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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

Joseph Mundo,

Plaintiff,

v.

Shelby Vandever, and Crownpoint Navajo  
Family Court,

Defendants.

Case No.: CIV25-0136JB/KK

**THE NAVAJO NATION'S MOTION  
TO DISMISS**

**I. INTRODUCTION**

The Navajo Nation hereby files this Motion to Dismiss<sup>1</sup> Plaintiff's claims in their entirety as to the Navajo Nation and its courts.<sup>2</sup> It is well-established that the Navajo Nation enjoys tribal sovereign immunity from suit, and Navajo Nation courts are likewise entitled to that same immunity. Furthermore, Plaintiff has not alleged waiver of sovereign immunity. Tribal sovereign immunity simply bars this suit in its entirety as to the Navajo Nation and its courts.

Because sovereign immunity is a threshold issue of this Court's subject matter jurisdiction, the Navajo Nation respectfully requests that this Court dismiss Plaintiff's claims as to the Navajo Nation and its courts.

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<sup>1</sup> As explained previously, Plaintiff did not properly serve the operative complaint upon the Navajo Nation or its courts, *see* Doc. 16, and thus, the time for the Navajo Nation to respond to the operative complaint has not yet begun to run.

<sup>2</sup> Plaintiff named "Crownpoint Navajo Family Court" as Defendant in this action. As will be explained below, the Crownpoint Judicial District is an arm of the Navajo Nation and is entitled to the same tribal sovereign immunity enjoyed by the Navajo Nation.

## II. RELEVANT LAW

### A. Rule 12(b)(1) Standard

Federal Rule of Civil Procedure 12(b)(1) allows a party to contest a federal court's jurisdiction over the subject matter of a claim by motion. Fed. R. Civ. P. 12(b)(1). The party invoking a federal court's jurisdiction bears the burden of establishing that jurisdiction exists. *Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1974); *Salzer v. SSM Health Care of Okla. Inc.*, 762 F.3d 1130, 1134 (10th Cir. 2014). “[C]onclusory allegations of jurisdiction are insufficient.” *Harris v. PBC NBADL, LLC*, 444 Fed. Appx. 300, 301 (10th Cir. 2011). Rule 12(b)(1) permits two forms of attack on a complaint: facial and factual. A facial attack asserts that the allegations in the complaint, even if true, are insufficient to establish subject matter jurisdiction. *Holt v. United States*, 46 F.3d 1000, 1002 (10th Cir. 1995). By contrast, a factual attack on the complaint challenges the veracity of the allegations upon which subject matter jurisdiction depends. *Id.* at 1003. Here, under either theory, Plaintiff would *never* be able to establish jurisdiction over the Navajo Nation; so, dismissal of the Complaint is mandatory.

### B. Tribal sovereign immunity generally

“Sovereign immunity . . . presents a threshold question of the district court's subject matter jurisdiction.” *Chilcoat v. San Juan Cnty.*, 41 F.4th 1196, 1215 n.21 (10th Cir. 2022). Tribal sovereign immunity is a matter of subject matter jurisdiction which can be challenged in a Fed. R. Civ. P 12(b)(1) motion to dismiss for lack of subject matter jurisdiction. *Kiowa Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754, 118 S.Ct. 1700, 140 L.Ed.2d 981 (1998); *E.F.W. v. St. Stephen's Indian High School*, 264 F.3d 1297, 1302 (10 Cir. 2001).

Indian tribes generally enjoy a common law immunity from suit. *See generally Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978); *see also United States v. United States Fidelity & Guaranty Co.*, 309 U.S. 506 (1940). Indeed, “[t]ribal sovereign immunity is immunity from suit in federal court.” *Fletcher v. United States*, 116 F.3d

1 1315, 1326 (10th Cir. 1997); *see also Okla. Tax Comm'n v. Citizen Band Potawatomi*  
 2 *Indian Tribe*, 498 U.S. 505, 509 (1991) (“Suits against Indian tribes are thus barred by  
 3 sovereign immunity absent a clear waiver by the tribe or congressional abrogation.”).  
 4 Furthermore, “[t]here is a strong presumption against waiver of tribal sovereign  
 5 immunity.” *Shattuck v. Lucero*, No. CV 04-1287 JB/RHS, 2005 WL 8163560, at \*6  
 6 (D.N.M. Aug. 25, 2005) (citing *Demontiney v. United States*, 255 F.3d 801, 811 (9th Cir.  
 7 2001); *see also Merida Delgado v. Gonzales*, 428 F.3d 916, 919 (10th Cir. 2005) (Federal  
 8 courts are courts of limited jurisdiction, and there is a presumption against the exercise of  
 9 federal jurisdiction). What’s more, tribal sovereign immunity extends to suits for  
 10 declaratory and injunctive relief. *See Enterprise Management Consultants, Inc. v. United*  
 11 *States ex rel. Hodel*, 883 F.2d 890, 892 (10th Cir. 1989) (finding sovereign immunity a  
 12 bar to federal court's consideration of plaintiff's prayer for injunctive and declaratory  
 13 relief in contract dispute).

#### 14 C. Waiver of Tribal Sovereign Immunity

15 Regarding waiver of tribal sovereign immunity, the Tenth Circuit wrote:

16 It is well-established that Indian tribes are distinct, independent political  
 17 communities, retaining their original natural rights in matters of local self-  
 18 government. Although no longer possessed of the full attributes of sovereignty,  
 19 they remain a separate people, with the power of regulating their internal and social  
 20 relations. As sovereign powers, ***Indian tribes are immune from suit absent***  
***congressional abrogation or clear waiver by the tribe.***

21 *Somerlott v. Cherokee Nation Distributors, Inc.*, 686 F.3d 1144, 1148 (10th Cir. 2012)  
 22 (internal citations omitted) (emphasis added). As such, tribal sovereign immunity can be  
 23 waived only if a tribe ***unequivocally*** waives its tribal sovereign immunity or Congress  
 24 ***unequivocally*** abrogates tribal sovereign immunity. *St. Stephen's Indian High School*,  
 25 264 F.3d at 1304 (quoting *Fletcher*, 116 F.3d at 1324).

### 1 **III. PLAINTIFF’S CLAIMS MUST BE DISMISSED FOR LACK OF SUBJECT** 2 **MATTER JURISDICTION**

#### 3 **A. Plaintiff’s suit is against the Navajo Nation itself, which is immune from** 4 **suit**

5 Here, Plaintiff seeks relief against the Crownpoint Judicial District, and thus, is  
 6 seeking relief against the Navajo Nation itself. A tribe's sovereign immunity extends both  
 7 to tribal governing bodies and to tribal agencies which act as an arm of the tribe. *See, e.g.,*  
 8 *Native Am. Distrib. v. Seneca-Cayuga Tobacco Co.*, 546 F.3d 1288, 1292 (10th Cir.  
 9 2008); *Diné Dev. Corp. v. Fletcher*, No. CIV 17-0015 JB/KBM, 2017 WL 2292849, at  
 10 \*3 (D.N.M. Mar. 10, 2017). The Navajo Nation clearly enjoys sovereign immunity as a  
 11 federally recognized tribe, and as such, Plaintiff’s claims must be dismissed as to the  
 12 Navajo Nation and its courts absent a waiver of the Navajo Nation’s tribal sovereign  
 13 immunity. And as will be shown below, there has been no such waiver.

#### 14 **B. There is no waiver of the Navajo Nation’s tribal sovereign immunity here**

15 “Tribal sovereign immunity can be waived only if a tribe unequivocally waives its  
 16 tribal sovereign immunity or Congress unequivocally abrogates tribal sovereign  
 17 immunity.” *Bales v. Chickasaw Nation Indus.*, 606 F.Supp. 2d 1299, 1301–02 (D.N.M.  
 18 2009).<sup>3</sup> Plaintiff does not cite – nor could he – anything which waives the immunity of  
 19 the Navajo Nation or the Navajo Family Court. The Crownpoint Judicial District is a  
 20 Court of the Navajo Nation within the Judicial Branch of the Navajo Nation government.  
 21 The Judicial Branch, as an arm of the Navajo Nation, is protected by its sovereign  
 22 immunity. 1 Navajo Nation Code § 552(I). Since the purported defendant, Crownpoint  
 23 Judicial District, is an entity of the Navajo Nation, it maintains sovereign immunity from  
 24 suit and Plaintiff cannot establish subject matter jurisdiction.

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25  
 26 <sup>3</sup> Plaintiff appears to argue that 28 U.S.C. § 1331 provides a basis for waiver, *see* Doc. 4 at 1-2 (“This Court has  
 27 jurisdiction pursuant to 28 U.S.C. § 1331 because Plaintiff’s claims arise under federal law, specifically the  
 28 federal common law governing the extent of tribal jurisdiction, including the jurisdiction of the tribal courts....”),  
 but this argument fails, as “nothing in § 1331 unequivocally abrogates tribal sovereign immunity.” *Miner Elec.,*  
*Inc. v. Muscogee (Creek) Nation*, 505 F.3d 1007, 1011 (10th Cir. 2007).

Plaintiff's Amended Complaint<sup>4</sup> makes reference to the *Ex parte Young* doctrine, see Doc. 4 at 6-7, but *Ex parte Young*, 209 U.S. 123, 28 S.Ct. 441, 52 L.Ed. 714 (1908), does not save Plaintiff's claims against the Navajo Nation. Under *Ex parte Young*, tribal sovereign immunity may be pierced for prospective relief against tribal officials under certain circumstances. See *Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140, 1154 (10th Cir. 2011) (recognizing that under *Ex parte Young*, immunity can be waived in suits "against state officials seeking to enjoin alleged ongoing violations of federal law" and noting that the *Ex parte Young* exception to immunity "proceeds on the fiction that an action against a state official seeking only prospective injunctive relief is not an action against the state and, as a result, is not subject to the doctrine of sovereign immunity."). However, *Ex parte Young* cannot overcome the Navajo Nation's sovereign immunity here, as Plaintiff did not name specific officials as defendants, and instead named the entire Navajo Nation's Family Court. See Doc. 4 at 1. This is fatal to Plaintiff's claims, as it eliminates the possibility that *Ex parte Young* could apply here in the first instance. See *Norton v. Ute Indian Tribe of the Uintah & Ouray Rsrv.*, 862 F.3d 1236, 1251 (10th Cir. 2017) ("[T]he Tribal Court [is] not subject to the *Ex parte Young* exception because the complaint asserts claims against those tribal entities rather than their constituent officials."). District Courts in the Tenth Circuit and around the country analyzing *Ex parte Young* similarly hold that tribal courts have sovereign immunity barring suit absent an appropriately named official. See, e.g., *Nygaard v. Taylor*, 563 F.Supp. 3d 992, 1019 (D.S.D. 2021) ("This Court concludes that the Tribal Court and the Tribal Court of Appeals have sovereign immunity and must be dismissed as named defendants in this suit."); *Brown on Behalf of Brown v. Rice*, 760 F.Supp. 1459, 1464 (D. Kan. 1991) (determining that sovereign immunity extended to tribal court and council).

Moreover, the reach of Tribal sovereign immunity is broad. Any subordinate entity with a sufficiently close relationship to the Tribe [can] share in its immunity."

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<sup>4</sup> The Court has not granted leave of Court to amend the Complaint for a second time, and Plaintiff has already amended the Complaint once. See Docket, at 4.

1 *Breakthrough Mgmt. Group, Inc. v. Chukchansi Gold Casino & Resort*, 629 F.3d 1173,  
 2 1181 (10th Cir. 2010). In fact, Tribal sovereign immunity is so expansive that even  
 3 entities not involved within direct governmental affairs can share a Tribe's sovereign  
 4 immunity. *See Native Am. Distrib. v. Seneca-Cayuga Tobacco, Co.*, 491 F.Supp. 2d 1056,  
 5 1070 (N.D. Okla. 2007) (extending sovereign immunity to a Tribal enterprise which  
 6 manufactured and sold tobacco products because "there can be no doubt that the Tribe  
 7 significantly benefited from [the enterprise's] commercial endeavors and that [the  
 8 enterprise] is the type of entity capable of being clothed with the sovereign immunity of  
 9 the Tribe"). As a division within the Judicial Branch of the Navajo Nation, the  
 10 Crownpoint Judicial District is even more clearly within the far-reaching confines of  
 11 shared sovereign immunity.

12 Thus, the Navajo Nation and its Courts are entitled to tribal sovereign immunity  
 13 and Plaintiff's claims fail.

#### 14 **IV. CONCLUSION**

15 For the reasons stated above, the Navajo Nation respectfully asks that this Court  
 16 dismiss Plaintiff's claims as to the Navajo Nation and its courts due to lack of subject  
 17 matter jurisdiction.

18 **RESPECTFULLY SUBMITTED** this 12<sup>th</sup> day of March, 2025.

19 **ZWILLINGER WULKAN PLC**

20  
 21 By: 

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 26  
 27  
 28

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of March 2025, I electronically transmitted the attached documents to the Clerk's Office using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the following individuals who are registered in the CM/ECF system:

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