's immunity from suit. *Reeves v. United States*, 809 F. Supp. 92, 94 (N.D. Ga. 1992), aff'd without op., 996 F.2d 1232 (11th Cir. 1993*); see Swift v. United States Border Patrol*, 578 F. Supp. 35, 37 (S.D. Tex. 1983) ("[I]t is incumbent upon the Appellant to state in his complaint the grounds upon which the sovereign consented to [the] suit."), aff'd without op., 731 F.2d 886 (5th Cir. 1984); 5 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* 1212 at 126 (1990).

Warminster Twp. Mun. Auth. v. United States, 903 F. Supp. 847, 849 (E.D. Pa. 1995); *see also McCord v. Alabama*, 364 Fed. Appx. 590, 591 (11th Cir. 2010) (affirming dismissal of a civil rights claim against the state where the plaintiffs "did not allege that the state consented to suit or that Congress had abrogated the state's immunity.")

Here, Plaintiff's Complaint does not address sovereign immunity whatsoever, let alone address a waiver of sovereign immunity—and for good reason, i.e. the Standing Rock Tribal Code contains no such waiver. In fact, Section 1-108 and 1-109 of the SRST Code expressly preserves sovereign immunity in suits against the Tribe and Tribal officials, except in narrow circumstances (none of which apply here).

B. THE TRIBE AND TRIBAL OFFICIALS HAVE SOVEREIGN IMMUNITY FROM UNCONSENTED SUIT.

Courts lack jurisdiction over Tribes and tribal legal entities entitled to assert sovereign immunity. *Hagen v. Sisseton-Wahpeton Community College*, 205 F.3d 1040, 1043 (8th Cir. 2000); *Robbins v. U.S. Bureau of Land Mgmt.*, 438 F.3d 1074, 1080 (10th Cir. 2006). It is well established that a Tribe's immunity extends to its officials when acting in their representative capacity and within the scope of their authority. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55 (1978); *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 690 & n. 22, (1949); *Burlington N. v. Blackfeet Indian Tribe*, 924 F.2d 899, 901 (9th Cir. 1991); *Bug Master v. Standing Rock Sioux Tribe Housing Authority*, APL-18-004 (Standing Rock Sup. Ct. Nov. 20, 2018).

When considering a motion to dismiss for lack of jurisdiction or based upon sovereign immunity, the court is not limited to the facts pled in the court complaint, but can and should consider evidence submitted with the motion to dismiss and adopt any suitable mode of proceeding to determine facts in order to satisfy itself as to its power to hear the case. *Osborn v. United States*, 918 F.2d 724 (8th Cir. 1990). "When determining whether a plaintiff pled jurisdiction and waiver, the court does not accept the truthfulness of any legal conclusions contained in the complaint when assessing a facial attack on subject matter jurisdiction under Rule 12(b)(1)." *Payne v. U.S. Bureau of Reclam.*, No. CV1700490ABMRWX, 2017 WL 6819927, at *2 (C.D. Cal. Aug. 15, 2017) (citing *Warren v. Fox Family Worldwide, Inc*., 328 F.3d 1136, 1139 (9th Cir. 2003). A plaintiff

cannot avoid that rule by attempting to state legal conclusions as if they are factual allegations. *W. Mining Council v. Watt,* 643 F.2d 618, 624 (9th Cir. 1981).

The purpose and significance of tribal sovereign immunity was summarized well by the Eighth Circuit Court of Appeals in a prior case against the Standing Rock Sioux Tribe:

> The principle that Indian nations possess sovereign immunity has long been part of our jurisprudence. Indian tribes enjoy immunity because they are sovereigns predating the Constitution, and because immunity is thought necessary to promote the federal policies of tribal self-determination, economic development, and cultural autonomy. That sovereign immunity can be surrendered only by express waiver enjoys similarly ancient pedigree. We steadfastly have applied the express waiver requirement irrespective of the nature of the lawsuit.

Am. Indian Ag. Credit Consortium, Inc. v. Standing Rock Sioux Tribe, 780 F.2d 1374, 1377-79 (8th Cir. 1985). Sovereign immunity is not merely an affirmative defense, but rather a jurisdictional bar. As the United States Supreme Court noted, "The entitlement is an *immunity from suit* rather than a mere defense to liability." *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985). "Because of its jurisdictional nature, we must consider the Tribe's claim of sovereign immunity *before* reaching the issue of failure to state a claim." *Fla. v. Seminole Tribe of Fla.*, 181 F.3d 1237, 1241 (11th Cir. 1999). (Emphasis added.) "Since the issue of tribal sovereign immunity is jurisdictional in nature, *we must first determine* whether the Band has effectively waived tribal immunity… irrespective of the merits of [Plaintiff's] tort and contractual claims." *Pan Am. Co. v. Sycuan Band of Mission Indians*, 884 F.2d 416, 418 (9th Cir. 1989) (internal citations omitted) (Emphasis added.) Therefore, if a Tribe and/or Tribal officials have sovereign immunity, then a court is without jurisdiction and has no power to act. Consequently, sovereign immunity can be raised at any point in a proceeding. *See Hagen*, 205 F.3d at 1044.

Subject matter jurisdiction is the very power of the court to hear a case. *United States v. Beasley*, 495 F.3d 142 (4th Cir. 2007). Without subject matter jurisdiction, the Court cannot proceed at all except to announce that it is without jurisdiction and dismiss the case. *Id.; see also*

Colville Confederated Tribal Enterprise Corp. v. Orr. (Colv. App. Dec. 4, 1998)[3] (citing *United States v. U.S. Fidelity & Guarantee*, 309 U.S. 506, 513 (1940) and *American Indian Agricultural Credit Consortium* in support of the Court's holding that sovereign immunity "is not a discretionary principle subject to the vagaries of the commercial bargaining process or the equities of a given situation.")

The Tribe's immunity is only waived by specific, clear and unequivocally expressed waiver. Any alleged waiver would have to be narrowly construed in favor of the Tribe. Absent such a waiver, the Tribe and its Tribal officers are not subject to civil suit in any tribunal. *E.g., Santa Clara Pueblo*, 436 U.S. at 58 (Abrogation or tribal waiver of sovereign immunity "cannot be implied but must be unequivocally expressed."); *C & L Enter., Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 532 U.S. 411, 418 (2001); *Kiowa Tribe of Okla. v. Mfg. Techs., Inc*., 523 U.S. 751, 754 (1998); *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 509 (1991).

Absent an express waiver or abrogation of immunity, officials of the Tribe are immune from suit. *Dillon v. Yankton Sioux Tribe Housing Authority*, 144 F.3d 581 (8th Cir. 1998). Therefore, to overcome the Tribe's sovereign immunity, the Plaintiff would have to plead, and then prove, a clear and unequivocal waiver or exception to the Tribe's sovereign immunity from suit. Plaintiff did not do either. This alone calls for dismissal of the Complaint.

III. PLAINTIFF HAS NOT PRESENTED ANY FEDERAL QUESTION.

Because this is a Court of limited jurisdiction, this Court is required to presume that it lacks jurisdiction, and "[i]t is well-settled that the plaintiff bears the burden of establishing subject matter jurisdiction. *Nucor Corp. v. Neb. Pub. Power Dist.*, 891 F.2d 1343, 1346 (8th Cir. 1989).

[3] Available at http://www.tribal-institute.org/opinions/1998.NACC.0000009.htm.

Plaintiff does not meet that burden. Plaintiff nominally states that this Court has a federal question jurisdiction under 28 U.S.C. § 1331 or 29 U.S.C. § § 1132. But Defendant never sets forth a federal question or a violation of any specific federal law. Instead, after nominally asserting federal question jurisdiction, Defendant makes the contradictory and confusing allegation that his claims arise under state law. Complaint ¶V. As discussed above, state law does not apply to this contract: This contract is governed by Standing Rock Sioux Tribe's law. Plaintiff does not allege any violation of Standing Rock Sioux Tribal law. Plaintiff also does not allege, and could not allege, that this Court has "supplemental jurisdiction" over claims based upon the Tribe's laws. Plaintiff has not met his burden to show federal court jurisdiction, and his complaint therefore must be dismissed.

IV. PLAINTIFF HAS FAILED TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED.

As discussed in the two prior sections of this brief, Plaintiff has only made a conclusory allegation of violation of federal law, his allegations of violation of "state law" are not within this Court's jurisdiction because state law does not apply, and he has not alleged and cannot show an applicable waiver of the Tribe's sovereign immunity. As discussed above, the Tribe's position is that these failures deprive the Court of subject matter jurisdiction. For the same reasons as discussed above, they would, in the alternative or in addition, also constitute a failure to state any claim upon which relief can be granted.

Respectfully submitted August 8, 2025.

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