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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

COLIN GRAHAM MEGLITSCH,	)	
	)	
Plaintiff,	)	Case No. 3:20-cv-00190-JWS
	)	
	)	
SOUTHCENTRAL FOUNDATION,	)	
	)	
Defendant.	)	
	)	

PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiff, Colin Graham Meglitsch, by and through his attorney, Isaac Derek Zorea, opposes the summary judgment motion filed by Defendant Southcentral Foundation. Mr. Meglitsch has filed a wage and hour claims under the Fair Labor Standards Act ("FLSA") against his employer Southcentral Foundation ("SCF"). At the time that SCF hired Meglitsch, it told him that his job was non-exempt and

that he would be eligible for overtime compensation.[1] Mr. Meglitsch disputes that SCF properly calculated the overtime hours he worked. This lawsuit is the result of the wage and hour dispute between Meglitsch and his employer SCF.

In its motion for summary judgment SCF claims that it is exempted from the dictates of the FLSA because it is a federal statute of general applicability and SCF is a tribal entity. However, in its motion for summary judgment, SCF clearly has trouble fitting the facts of this case into the limited exemption identified in *Donovan v. Coeur d'Alene Tribal Farm*.[2]

Simply put, the exemptions within *Coeur d'Alene's* self-government exemption do not apply to SCF. As will be laid out below, SCF is not an Indian tribe, vested with inherent rights to sovereign immunity.[3] Most importantly, the dispute between SCF and Meglitsch is not purely intramural and paying him in accordance with the FLSA does not touch on any rights of self-governance.[4] SCF

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[1] Exhibit A.

[2] 751 F.3d 1113 (9th Cir. 1985).

[3] See: *NLRB v. Chapa De Indian Health Program, Inc.*, 316 F.3d 995, 1000 (9th Cir. 2003), pointing out that tribal organizations are not the same as a tribe for purposes of *Coeur d'Alene* self-government exemption.

[4] See: *Id.*, a tribal organization's providing health needs for tribal members may relate to self-governance, but this does not mean that its labor relations are activities related to self-governance.

is a vast non-profit enterprise operated by Alaska Native Tribes.[5] Its dispute with Meglitsch is commercial in nature, dealing with a non-Indian/non-Alaskan Native, who seeks payment for services he provided to non-Indian/non-Alaskan natives, in addition to Alaska Natives and Indians.

Throughout SCF's motion for summary judgment it references the *self-government* test identified in *Coeur d'Alene* but ignores the fact the this exemption has two subparts. The *Coeur d'Alene* self-government exemption states that federal statutes of general applicability apply to Indian tribes unless the law (a) touches exclusive rights of self-governance in (b) purely intramural matters.[6] Throughout SCF's motion, it blurs the two subparts, arguing basically that "rights of self-governance" is synonymous with "purely intramural."

The reason that SCF blurs the two subparts of the self-government test is because it recognizes that its dispute with Meglitsch is not a purely intramural dispute. As such, even if SCF can argue it is vested with self-governance by virtue of rights delegated to it from the Native Tribes on whose behalf it provides

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[5] *Id.*., *Chapa De* Court found as a distinction an entity operated as an arm of tribal government as opposed to a "non-profit" corporation operating health care facilities on non-Indian lands that happens to be operated by an Indian tribe.

[6] *Donovan v. Coeur D'Alene Tribal Farm*, 751 F.2d 1113,1116 (9th Cir. 1985), subpart division not in original.

health services, it is still bound by the FLSA because Meglotsch's wage claim is not a purely intramural matter.

This court should deny SCF's motion for summary judgment and hold that the FLSA applies to this Native Alaskan enterprise.

FACTUAL BACKGROUND

As laid out in his complaint, Colin Meglitsch has been employed for over ten years as a Community Health Practitioner at Takotna Clinic, a clinic operated by SCF within the small village town of Takotna.[7] When Meglistch began his employment with SCF, it presented itself as a non-profit business, much like any other healthcare provider in Alaska.[8] SCF promised Meglitsch that he would received overtime pay for hours worked over 40 hours a week, indicating clearly that he was "non-exempt" and "eligible for overtime."[9]

Shortly after being hired, Meglitsch became bound by the policies and procedures employed by SCF. As part of these policies and procedures, available to Meglitsch, is an extensive set of guidelines laying out the policies regarding

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[7] Dkt. 1-1, at 2.

[8] See: Exhibit A. The wording in Meglitsch's employment offer provides no indication that he is engaging in an intramural employment arrangement with a Native tribe.

[9] *Id.*.

overtime payment.[10] SCF's policies regarding its payroll procedures provided Meglitsch with no notice or hint that he was working under a different wage and hour scheme than he would in any other non-profit business in Alaska. SCF gave no notice that it was exercising its self-governance prerogatives regarding wage and hour concerns – no tribal wage and hour policy was mentioned, nor was there mention of any tribal exemption from the FLSA.

To the contrary, SCF also provided a Code of Conduct to Meglitsch, identifying its "commitment to compliance with the law."[11] In fact, in its Code of Conduct, SCF specifically states that it will "ensure that SCF complies with all applicable federal and state laws, including laws pertaining to the detection and prevention of fraud, waste and abuse."[12] Far from asserting a claim to a *Coeur d'Alene* self-government exemption, SCF stated clearly that it will abide by the False Claims Act,[13] Anti-Kickback Statute,[14] Stark Laws,[15] Exclusion Authority laws,[16] Civil Monetary Penalties Laws,[17] Alaska Medical Assistance Fraud

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[10] Exhibit B.
[11] Exhibit C.
[12] *Id.*, at 2.
[13] *Id.*.
[14] *Id.*.
[15] *Id.,* at 3.
[16] *Id.*.
[17] *Id.*.

Statute,[18] Whistleblower Protection laws (State and Federal),[19] and provide Mandatory Reporting.[20] This list is not even exclusive, as the Code of Conduct list numerous additional statutes that it promises that it will follow.[21] In its Code of Conduct, SCF even promises that it will comply with all federal and state discrimination laws.[22]

SCF has either only recently concluded that it is exempt from federal statutes of general applicability or it has decided this critical belief was something to hide from its employees. What is clear from SCF's Code of Conduct is that there is no mention in this document that it views its operation as a business dealing with purely intramural matter touching its prerogatives of self-government.

STANDARD OF REVIEW

The Defendants have filed for their motion to dismiss based on Rule 12(b)(1) of the Federal Rules of Civil Procedure. A motion to dismiss an action pursuant to Rule 12(b)(1) questions the federal court's subject matter jurisdiction

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[18] *Id.*.

[19] *Id.*.

[20] *Id.*.

[21] *Id.*, at 4-5.

[22] *Id.,* at 6.

over the action. Under Rule 12(b)(1), a complaint may be dismissed for lack of subject matter jurisdiction.[23] When considering a Rule 12(b)(1) motion challenging the substance of jurisdictional allegations, the Court may look beyond the complaint.[24] The burden of proof in a Rule 12(b)(1) motion is on the party asserting jurisdiction.[25]

ARGUMENT

The Ninth Circuit has uniformly held that "general acts of Congress apply to Indians as well as to others in the absence of a clear expression to the contrary."[26] As such, the presumption is that this Court has jurisdiction to hear Meglitsch's lawsuit against SCF because he is pleading an action based on the FLSA, which is a federal statute of general applicability.

The Ninth Circuit has, however, also recognized an exception to the *Tuscarora* principle where the federal statute of general applicability is silent with

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[23] Fed.R.Civ.P. 12(b)(1).

[24] *Tonasket v. Sargent*, 830 F.Supp.2d 1078, 1080 (E.D. Wash. 2011). Citing: *White v. Lee,* 227 F.3d 1214, 1242 (9th Cir.2000) (district court may consider extrinsic evidence when deciding a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction); *McCarthy v. United States,* 850 F.2d 558, 560 (9th Cir.1988).

[25] *See: Sopcak v. Northern Mountain Helicopter Serv.,* 52 F.3d 817, 818 (9th Cir.1995); *Ass'n of Am. Med. Coll. v. United States,* 217 F.3d 770, 778–79 (9th Cir.2000).

[26] *EEOC v. Karuk Tribe Housing* Authority, 260 F.3d 1071, 1079 (9th Cir. 2001), citing: *Federal Power Commission v. Tuscaroro Indian Nation*, 362 U.S. 99, 120 (1960).

respect to Indians (Alaska Natives). If a federal statute of general applicability is silent with respect to Indians, it will nonetheless apply unless "(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 reservations....'"[27]

SCF alleges only that the initial exemption applies to this case. To support its argument, SCF offers five justifications for why the *Coeur d'Alene* self-government exemption applies to the facts involved in Meglistch's case. However, SCF's five justifications fail to connect the *Coeur d'Alene* self-government exemption to the claims Meglitsch has filed against his employer. Additionally, SCF offers case law in support of its argument. The case law that SCF offers to support its claim that the self-government exempt applies to this case, actually establish the that the exemption does not apply.

On all points, SCF's motion for summary judgment fails. The *Coeur d'Alene* self government test does not exempt SCF from Meglitsch's FLSA lawsuit.

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[27] *Coeur D'Alene Tribal Farm*, 751 F.2d, at 1116 (9th Cir. 1985), citing: *United States v. Farris*, 624 F.2d 890, 893-894 (9th Cir. 1980).

A. *COEUR D'ALENE'S* SELF-GOVERNMENT EXEMPT HAS TWO SUB-PARTS: SCF'S ARGUMENTS FOCUS ON ONLY ONE SUB-PART.

The *Coeur d'Alene* court provided clear guidance on what it meant with the self-government exemption. The Court made clear that the self-government exemption had limited scope. It stated that the goal of the exemption was not designed to "bring within the embrace of 'tribal self-government' all tribal business and commercial activity."[28] Rather, the Court clarified that the exemption is "designed to exempt purely intramural matters such as conditions of tribal membership, inheritance rules, and domestic relations from the general rules that otherwise applicable federal statutes apply to Indian tribes."[29]

The five point analysis SCF makes in its motion simply misses the mark because the points only focus on the self-governance element of the exemption and ignore the "purely intramural" requirement. In truth, SCF's analysis seems more designed to confuse the issue than it does as a support for showing why the *Coeur d'Alene* exemption applies.

In its motion, SCF argues that the self-government exemption applies but it makes no specific allegation that Meglitsch's claim is a purely intramural matter.

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[28] *Coeur d'Alene*, 751 F.2d, at 1116.

[29] *Id.*, citing: *Faris*, 624 F.2d, at 893.

SCF claims that it is a "non-commercial enterprise that provides core governmental services."[30] By so arguing, SCF is only addressing whether Meglitsch's claim under the FLSA may possibly impact an element of self-government, but it has no application to whether his claim is "purely intramural." For a claim to be purely intramural it must be between Indian or Native Alaskans. SCF's medical services, even if non-commercial, are not restricted to Indian or Alaska Native recipients. Further, Meglitsch is not a tribal member to any of the tribes associated with SCF.

Next, SCF argues that it "primarily serves Alaska Native and American Indian people" with the medical services it provides.[31] Elsewhere SCF states that the "very high percentage" of Alaska Native or American Indian individuals it provides services to "underscores the intramural nature of SCF's programs."[32] The problem for SCF, however, is that the *Coeur d'Alene* exemption does not use the words "intramural *nature*," but rather stipulates to the matter being "*purely* intramural." The examples of purely intramural used by the *Coeur d'Alene* court speak in absolute terms without any mention of nearly intramural or mostly

[30] Dkt. 22, at 2, 14-16.

[31] *Id.*, at 16-18.

[32] *Id.*, at 17.

intramural.[33]

In its third point, SCF argues that its funding from IHS, coming through twelve authorizing Indian tribes, confirms its "authority to self-govern."[34] Again, SCF's analysis is focusing only on the self-governance element of the two part self-government exemption. It is critical to remember that the self-government exemption states that it relates to "exclusive rights of self-government in purely intramural matters." The exemption does not read that it can relate *either* to "exclusive rights of self-government" *or* "intramural matters." The exemption speaks clearly that the matter must be *purely* intramural.

SCF's fourth and fifth points are similarly non-responsive to the *Coeur d'Alene* exemption. For its fourth point, SCF stated that its board of directors is comprised entirely of tribal members.[35] Whereas for its fifth point, SCF argued that a majority of its employees are Alaska Native or American Indian.[36] Neither of these points, however, relate to whether the FLSA claim by Meglitsch is purely intramural. It would be a different scenario if SCF argued that all of its

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[33] See: *Coeur d"Alene*, 751 F.2d, at 1116 ("purely intramural matters such as conditions of tribal membership, inheritance rules, and domestic relations").

[34] *Id.*, at 18.

[35] *Id.*, at 22.

[36] *Id.*.

employees, including Meglitsch, were Alaska Native and all of the board of directors were Alaska Native. In such a scenario, Meglitsch's dispute would be far closer to being a purely intramural matter concerning SCF or its member tribes.[37]

As stated above, none of SCF's five points that it argues support the self-government exemption address the requirement that the matter be "purely intramural." All that SCF has established is that even though it is a tribal organization, it may still have some self-government prerogatives – as if it were a federally recognized Indian tribe. The self-governance element to the *Coeur d'Alene* exemption is very important but the exemption requires that both subpart are satisfied. SCF has failed to establish the intramural element.

B. THE NINTH CIRCUIT HAS CONSISTENTLY ASKED IF AN ACT IS PURELY INTRAMURAL BEFORE FINDING AN EXEMPTION.

The Ninth Circuit has frequently applied the *Coeur d'Alene* analysis to various factual claims brought against Indian tribes. In its motion, SCF identified several cases that it relied on in support of its argument that the FLSA does not apply to Meglistch's claims against it. While SCF makes a brief reference to these

[37] See: *EEOC v. Karuk Tribe Housing Authority*, 260 F.3d 1071, 1079 (9th Cir. 2001)("the dispute is between an Indian applicant and an Indian tribal employer.").

cases, it ignores the fact that the Ninth Circuit focused on the "purely intramural" subpart to the self-government test as the deciding element in analyzing these cases.

For instance, SCF argued that the Ninth Circuit concluded that the FLSA does not apply to "non-commercial tribal entities like SCF."[38] To support this claim, SCF referenced *Snyder v. Navajo Nation*[39] to support its argument that the "FLSA's overtime pay provisions does not apply to tribal law enforcement officers."[40] However, SCF failed to provide an indepth analysis into the Ninth Circuit's reasoning in *Snyder*. Had SCF more carefully reviewed *Snyder*, it would realize that the most relevant fact was that "Maintaining law and order within the reservation ... is a governmental function."[41] The Ninth Circuit focused on the fact that all the officers in the case "work on the reservation to serve the interests of the tribe and reservation governance."[42] The Court made its determination *because* this overtime issue addressed a "purely intramural matter."

SCF also referenced *EEOC v. Karuk Tribe Housing Authority*[43] as a case

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[38] Dkt. 22, at 13.

[39] 382 F.3d 892 (9th Cir. 2004).

[40] Dkt. 22, at 13.

[41] 382 F.3d, at 895.

[42] *Id.*, at 896.

[43] 260 F.3d 1071 (9th Cir. 2001).

supporting its claim to the *Coeur d'Alene* exemption. SCF's reliance on *Karuk*, however, was totally misplaced. The facts of *Karuk* focused on whether the Age Discrimination in Employment Act (ADEA) applied to the Karuk Tribe Housing Authority.[44] It is important to note that in *Karuk*, the plaintiff, Grant, was a tribal member and the housing authority was a governmental arm of the tribe, implementing a tribal benefit.[45] Further, Grant made use of extensive internal tribal review procedures concerning whether his termination violated tribal standards.[46] In the end, the Ninth Circuit concluded that the ADEA did not apply because the specific dispute in question was "entirely 'intramural,' between the tribal government and a member of the tribe."[47] The dispute did not concern "non-Karuks or non-Indians as employer, employees, customers or anything."[48]

SCF also referenced *Pauma v. NLRB*[49], in support of its argument that tribal entities engaging is self-government are subject to the *Coeur d'Alene* exemption.[50] *Pauma*, however, does not support SCF's claim of exemption. *Pauma* was a case

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[44] *Id.*, at 1079.
[45] *Id.*, at 1080.
[46] *Id.*, at 1081.
[47] *Id.*.
[48] *Id.*.
[49] 888 F.3d. 1066 (9th Cir. 2018).
[50] Dkt. 22, at 14.

applying the NLRB to the Pauma Band of Mission Indian tribe's casino operation.[51] In holding that the NLRB, a federal statute with general applicability like the FLSA, did apply to the casino operation, the Ninth Circuit focused on the fact that the dispute was not purely intramural.[52]

In *Pauma*, the Ninth Circuit focused on several key facts that are also applicable to SCF. The Court focused on the fact that the *Pauma* casino employed non-Indians as well as Indians.[53] Further, the enterprise was in "virtually every respect a normal commercial ... enterprise," such that its operation free from federal [labor laws] is neither profoundly intramural ... nor essential to self-government."[54] The same can be said of SCF, in that it provides substantial services to non-Indians, accepts private insurance payments and medicare/ medicaid – in the same manner as any other non-profit healthcare provider.

The Ninth circuit has not applied the *Coeur d'Alene* self-government exemption to any case unless the claim deals with a matter that is purely intramural.[55] The words "purely intramural" mean that cases like Meglitsch's

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[51] 888 F.3d., at 1067.

[52] *Id.*, at 1077.

[53] *Id.*.

[54] *Id.*.

[55] See: *US DOL v. Occupational Safety & Health Review Comm'n*, 935 F.2d 182, 184 (9th Cir. 1991) (tribal employer is subject to OSHA because it "employs a significant number of

FLSA claim, wherein a non-tribal member, seeks payment for services that he performed on behalf of his employer, provided to non-tribal members, are not exempt under *Coeur d'Alene.*

CONCLUSION

SCF's motion essentially asks this court to expand the self-government exemption so as to include scenarios where federal law is not applicable to Indian tribes engaging in self-governance. However, *Coeur d'Alene* exemption is far more limited, applying as it does to self-governance scenario that are also purely intramural matters. SCF operates a vast array of services and programs. The providing of IHS healthcare to tribal members is only one of the many programs that SCF provides to Alaskans.

In many respects, SCF is similar to a traditional health care provider like Providence Health Care Systems. Further, Meglitsch is not a tribal member, and he is not providing services on a reservation or to only Indian or Alaska Native recipients.

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non-Native Americans and sells virtually all of its finished product to non-Native Americans through channels of interstate commerce."); *Reich v. Mashantucket Sand & Gravel*, 95 F.3d 174, 181 (2d Cir. 1996) ("MSG's employment of non-Indians weighs heavily against its claim that its activities affect rights of self-governance in purely intramural matters. In general, tribal relations with non-Indians fall outside the normal ambit of tribal self-government. Furthermore, intramural matters generally consist of conduct the immediate ramifications of which are felt primarily within the reservation by members of the tribe.") (citing Farris, 624 F.2d at 893).

Mr. Meglitsch asks that this Court deny SCF's motion for summary judgment. This case deals with a federal statute of general applicability that does not fit into the *Coeur d'Alene* exemptions.

DATED this 30th Day of August 2022.

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Certificate of Service

I CERTIFY that on the 30th of August 2022, a true and accurate copy of the foregoing document was served via cm/ecf system to the following counsel of record:

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