Matthew L. Murdock (*Pro Hac Vice* DC #241655)
Sonosky, Chambers, Sachse,
Endreson & Perry, LLP
1425 K Street NW, Suite 600
Washington, D.C. 20005
Telephone: (202) 682-0240
Facsimile: (202) 682-0249
Email: mmurdock@sonosky.com

Vanessa L. Ray-Hodge (ISB # 10565)
Sonosky, Chambers, Sachse,
Mielke & Brownell, LLP
500 Marquette Ave, NW, Suite 660
Albuquerque, NM 87102
Telephone: (505) 247-0147
Facsimile: (505) 843-6912
Email: vrayhodge@abqsonosky.com

Eric R. Van Orden, Legal Counsel (ISB #4774)
Coeur d'Alene Tribe
P.O. Box 408
Plummer, Idaho 83851
Telephone: (208) 686-6116
Facsimile: (208) 686-9102
Email: ervanorden@cdatribe-nsn.gov

Attorneys for the Coeur d'Alene Tribe

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

STIMSON LUMBER COMPANY, Plaintiff, v. COEUR D'ALENE TRIBE, Defendant.	Case No. 2:22-cv-00089-DCN **COEUR D'ALENE TRIBE'S REPLY IN SUPPORT OF MOTION TO DISMISS [DKT. 35]**

Defendant Coeur d'Alene Tribe ("Tribe") respectfully submits this reply in support of its motion to dismiss Stimson Lumber Company's ("Stimson") Amended Complaint.

INTRODUCTION

Stimson's response is utter nonsense. Stimson offers nothing but vapid and unfounded insults against the Tribe because the company cannot respond with substance. Stimson originally filed this action by correctly admitting the Tribe is a federally recognized Indian tribe. It was only after the Tribe showed it cannot be sued in diversity that Stimson fabricated an allegation in its Amended Complaint that the Tribe is a corporation. This was done solely for the purpose of obtaining diversity jurisdiction. Having no factual support for this conclusory allegation, Stimson now seeks to further delay this case's dismissal and the company's eviction by requesting jurisdictional discovery that would be a complete waste of time. The Tribe is not a corporation. The Tribe is a federally recognized Indian tribe. Accordingly, the Court lacks subject matter jurisdiction and must dismiss the action in its entirety because the Tribe is not a citizen of any state.

ARGUMENT

I. Stimson's Amended Complaint is Insufficient on Its Face to Invoke Diversity Jurisdiction.

The Court should dismiss this action because the Amended Complaint is insufficient on its face to invoke the Court's diversity jurisdiction. As shown in the Tribe's opening brief (Dkt. 35-1 at 5-8), the Court should disregard Stimson's conclusory allegation that the "Tribe is incorporated with its principal place of business in Idaho." Dkt. 26 ¶ 3. Stripped of this conclusory allegation, the Amended Complaint only alleges the Tribe is "a federally recognized Indian tribe possessed with the full legal power of a sovereign domestic government." *Id.* This demonstrates "as a matter of law that a particular Indian group has tribal status." *Frank's Landing Indian Cmty.*

v. Nat'l Indian Gaming Comm'n, 918 F.3d 610, 613 (9th Cir. 2019). The Tribe is therefore stateless and cannot be sued in diversity. *See Am. Vantage Cos. v. Table Mountain Rancheria*, 292 F.3d 1091, 1097 (9th Cir. 2002) ("domestic sovereigns are not citizens of states for purposes of diversity jurisdiction"); *Mitchell v. Bailey*, 982 F.3d 937, 943 (5th Cir. 2020).

Stimson's response does not even attempt to reconcile the contradiction between the Amended Complaint's allegations that the Tribe is "incorporated" and is "a federally recognized Indian tribe possessed with the full legal power of a sovereign domestic government." Dkt. 26 ¶ 3. Instead, Stimson selectively quotes language from section 19.4.1 of the Agreement. Stimson claims section 19.4.1 "contain[s] a promise and assurance from the Tribal Chairman that the Tribe is incorporated." Dkt. 38 at 5. This contention is hardly believable. In full, section 19.4.1 of the Agreement provides as follows:

> 19.4.1 **Tribal Existence.** Lessor is a federally recognized Indian tribe duly and validly organized under a constitution and bylaws ratified by the members of the Tribe. Lessor exercises corporate powers over the Leased Assets. Lessor has heretofore made available to Lessee complete and correct copies of their articles of incorporation and bylaws (or other comparable charter documents), as currently in effect.

Dkt. 26 at 35.

Section 19.4.1 is captioned "**Tribal Existence**," not corporate existence. It then provides that the Tribe "**is** a federally recognized Indian tribe **duly and validly organized under a constitution and bylaws** ratified by the members of the Tribe." *Id.* (emphasis added). As shown in the Tribe's opening brief (Dkt. 35-1 at 7), this language clearly refers to the Tribe's Constitution and Bylaws adopted under section 16 of the Indian Reorganization Act ("IRA"). *See* Dkt. 35-3, 35-4. Stimson does not dispute the Tribe's Constitution and Bylaws, nor their approval by the federal government. As such, the Court may take judicial notice of those documents for the purpose of deciding the Tribe's facial attack.

Section 19.4.1 then provides that the Tribe had made available "their articles of incorporation and bylaws (**or other comparable charter documents**), as currently in effect." Dkt. 26 at 35 (emphasis added). These "other comparable charter documents" obviously refer to the "constitution and bylaws ratified by the members of the Tribe" described in the preceding language of section 19.4.1. *Id.*

Stimson's newly claimed "belief" that the Tribe is a corporation is based entirely on a single reference to "corporate powers" in section 19.4.1. That reference is taken out of context and must be read in light of the entire section, which belies any notion that the Tribe is a corporation.[1] Put simply, this fleeting reference to "corporate powers" provides no basis to support a conclusory allegation that the Tribe is "incorporated." Section 19.4.1 clearly provides the Tribe has "Tribal Existence," is a "federally recognized Indian tribe," is organized under a "constitution and bylaws," and made such "comparable documents" available to the lessee.

Section 19.4.1's intent is to simply represent that the leasing of the assets was within the authority of the Tribe, as the lessor. As provided in section 19.4.1, this authority was evidenced in the Tribe's "constitution and bylaws." The Tribe's Constitution and Bylaws provide this authority by authorizing the leasing of the Tribe's assets. *See* Dkt. 35-3 at 4 (art. VII § 1(B)). Section 19.4.1 was not a "promise" that the Tribe is a corporation. If anything, the provision was a "promise" that the Tribe is a "federally recognized Indian tribe validly organized under a constitution and bylaws ratified by the members of the Tribe." Dkt. 26 at 35.

[1] The Agreement repeatedly recites the Tribe's status as a "federally recognized Indian tribe." *See* Dkt. 26 at 13, 19, 35, 55. By contrast, the Agreement describes the status of TOBD, Inc., the original lessee, as an "Idaho corporation." *Id.* at 13. Nowhere in the Agreement is the Tribe referred to as a corporation.

A contracting party could not look at section 19.4.1 and reasonably believe the Tribe had "promised" it was a corporation. Stimson is grasping at straws in order to fabricate a basis for diversity jurisdiction. The Court should accordingly disregard Stimson's conclusory allegation the Tribe is "incorporated." Without that baseless allegation, the Amended Complaint only alleges the Tribe is "a federally recognized Indian tribe possessed with the full legal power of a sovereign domestic government." Dkt. 26 ¶ 3. This means the Tribe is not a citizen of any state and there cannot be complete diversity of citizenship here. *Am. Vantage*, 292 F.3d at 1097; *see also Mitchell*, 982 F.3d at 943. Thus, the Court should dismiss this action because the Amended Complaint is insufficient on its face to establish diversity jurisdiction.

II. Alternatively, Matters Outside the Amended Complaint Show the Tribe Is Not a Corporation.

A. The Tribe's Motion to Dismiss is Not a Motion for Summary Judgment.

Stimson also fabricates an erroneous legal standard to argue the Tribe's alternative factual attack on the Amended Complaint "converts its motion to dismiss into a motion for summary judgment." Dkt. 38 at 5. Stimson cites authority for a Rule 12(b)(6) motion, stating that "the **12(b)(6) motion** converts into a motion for summary judgment under Rule 56." Dkt. 38 at 3 (quoting *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 998 (9th Cir. 2018)) (emphasis added). Of course, the Tribe did not bring a motion under Rule 12(b)(6). *See* Dkt. 35. Neither *Khoja* nor Federal Rule 12(d) applies here.

As set forth in the Tribe's opening brief (and unaddressed by Stimson's response), the rule for a factual attack on a Rule 12(b)(1) motion is that, "[i]n resolving a factual attack on jurisdiction, the district court may review evidence beyond the complaint **without converting** the motion to dismiss into a motion for summary judgment." *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004) (emphasis added). In a factual attack, Stimson must support its jurisdictional

allegations "under the same evidentiary standards that govern in the summary judgment context." *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). Contrary to Stimson's misstatements, this does not mean there must be "no genuine dispute as to any material fact." Dkt. 38 at 4 (quoting *Zetwick v. Cty. of Yolo*, 850 F.3d 436, 440 (9th Cir. 2017)).

Rather, the standard is that the "plaintiff bears the burden of proving by a preponderance of the evidence that each of the requirements for subject-matter jurisdiction has been met." *Leite*, 749 F.3d at 1121. As discussed below, Stimson has failed to do so.

B. Matters Outside the Amended Complaint Demonstrate the Tribe is a Federally Recognized Indian Tribe Organized Under Section 16 of the IRA.

Stimson must show that the Coeur d'Alene Tribe **itself is** a corporation to establish diversity jurisdiction. The "Supreme Court has rejected attempts to treat entities in the nature of corporations *as* corporations for purposes of diversity jurisdiction." *Am. Vantage*, 292 F.3d at 1099 (quoting *Gaines v. Ski Apache*, 8 F.3d 726, 730 (10th Cir. 1993) (emphasis in original)). There is no real factual dispute about the Tribe's status for diversity jurisdiction. As detailed above, Stimson's baseless allegation that the Tribe is incorporated is only supported by a single reference to "corporate powers" in section 19.4.1 of the Agreement that when read in context confirms the Tribe's "Tribal Existence" as a "federally recognized Indian tribe validly organized under a constitution and bylaws ratified by the members of the Tribe" with the ability to enter into agreements such as the lease. Dkt. 26 at 35. The Tribe submitted its Constitution and Bylaws, which show the Tribe is not incorporated and confirmed its authority to enter into the lease. Stimson has not disputed those documents.

Stimson has not come forward with any evidence to support its allegation that the Tribe is incorporated. As such, it is ironic that Stimson boldly and unjustifiably asserts the "Tribe lied." Dkt. 38 at 8. Stimson does not even attempt to reconcile its new "belief" that the Tribe is

incorporated with the company's own documents that describe the Tribe's status as "a federally recognized Indian tribe and sovereign nation." Dkt. 6-4 at 3. Stimson has provided no evidence to show it ever believed the Tribe was a corporation. Stimson seeks jurisdictional discovery because the company has no factual basis for its conclusory allegation that the Tribe is incorporated. This is despite the fact that Stimson had a contractual relationship with the Tribe for approximately fourteen years, and presumably conducted its own due diligence into the Tribe's status and maintained its own files.

Moreover, despite Stimson's assertion to this Court that the company does not have access to documents, Stimson has shown it already has documents it must have obtained from the original lessee. Specifically, Stimson submitted two appraisals for the Mill from 1999 and 2000, as well as Tribal Council resolutions from before the original lessee assigned the Agreement to Stimson. Dkt. 30-1 at 3, 142; Dkt. 30-2 at 2-6. Stimson even requested an extension for its sur-reply to address the Tribe's supplemental memorandum regarding Stimson's motion for a preliminary injunction. Dkt. 36. Yet, Stimson failed to reply or even dispute the response by the Tribe that rebutted any notion that those documents supported Stimson's jurisdictional allegations.[2]

Accordingly, the Court should deny Stimson's request for jurisdictional discovery and proceed to grant the Tribe's motion to dismiss. This Court recently denied jurisdictional discovery for this exact issue. In *Whittle v. Zims Hot Springs*, No. 2:21-cv-00303-BLW, 2022 WL 280293 (D. Idaho Jan. 31, 2022), this Court denied a request for jurisdictional discovery into whether the

[2] Stimson also cites a provision in the Agreement that had waived objections as to whether this Court "**should** not exercise its jurisdiction." Dkt. 26 at 34 (§ 19.3.2) (emphasis added). Diversity jurisdiction is not a discretionary matter of whether this Court "should" exercise jurisdiction. Rather, it is whether the Court cannot exercise jurisdiction due to the fundamental limits of the federal judicial power. The Agreement clearly contemplated in section 19.3.3 that this Court would determine that an action "does not fall within its statutory jurisdiction." Dkt. 26 at 34.

Nez Perce Tribe was a corporation, because "it is difficult to see why further discovery is warranted." *Id.* at *3. This was because the "incorporated or unincorporated status of a business operation is an issue easily resolved through a simple inquiry of the appropriate state or tribal agency." *Id.* Further, jurisdictional discovery is properly denied when a request is "based on little more than a hunch that it might yield jurisdictionally relevant facts." *Boschetto v. Hansing*, 539 F.3d 1011, 1020 (9th Cir. 2008). Stimson's request for jurisdictional discovery is not even based on a hunch. It is a tactic to delay dismissal of this action and Stimson's eviction. The true intent of Stimson's discovery request is disclosed by the company's proposal for written discovery and *depositions* on several irrelevant issues that would not establish the Tribe is incorporated.

Stimson's proposed discovery is wildly broad and unjustified. Nothing Stimson could discover about any of the issues it has identified for discovery would establish that the Tribe is itself a corporation. As this Court acknowledged in *Zims*, this is not a difficult question because the Tribe either has articles of incorporation or it does not. The Tribe has provided its Constitution and Bylaws, which are *not* articles of incorporation and are undisputed. The Court should not permit Stimson to harass the Tribal government with pointless discovery.

For example, Stimson seeks discovery into the "role, if any, of the tribal development corporation at the Mill." Dkt. 38 at 8. The Tribe's Planning and Development Corporation is not a party to this lawsuit. Stimson should go try to sue the Tribe's Planning and Development Corporation if the company truly believes the Planning and Development Corporation "acts as the Lessor." Dkt. 30 ¶ 4. But the Tribe itself cannot be a defendant. The Tribe is stateless and destroys diversity regardless of the Planning and Development Corporation's "role." The point is illustrated by *Payne v. Mississippi Band of Choctaw Indians*, 159 F. Supp. 3d 724 (S.D. Miss. 2015). In *Payne*, the plaintiff sued the Mississippi Band of Choctaw ("Choctaw"), which is a federally

recognized Indian tribe, just like the Tribe. *Id.* at 727. The plaintiff also named Choctaw's Development Enterprise, Inc. and other entities as defendants. *Id.* at 727. The plaintiff argued there was diversity jurisdiction because Choctaw's entities were also defendants. *Id.* The court in *Payne* rejected that argument out of hand, because "even if all these named defendants were citizens of Mississippi . . . the court would lack diversity jurisdiction in view of the presence of the Tribe, a 'stateless' entity, as a defendant." *Id.*[3] The same is true here with respect to the Tribe, which destroys diversity jurisdiction in all cases.

Further, the only authority Stimson cites is *Cook v. AVI Casino Enterprises, Inc.*, 548 F.3d 718 (9th Cir. 2008). In *Cook*, the Ninth Circuit considered the status of a "corporation organized under the Fort Mojave Business Corporation Ordinance." *Id.* at 721. The Fort Mojave Indian Tribe was "a federally recognized Indian tribe" that formed a *separate* tribal corporation called AVI Casino Enterprises, Inc. *Id.* The Fort Mojave Tribe itself was not the defendant. The defendant was a separate corporation created by the Fort Mojave Tribe. *Id.* at 724 n.3 (noting the "treatment of tribal corporations as distinct sovereign entities"); *see also Big Sandy Rancheria Enters. v. Bonta*, 1 F.4th 710, 721 (9th Cir. 2021) (A tribe's "constitutional form" is "distinct from its corporate form.").

Here, Stimson has sued the Tribe itself. The irrefutable facts are that the Tribe is a federally recognized Indian tribe that is organized under section 16 of the IRA. This is what section 19.4.1 of the Agreement provides. That is conclusive on the matter and shows the Tribe is not a

[3] Similarly, in *Grand Canyon Skywalk Dev., LLC v. Hualapai Indian Tribe of Ariz.*, 966 F. Supp. 2d 876, 880-81 (D. Ariz. 2013), the plaintiff sued a federally recognized Indian tribe and tribal officials. The court found joinder of the tribal officials as defendants "does not cure this jurisdictional defect" because "the presence of an Indian tribe destroys complete diversity." *Id.*

corporation. The Court should dismiss this action in its entirety for lack of subject matter jurisdiction.

CONCLUSION

For these reasons, the Tribe respectfully requests that the Court grant the Tribe's motion to dismiss (Dkt. 35).

Respectfully submitted this 26th day of April, 2022.

/s/ Matthew L. Murdock
Matthew L. Murdock (*Pro Hac Vice* DC #241655)
Sonosky, Chambers, Sachse,
Endreson & Perry, LLP
1425 K Street NW, Suite 600
Washington, D.C. 20005
Telephone: (202) 682-0240
Facsimile: (202) 682-0249
Email: mmurdock@sonosky.com

Vanessa L. Ray-Hodge (ISB #10565)
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Mielke & Brownell, LLP
500 Marquette Ave. NW, Suite 660
Albuquerque, NM 87102
Telephone: (505) 247-0147
Facsimile: (505) 843-6912
Email: vrayhodge@abqsonosky.com

Eric R. Van Orden, Legal Counsel (ISB #4774)
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Telephone: (208) 686-6116
Facsimile: (208) 686-9102
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