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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

CHELSEA FARRER, and CHAD YOUNG, Plaintiffs, v. WANEKA ROSEBUD CORNPEACH, Defendant	**PLAINTIFFS' RESPONSE AND MEMORANDUM IN OPPOSITION TO DEFENDANT'S MEMORANDUM REGARDING FEDERAL QUESTION JURISDICTION** Civil No. 2:25-cv-00551-JNP-DAO Judge Jill N. Parrish Magistrate Judge Daphne A. Oberg

Plaintiffs Chelsea Farrer and Chad Young (together "Plaintiffs"), by and through undersigned counsel, respectfully submit this Response and Memorandum in Opposition to Defendant Waneka Rosebud Cornpeach's ("Defendant" or "Cornpeach")

Memorandum Regarding Federal Question Jurisdiction, as directed by the Court. (ECF Nos. 20, 24).

INTRODUCTION

In this case, Plaintiffs seek recovery under Utah tort law for grievous injuries they suffered when Defendant criminally shot them in the back. The only issue currently before the Court is whether federal question jurisdiction exists in the instant action to support removal under 28 U.S.C. § 1441(a). Defendant claims that this matter was properly removed to this Court because a federal question has been presented regarding state infringement on tribal sovereignty. However, it has long been held that a case may not be removed to federal court based on a federal defense. This is exactly what Defendant has attempted here. Plaintiffs' well-pleaded Complaint asserts only claims under Utah state tort law and does not present a federal question. Defendant's federal defense of infringement on tribal sovereignty does not change the face of the Complaint. As described in detail below, this Court does not have federal question jurisdiction in the above-captioned matter, and it should be remanded to state court.

ARGUMENT

I. REMOVAL IS IMPROPER BECAUSE THERE IS NO FEDERAL QUESTION PRESENTED ON THE FACE OF THE COMPLAINT

A. Federal Question Jurisdiction is Proper Only Where a Federal Question is Presented on the Face of the Complaint

It is well-settled that "[o]nly state-court actions that originally could have been filed in federal court may be removed to federal court by the defendant. Absent diversity

of citizenship, federal-question jurisdiction is required." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987); *accord Jefferson Cty., Ala. v. Acker,* 527 U.S. 423, 430 (1999) ("[A]n action may be removed from state court to federal court only if a federal district court would have original jurisdiction over ***the claim*** in the suit." (emphasis added)). "This jurisdictional prerequisite to removal is an absolute, non-waivable requirement." *Hunt v. Lamb,* 427 F.3d. 725, 726 (10th Cir. 2005). "There is a presumption against removal jurisdiction, and the party seeking removal has the burden of proof to establish jurisdiction." *Estate of Tolmakov v. Freedom Holding Corp.,* 2021 WL 1688541, at *1 (D. Utah April 29, 2021) (citations and footnotes omitted). If, prior to final judgment, it appears that the Court lacks subject matter jurisdiction, it is "required by 28 U.S.C. § 1447(c) to remand the action to state court." *Hunt v. Lamb,* 427 F.3d 725, 727 (10th Cir. 2005).

Under 28 U.S.C. § 1331, federal district courts have jurisdiction over cases "arising under the Constitution, laws or treaties of the United States." 28 U.S.C. § 1331. "The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists ***only when a federal question is presented on the face of the plaintiff's properly pleaded complaint***." *Caterpillar,* 482 U.S. at 392 (emphasis added).

It is equally "settled law that a case may *not* be removed to federal court on the basis of a federal defense, including the defense of pre-emption, even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue." *Id.* at 393 (emphasis in original). This is

because the plaintiff is "the master of the claim" and "he or she may avoid federal jurisdiction by exclusive reliance on state law." *Id.* at 392.

In accordance with the well-pleaded complaint rule, the United States Supreme Court, as well as several lower courts, have specifically held: "Tribal immunity may provide a federal defense" to state law claims, but "it has long been settled that the existence of a federal immunity to the claims asserted does not convert a suit otherwise arising under state law into one which, in the statutory sense, arises under federal law." *Oklahoma Tax Com'n v. Graham*, 489 U.S. 838, 841 (1989); *see also Becker v. Ute Indian Tribe of the Uintah and Ouray Reservation*, 770 F.3d 944, 948 (10th Cir. 2014) ("[T]he Supreme Court has singled out tribal sovereign immunity as a type of federal defense that 'does not convert a suit a suit otherwise arising under state law into one which, in the statutory sense, arises under federal law.'"); *Medesimo Tempo, LLC v. Skull Valley Health Care, LLC*, 2022 WL 901590 at *3 (D. Utah Mar. 28, 2022) ("[T]he Supreme Court has made it clear that federal-question jurisdiction may not be predicated on a federal defense such as tribal immunity.").

In *Graham*, the U.S. Supreme Court held that the issue of tribal sovereign immunity was a federal defense to the state tax law claims asserted by Oklahoma and removal of those claims was improper. *Graham*, 489 U.S. 841–42. It emphasized that "[t]he jurisdictional question in this case is not affected by the fact that tribal immunity is governed by federal law," *id.* at 841, and because the case had been improperly removed, "the merits of the claims of tribal immunity were not properly before the federal courts, and we express no opinion on that question." *Id.* at 842. In so holding, the Supreme Court

reversed and rejected the Tenth Circuit's holding below that tribal immunity presented an "implicit" or "inherent" federal question "within the complaint because of the parties subject to the action" – i.e., a tribal defendant. *Id.* at 840.

More recently, in *Medesimo Tempo*, the Federal District Court of Utah held that no federal question jurisdiction existed where respondents claimed that the land subject to the action was in Indian Country and respondents were tribal entities entitled to tribal immunity, a substantial federal issue that would necessarily be raised in the case. *See Medesimo Tempo, LLC v. Skull Valley Health Care, LLC*, 2022 WL 901590 at *2-3 (D. Utah Mar. 28, 2022). The court observed that the petition was "entirely predicated on Utah state law and deals with state-law issues of contract and property" and even if respondents had tribal immunity, it would "not vest jurisdiction in this court in the face of a complaint which raises no federal issues." *Id.*

B. Plaintiffs' Claims Arise Under Utah Tort Law and Defendant Cannot Create Federal Question Jurisdiction by Raising Possible Federal Defenses of Tribal Sovereignty and Immunity.

These authorities are dispositive here and establish that removal by Defendant was improper because Plaintiffs' claims arise entirely under Utah law. Defendant does not point to a single question of federal law appearing on the face of Plaintiffs' Complaint. Rather, Defendant is attempting to allege that federal question jurisdiction exists based on issues of sovereign immunity and tribal sovereignty – so-called federal defenses – even though the Complaint only pleads causes of action under Utah tort law. Specifically, Defendant argues that a "federal law barrier to the exercise of state jurisdiction over Indians for legal claims arising inside an Indian reservation" exists where "the exercise of

state jurisdiction may impermissibly infringe on the right of reservation Indians to make their own laws and be ruled by them." ECF No. 17, p. 5-6 (cleaned up). As in *Graham, Caterpillar*, and *Medesimo Tempo*, this argument must fail.

First, Defendant's argument of infringement upon tribal sovereignty is a *federal defense* and does not create a federal question on the face of Plaintiffs' Complaint under the well-pleaded complaint rule that governs removal actions. *See, e.g., Graham,* 489 U.S. 841 (*supra*); *Medesimo Tempo, LLC v. Skull Valley Health Care, LLC*, 2022 WL 901590 at *2-3 (D. Utah Mar. 28, 2022) (*supra*); *accord Caterpillar*, 482 U.S. at 393 ("[A] case may *not* be removed to federal court on the basis of a federal defense . . . even if the defense is anticipated in the plaintiff's complaint, and even if both parties concede that the federal defense is the only question truly at issue.") (emphasis in original). Given that Plaintiffs' Complaint pleads only state-law causes of action, Defendant's assertion of a possible federal defense is insufficient to create federal question jurisdiction to remove this action to federal court – even if the defense could be anticipated from the facts pled in the Complaint. *See Graham*, 489 U.S. at 841 ("The possible existence of a tribal immunity defense" to the claims asserted "does not convert a suit arising under state law into one which, in the statutory sense, arises under federal law."). Indeed, Defendant's argument here is based on the same faulty reasoning rejected by the Supreme Court in *Graham*: that because she is a tribal member being sued in state court, the case presents some form of implicit or inherent federal question of tribal immunity or sovereignty, even though – just like the complaint in *Graham* – "nothing within the literal language of the

[Plaintiffs'] pleading even suggests implication of a federal question." *Graham,* 489 U.S. at 840 (reversing the Tenth Circuit for employing the same reasoning).

Next, none of the authorities cited by Defendant regarding infringement is applicable because none of them arose in the context of removal.[1] *Graham* is the controlling authority on the issue presently before the Court – the existence of a federal question on a case removed under 28 U.S.C. § 1441 – and it is telling that Defendant did not even acknowledge this decision in her Notice of Removal or in her Supplemental Memorandum filed in response to this Court's order directing Defendant to clarify the basis for federal subject matter jurisdiction. (ECF No. 14). Instead, each case cited by Defendant consists of an appeal from a lower court's decision *on the merits* of the issues presented outside of the context of removal.

For example, in *Williams v. Lee*, which Defendant claims is the "loadstar [sic] for this Court to follow," the United States Supreme Court considered the Supreme Court of Arizona's determination that Arizona courts were free to exercise jurisdiction over civil suits by non-Indians against Indians where the action occurred on an Indian reservation. *See Williams v. Lee*, 358 U.S. 217, 217 (1959). While the petitioner in that case filed a motion to dismiss in state court on the grounds that jurisdiction lay with the tribal court rather than the state court, at no time was a notice of removal filed. *See id.* As such, the

[1] The jurisdictional authorities relied upon by Defendant are as follows: *Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue*, 458 U.S. 832 (1982); *White Mountain Apache Tribe v. Bracker*, 488 U.S. 136 (1980); *Williams v. Lee*, 358 U.S. 217 (1959). However, as set forth more particularly below, none of these cases analyze the issue of federal question jurisdiction in the context of removal.

Supreme Court in *Williams* never considered the issues of federal question jurisdiction, federal defenses, or the well-pleaded complaint rule resolved by *Graham.*

Similarly, in *Ramah Navajo Sch. Bd., Inc.*, the Supreme Court "address[ed] the question whether federal law pre-empts a state tax imposed on the gross receipts that a non-Indian construction company receives from a tribal school board for the construction of a school for Indian children on the reservation." 458 U.S. at 834. But, like *Williams, Ramah* did not involve a removal from state court. *See id.* Finally, in *Bracker*, the Supreme Court considered the extent of state authority over the activities of non-Indians engaged in commerce on an Indian reservation. *See* 448 U.S. at 137-38. Once again, no notice of removal had been filed in the underlying proceedings, so the Court never analyzed, or even *mentioned*, the issues of federal question jurisdiction in the context of removal or the well-pleaded complaint rule in its opinion. *See id.*

Thus, the case law relied upon by Defendant is inapposite and unhelpful at this point in the litigation because the current issue before the Court is whether federal question jurisdiction exists, not whether Defendant's federal defense has merit.[2] Instead of utilizing this off-point case law, the Court should follow the precedents addressing tribal sovereignty and immunity in the context of removal cited by Plaintiffs herein.

[2] To be clear, Plaintiffs do not agree or concede that tribal immunity or infringement are valid defenses. Plaintiffs also dispute Defendant's assertions that the events underlying this action occurred inside an Uintah and Ouray Reservation. However, those issues, including the validity of Defendant's defenses, are not presently or properly before this Court. Rather, the threshold, and *only,* issue presently before the Court is whether federal question jurisdiction exists to support removal, and for the reasons detailed herein, these asserted defenses are inapposite to that question. *See Graham*, 489 U.S. at 841.

Because Defendant has failed to carry her burden to demonstrate that federal subject matter exists to support removal, this Court is "required by 28 U.S.C. § 1447(c) to remand the action to state court." *Hunt*, 427 F.3d at 727.

CONCLUSION

Based on the foregoing, Plaintiffs respectfully submit that the Court should find that federal question jurisdiction does not exist on the face of Plaintiffs' well-pleaded Complaint and remand this matter back to state court. While Defendant has asserted a potential federal defense to Plaintiffs' claims, this is insufficient to create a federal question where the Complaint otherwise pleads only state-law tort claims governed by Utah state law.

DATED this 12th day of September 2025.

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