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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

COYOTE VALLEY BAND OF POMO INDIANS, a federally recognized Indian tribe,

Plaintiff,

v.

ROBERT FINDLETON, doing business as Terre Construction and On-Site Equipment; ANN C. MOORMAN, Judge of the Superior Court of Mendocino County, California, in her official capacity; SAVINGS BANK OF MENDOCINO COUNTY, a California corporation; JOHN AND JANE DOES 1-10; ABC CORPORATIONS 1-10; and XYZ LLCs 1-10,

Defendants.

Case No. 3:22-cv-00607

PLAINTIFF COYOTE VALLEY BAND OF POMO INDIANS' COMBINED OPPOSITION TO MOTIONS TO DISMISS

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

For the sake of brevity, the Coyote Valley Band of Pomo Indians (the "Tribe") notes that the facts regarding this dispute are discussed in detail in the background sections in the Motion for Preliminary Injunction [Doc. 8] (the "PI Motion"), Emergency Motion for Temporary Restraining Order [Doc. 27] (the "Emergency Motion"), Renewed Emergency Motion for Temporary Restraining Order [Doc. 32] (the "Renewed Emergency Motion"), Reply in Support of Motion for Preliminary Injunction [Doc. 58] (the "PI Motion Reply"), and Combined Response in Opposition to Defendants' Motions to Dismiss [Doc. 61] ("Combined Opposition"). As discussed in these incorporated filings, this action arises from the Tribe's request that the Court invoke comity principles and resolve the undisputed conflict between the orders of the Coyote Valley Tribal Court (the "Tribal Court"), which is a court of competent jurisdiction over the underlying dispute, and the orders of the Mendocino County Superior Court (the "State Court"), which continues to act without congressional authorization to exercise subject-matter jurisdiction and in plain disregard for the Tribe's sovereignty and sovereign immunity.

In their motions to dismiss (collectively, the "Motions"), Defendants Honorable Ann C. Moorman ("Judge Moorman") and Robert Findleton ("Findleton") raise the same arguments they asserted in prior filings, including prior motions to dismiss. In addition to the arguments in the Argument section of this Opposition, Findleton's and Judge Moorman's arguments are rebutted by arguments the Tribe raised in prior submissions (the "Incorporated Arguments"), which the Tribe incorporates by reference and summarizes as follows:

(1) **This Court Has Subject Matter Jurisdiction.** The Tribal Court's power to compel a non-Indian property owner to submit to its jurisdiction is a federal question under Section 1331. *National Farmers Union Insurance Companies v. Crow Tribe*, 471 U.S. 845, 852 (1985); *Cour d'Alene Tribe v. Hawks*, 933 F.3d 1052, 1053-45 (9th Cir. 2019). Similarly, the Tribe's assertion of sovereign immunity arises under "the Constitution, laws, or treaties of the United States," thereby conferring jurisdiction under Section 1362. *Keetoowah Band of Cherokee Indians v. State of Oklahoma ex rel. Moss*, 927 F/2d 1170, 1173 (10th Cir. 1991); *see generally* Tribe's Reply in Support of PI Mot. [Doc. 58] at 4-6.

(2) **The Anti-Injunction Act Does Not Bar Relief.** The Tribe's request for this Court to resolve the conflicting assertions of jurisdiction by the State Court and the Tribal Court falls squarely within the "necessary in aid" exception to the Anti-Injunction Act. *Ute Indian Tribe of the Uintah & Ouray Rsrv'n v. Lawrence*, 2:16-CV-00579, 2018 WL 941720, at *2-3 (D. Utah Feb. 17, 2018); *see generally* Renewed Emergency Mot. [Doc. 32] at 9-12; Tribe's Reply in Support of PI Mot. [Doc. 58] at 16-18.

(3) **The *Rooker-Feldman* Doctrine Does Not Bar Relief.** The *Rooker-Feldman* doctrine does not apply: (1) where a federal plaintiff alleges legal injury from an allegedly erroneous legal ruling in a state court proceeding in which it was a litigant, *Noel v. Hall*, 341 F.3d 1148, 1163 (9th Cir. 2003); (2) where the state proceeding is a legal nullity and void *ab initio*, *In re Pavelich*, 229 F.R. 777, 783 (9th Cir. B.A.P. 1999); or (3) where plaintiff seeks enforcement of a trial court judgment that does not conflict with another final judgment "*entitled to recognition*," *Wilson v. Marchington*, 127 F.3d 805, 810 (9th Cir. 1997); *see generally* Tribe's Reply in Support of PI Mot. [Doc. 58] at 9-13.

(4) ***Younger* Abstention Does Not Bar Relief.** *Younger v. Harris*, 401 U.S. 37 (1971) applies only if the pending state court proceeding at issue implicates important state interests. *Carden v. Montana*, 626 F.2d 82, 83 (9th Cir. 1980). The requisite state interest is lacking when a tribe seeks to enjoin actions over which the state court lacks jurisdiction. *E.g.*, *Fort Belknap Indian Cmty. Of Fort Belknap Indian Rsrv. v. Mazurek*, 43 F.3d 428, 430 (9th Cir. 1994); *see generally* Tribe's Renewed Emergency Mot. [Doc. 32] at 12-14; Tribe's Reply in Support of PI Mot. [Doc. 58] at 13-15.

(5) ***Colorado River* Abstention Does Not Bar Relief.** Judge Moorman's invocation of *Colorado River* abstention on the theory that the State Court's decision to exercise jurisdiction over the contractual dispute between Findleton and the Tribe involves an important issue of state law is fatally flawed because the question of state court jurisdiction over such claims is one of federal law. *Alvarado v. Table Mtn. Rancheria*, 509 F.3d 1008, 1016 (9th Cir. 2007); *see generally* Tribe's Reply in Support of PI Mot. [Doc. 58] at 15-16.

(6) **The "Unclean Hands" Doctrine Does Not Bar Relief.** The Tribe is not guilty of "unclean hands" either through its insistence upon its sovereignty and its sovereign immunity, or through

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its invocation of Tribal Court jurisdiction. *See Institute of Cetacean Research v. Sea Shepherd Conservation Society*, 725 F.3d 940, 947 (9th Cir. 2013); *see generally* Tribe's Reply in Support of PI Mot. [Doc. 58] at 24-27.

(7) **Judicial Immunity Does Not Bar Relief.** "[J]udicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity." *Pulliam v. Allen*, 466 U.S. 522, 542 (1984); *see generally* Tribe's Reply in Support of PI Mot. [Doc. 58] at 21-22.

(8) **Eleventh Amendment Immunity Does Not Bar Relief.** The Eleventh Amendment allows prospective claims for relief based on an ongoing violation of federal law. *Idaho v. Coeur d'Alene Tribe of Idaho*, 535 U.S. 635, 645 (2002); *see generally* Tribe's Reply in Support of PI Mot. [Doc. 58] at 21-22.

Defendants' Motions ask this Court to dismiss the Second Amended Complaint ("SAC"), to ignore the conflict between the Tribal Court's and State Court's orders, and to abandon its "duty . . . to adjudicate a controversy properly before it." *Colo. River Water Conserv. Dist. v. United States*, 424 U.S. 800, 813 (1976); *contra Ute Indian Tribe of the Uintah & Ouray Rsvn. v. Lawrence*, 22 F.4th 892, 907 n.17 (10th Cir. 2022) (stating that an analogous case "does not present the 'exceptional circumstances' required to abandon our duty to 'adjudicate a controversy properly before [us].'" (alterations original) (quoting *Colo. River*, 424 U.S. at 813)). It bears emphasizing that, in taking this position, Defendants conflate all orders entered by the Tribal Court even though they address distinct matters, including several matters and Tribal Court orders that are not at issue in the State Court matter styled as *Findleton v. Coyote Valley Band of Pomo Indians*, Case No. SCUK CVG 12-59929 (the "State Court Proceedings"). The Court also did not distinguish between the Tribal Court's various orders in its Order dismissing the First Amended Complaint. Each order needs to be analyzed separately.

For the reasons set forth below and in the Tribe's Incorporated Arguments, Defendants arguments fail, and the Court should deny Defendants' Motions accordingly. Even if there are some deficiencies in the SAC (there are not for the reasons discussed here and in the Tribe's Incorporated Arguments), the Court should grant the Tribe leave to amend to cure any deficiencies. *See* Fed. R. Civ. P. 15(a)(2) ("The court should freely give leave when justice so requires."); *Foman v. Davis*, 371 U.S. 178, 182 (1962)

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("[O]utright refusal to grant [a party] leave without any justifying reason . . . [is an] abuse of . . . discretion and inconsistent with the spirit of the Federal Rules.").

II. BACKGROUND

In the SAC, the Tribe alleges the following claims: (1) Recognition and Enforcement of First Tribal Court Permanent Injunction (Count One); (2) Recognition and Enforcement of the Second Tribal Court Permanent Injunction (Count Two); (3) Recognition and Enforcement of the Tribal Court Sanctions Orders (Count Three); (4) Declaratory Judgment that the State Court Lacks Jurisdiction (Count Four); (5) Recognition and Enforcement of the Tribal Court TRO (Count Five); (6) Breach of Contract (Count Six); and (7) Unjust Enrichment (Count Seven). Although the allegations in the SAC are similar to the allegations in the Tribe's prior pleadings, they expound on the factual allegations underlying the Tribe's claims in meaningful ways.

Paragraphs 40 through 45 of the SAC allege facts, which the Court must accept as true on a motion to dismiss, regarding the Tribe's adjudicatory system that was available to Findleton when he filed his claims against the Tribe in State Court. SAC [Doc. 91] at ¶¶ 40–45. This includes the adjudicatory authority vested in the Tribal Council by the Tort Claims Ordinance in Title 1 of the Coyote Valley Band of Pomo Indians Tribal Code (the "Tort Claims Ordinance"), which was enacted on January 27, 2006. *Id.* ¶ 40. Paragraphs 28 through 39 of the SAC contain allegations relating to Chapter 1.10 of the Tribal Code (the "Claims Ordinance"), which "requires that a claim be presented to the Tribal Council as a prerequisite to filing a claim against the Tribe in court." *Id.* ¶¶ 28–39. Paragraphs 46 through 53 of the SAC contain additional allegations relating to the Tribe's adjudicatory and regulatory authority in matters relating to Findleton's conduct on the Tribe's land. *Id.* ¶¶ 46–53.

The SAC also alleges that, by executing AIA Document A107–1997, which governed the agreement between Findleton and the Tribe for construction of improvements on the Tribe's land, Findleton expressly agreed to be subject to the Tribe's laws and the Tribe's jurisdiction. SAC ¶ 62. This includes, but is not limited to, the Claims Ordinance. Findleton did not comply with the Claims Ordinance, however, and instead filed suit against the Tribe in State Court. Hence, as the allegations in the SAC establish, Findleton did not exhaust tribal remedies available to him, and there was a tribal

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adjudicative body to which he was required to submit his claims before filing suit against the Tribe in another tribunal.

III. ARGUMENT

A. *KREMPEL* DOES NOT FORECLOSE APPLICATION OF THE COMITY FRAMEWORK BECAUSE FINDLETON FAILED TO EXHAUST THE TRIBAL REMEDIES TO WHICH HE EXPRESSLY AGREED.

Consistent with tribal sovereignty and tribal jurisdiction recognized in *Knighton v. Cedarville Rancheria of Northern Paiute Indians*, 922 F.3d 892 (9th Cir. 2019), "[a]s a general rule, federal courts must recognize and enforce tribal court judgments under principles of comity," *AT&T Corp. v. Coeur d'Alene Tribe*, 295 F.3d 899, 903 (9th Cir. 2002). Although there are limited exceptions to this general rule, none of them apply here. *See FMC Corp. v. Shoshone-Bannock Tribes*, 942 F.3d 916, 930 (9th Cir. 2019) (describing three exceptions that apply for lack of jurisdiction, lack of due process, and equitable grounds). The court does not lack jurisdiction, there is no lack of due process, and there are no equitable considerations that militate against enforcement of the trial court judgment on these facts. The Ninth Circuit expressly recognized four equitable considerations that may defeat a tribal court order that (1) was obtained by fraud; (2) "conflicts with another final judgment that is entitled to recognition"; (3) is "inconsistent with the parties' contractual choice of forum"; or (4) "is against the public policy of the United States or forum state in which recognition . . . is sought." *Wilson v. Marchington*, 127 F.3d 805, 810 (9th Cir. 1997).

In the Dismissal Order, the Court appears to have invoked principles of equity in finding that it "need not conduct a comity analysis because the tribal court did not exist when the case was filed, nor did it exist five years after filing." Dismissal Order [Doc. 89] at 4 n.2. For support, the Court cited *Krempel v. Prairie Island Indian Cmty.*, 125 F.3d 621 (8th Cir. 1997), in which the Eighth Circuit declined to require exhaustion of tribal remedies when a tribal court did not exist when the plaintiff filed suit. Dismissal Order [Doc. 89] at 4 n.2 (citing *Krempel*, 125 F.3d at 810). Findleton also relies on *Krempel* for the same proposition in his Motion to Dismiss. Findleton Mot. [Doc. 100-1] at 10. But *Krempel* is inapposite. Findleton did not exhaust the tribal remedies to which he expressly agreed. Moreover, the Ninth Circuit looks to the tribal law in existence at the time, e.g. the Tribe's Claims

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Ordinance, and not to whether a tribal court was in existence at the time, to determine whether tribal jurisdiction attached. *See Knighton*, 922 F.3d at 906. Still further, the clarified allegations in the SAC establish that tribal judicial remedies were available to Findleton prior to the establishment of the Tribal Court. SAC [Doc. 91] at ¶¶ 28–45. This Court should not conflate the maturation of the tribal judiciary with the availability of tribal remedies.

A brief discussion of the tribal exhaustion rule is appropriate to understand its application here. In *National Farmers Union Insurance Companies v. Crow Tribe of Indians*, 471 U.S. 845 (1985), the Supreme Court mandated that litigants exhaust tribal remedies before seeking redress from a non-tribal court. *Id. at* 856 (emphasis added); *see also Krempel*, 125 F.3d at 622 ("It is now settled that principles of comity require that tribal-court remedies *must* be exhausted before a federal district court should consider relief in a civil case regarding tribal-related activities on reservation land."). The exhaustion requirement, which the Supreme Court reiterated and expanded in *LaPlante*, applies in all but three scenarios: (1) "where an assertion of tribal jurisdiction 'is motivated by a desire to harass or is conducted in bad faith'"; (2) "where the action is patently violative of express jurisdictional prohibitions"; or (3) "where exhaustion would be futile because of the lack of an adequate opportunity to challenge the court's jurisdiction." *Id.* at 856 n.21; *see also Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16 (1987) ("Adjudication of [jurisdictional] matters by ***any*** nontribal court . . . infringes upon tribal law-making authority, because tribal courts are best qualified to interpret and apply tribal law."); *Harvey v. Ute Indian Tribe of Uintah & Ouray Rsvn.*, 416 P.3d 401, 431 (Utah 2017) (Himonas, J., concurring) (observing "the policy underlying the tribal exhaustion rule admits of no distinction between federal and **s**tate courts").

The tribal court exhaustion rule encompasses the requirement to exhaust not only tribal court remedies, but also tribal administrative remedies. In *Burlington Northern R. Co. v. Crow Tribal Council*, 940 F.2d 1239 (9th Cir. 1991), the court invoked the exhaustion rule and reversed the trial court's entry of default judgment against the Crow Tribe. *Id.* at 1240. The dispute arose from the Crow Tribe's Common Carrier Ordinance, which required railroads crossing the Crow Tribe's land to provide regular freight and passenger service and maintain freight and passenger facilities. *Id.* at 1241. The Ordinance

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also empowered the Crow Tribe's regulatory commission (the "Crow Tribe Commission") to "provide for exemption from the ordinance upon written request and a hearing." *Id.*

The Crow Tribe Commission, which did not act for years after its creation, wrote to BN asking for a hearing on complaints about BN's noncompliance with the Ordinance. *Id.* Rather than cooperate with the administrative process, BN filed an action seeking a declaration that the Common Carrier Ordinance exceeded the Crow Tribe's jurisdiction. *Id.* The Crow Tribe filed a motion to dismiss, which was denied, and a motion for a preliminary injunction seeking an order preventing BN from closing a station on tribal land in violation of the Ordinance. *Id.* The trial court never ruled on the motion, and BN closed the station. *Id.* More than two years after BN filed suit, BN moved to compel the Crow Tribe to provide responses to written discovery, and the trial court granted the motion. *Id.* After the Crow Tribe subsequently failed to provide responses, BN moved for default judgment as a sanction, which the trial court granted. *Id.*

On appeal, the Crow Tribe argued that "the district court should have dismissed BN's complaint or stayed proceedings until BN had exhausted tribal remedies," and the Ninth Circuit agreed. *Id.* at 1244. The Ninth Circuit observed that the exhaustion rule arises from Congress's "commit[ment] to a policy of supporting tribal self-government and self-determination," and reasoned that the "policy of tribal self-government and self-determination goes to the heart of th[e] case." *Id.* (quotation marks omitted) (quoting *Natl. Farmers Union*, 471 U.S. at 856). The court also explained that disregarding the Ordinance undermined the Crow Tribe's sovereign authority:

> Through the challenged ordinance, the Tribe reasserts its commitment to sovereign authority over Reservation affairs. The ordinance establishes governmental mechanisms for exercise of that authority. Moreover, the ordinance identifies railroad services as vital to the Tribe's economic development. The foundation of self-determination for the Tribe must be its growing economic independence. Thus arises the necessity for BN's exhaustion of tribal remedies: the Crow Tribe must itself first interpret its own ordinance and define its own jurisdiction.

Id. at 1246–47. Based on this reasoning, the Ninth Circuit concluded that the trial court "erred in failing to dismiss or stay federal proceedings pending BN's exhaustion of Crow tribal administrative remedies" and vacated the default judgment. *Id.* at 1247.

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Notably, the Ninth Circuit in *Burlington* rejected the proposition that the exhaustion rule is limited to tribal court remedies and does not apply in cases involving tribal administrative remedies. *Id.* at 1246. "[T]he distinction is not substantive," the Ninth Circuit explained, because exhaustion of tribal court and tribal administrative remedies both involve an assertion of tribal sovereignty that the exhaustion rule is designed to promote: "If . . . BN suffers from a justiciable imposition of Crow sovereign authority, then its position is substantively no different from the non-Indian defendants forced to exhaust tribal [court] remedies before seeking relief in federal court." *Id.*

The same result applies to this case. By executing the AIA Agreement, Findleton expressly agreed, in Section 18.1.2, that that the Agreement "shall be governed by the law of the Coyote Band of Pomo Indians," and he further "agree[d] to the jurisdiction of the Coyote Valley Band of Pomo Indians." SAC [Doc. 91] at ¶ 62; *accord* AIA Agreement, Ex. H to SAC [Doc. 92], at 182. Findleton's compliance with the Claims Ordinance is included within the scope of this language, and so he was required to present his claims against the Tribe to the Tribal Council within 180 days of accrual. SAC [Doc. 91] at ¶¶ 31–33. Findleton failed to do so, and thus, has not exhausted the tribal remedies available to him.

It bears noting that claims ordinances of the type at issue here are not new, and courts routinely require plaintiffs to comply with them before filing suit. *Mcneil v. U.S.*, 508 U.S. 106, 106 (1980) (dismissing plaintiff's claim for failure to comply with claim-filing requirements imposed by Federal Tort Claims Act); *Mangold v. California Pub. Utilities Comm'n*, 67 F.3d 1470, 1477 (9th Cir. 1995) ("Where compliance with [a claims ordinance] is required, the plaintiff must allege compliance or circumstances excusing compliance, or the complaint is subject to general demurrer."); *Karim-Panahi v. Los Angeles Police Dep't.*, 839 F.2d 621, 627 (9th Cir. 1988) (dismissing plaintiff's claim for failure to comply with claim-filing requirements imposed by California Government Claims Act). Moreover, enforcing the Claims Ordinance serves the exhaustion rule's purpose of promoting tribal self-government and self-determination by allowing tribal institutions to consider the issues before them and "rectify any errors." *Iowa Mut. Ins. Co.*, 480 U.S. at 18 (quoting *Natl. Farmers Union*, 471 U.S. at 857).

Relevant and controlling is the Ninth Circuit's conclusion in *Knighton* that tribal adjudicative authority must be determined and applied based on regulatory provisions that were in effect when the

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nonmember brought himself or herself within the tribe's jurisdiction. 922 F.3d at 906. At issue in *Knighton* was whether the Cedarville Rancheria of Northern Paiute Indians (the "Cedarville Tribe") had jurisdiction over its claims against Knighton, a nonmember employee. *Id.* at 984. Knighton argued that the Cedarville Tribe's claims exceeded its authority to regulate her conduct, but the Ninth Circuit disagreed and concluded that the policy manual to which she was subject during her employment "regulated the conduct that forms the basis of the Tribe's claims against [her] and conferred jurisdiction over her conduct." *Id.* at 906. Notably, the Ninth Circuit concluded that the Cedarville Tribe had "adjudicatory authority" over Knighton even though "the tribal court and tribal judicial code were established and enacted after [she] left her employment with the [T]ribe." *Id.* at 895. As the court explained, "[t]he fact that the Tribe now seeks to adjudicate [its] claims in the Tribal **Court *does not undermine its jurisdiction over the Tribe's claims*.**" *Id.* at 906 (emphasis added).

Here, consistent with *Knighton*, the Tribe had, and still has, regulatory and adjudicatory authority over Findleton's conduct relating to the AIA Agreement because he expressly agreed to be subject to the Tribe's laws and jurisdiction. SAC ¶ 62. The Claims Ordinance is one such law, and it was in effect at the time Findleton executed the AIA Agreement. *Id.* ¶¶ 28–45. This inarguably conferred regulatory and adjudicatory jurisdiction over Findleton. *Knighton*, 922 F.3d at 906. Moreover, the proposition that a tribal adjudicatory system did not exist and was not available to Findleton when he filed suit in State Court is incorrect—the Claims Ordinance expressly provides that the Tribal Council has adjudicatory authority over Findleton's claims. SAC ¶ 43. In any event, even if the Court accepts as true that the Tribal Court did not exist when Findleton filed suit, "that the Tribe now seeks to adjudicate these claims in the Tribal Court does not undermine its jurisdiction." *Knighton*, 922 F.3d at 906.

Krempel is not a basis for the Court to avoid applying the comity framework, and declining to apply the comity framework here is inconsistent with binding Ninth Circuit precedent mandating its application. *Wilson*, 127 F.3d at 810 ("[A]s a general principle, federal courts should recognize and enforce tribal judgments."); *see also Knighton*, 922 F.3d at 906. Moreover, allowing Findleton to completely disregard the Claims Ordinance contravenes *Knighton* and the Supreme Court's mandate that courts give "proper respect [to] tribal institutions [by] . . . giv[ing] [them] a 'full opportunity' to consider

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the issues before them." *LaPlante*, 480 U.S. at 16. The Tribe respectfully requests that the Court deny Defendants' Motions and apply the comity framework as the Tribe seeks in the SAC.

B. *ROOKER-FELDMAN* DOES NOT BAR THE COURT FROM EXERCISING JURISDICTION OVER THE TRIBE'S CLAIMS.

1. Express Exceptions to *Rooker-Feldman* Apply.

The *Rooker-Feldman* doctrine does not, as Judge Moorman and Findleton argue, bar the Tribe's claims, and both Judge Moorman and Findleton fail to acknowledge two applicable exceptions to the *Rooker-Feldman* doctrine. First, the *Rooker-Feldman* doctrine "does not bar jurisdiction" "where the federal plaintiff . . . [complains] of a legal injury caused by an adverse party." *Noel v. Hall*, 341 F.3d 1148, 1163 (9th Cir. 2003). This is precisely what the Tribe alleges in the SAC — despite agreeing to be subject to the Tribe's laws and the Tribe's jurisdiction, Findleton disregarded the Claims Ordinance and is actively contravening the Tribal Court's binding and enforceable orders. Consistent with *Noel*, *Rooker-Feldman* does not bar the Court from exercising jurisdiction to give comity recognition to the Tribal Court's orders, and both 28 U.S.C. § 1362 and *Hawks*, 933 F.3d at 1037, expressly authorize the Court to do so.

Second, Judge Moorman and Findleton also ignore that "[a] state court judgment entered in a case that falls within the federal courts' exclusive jurisdiction is subject to collateral attack in the federal courts." *Gonzales v. Parks*, 830 F.2d 1033, 1036 (9th Cir. 1987). A related exception is one that "applies when the state proceeding is a legal nullity and void ab initio," *In re Pavelich*, 229 B.R. 777, 783 (9th Cir. B.A.P. 1999), such as when the state court lacks subject matter jurisdiction over the proceedings in question, *Merrell v. United States*, 140 F.2d 602, 606 (10th Cir. 1944) (noting that a state court's judgment is not exclusive from federal jurisdiction if "the absence of jurisdiction over the subject matter . . . affirmatively appears from the fact of the proceedings."). There is no circuit split on this issue, as the Supreme Court has long recognized that a state court judgment is "void, and subject to collateral attack," when the state court's actions implicate matters over which federal courts have exclusive jurisdiction. *Kalb v. Feuerstein*, 308 U.S. 433, 437–38 (1940).

This exception applies here because the State Court lacks jurisdiction over the Tribe. Findleton's state-court claims against the Tribe arise out of obligations incurred on and pertaining to tribal land, and

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conducted exclusively on tribal land, such that the State Court lacks subject-matter jurisdiction absent an express authorization from Congress. *See, e.g.*, *Alvarado v. Table Mtn. Rancheria*, 509 F.3d 1008, 1016 (9th Cir. 2007) ("[For a tribunal to have] subject matter jurisdiction in an action against a sovereign, in addition to a waiver of sovereign immunity, there must be statutory authority vesting [the tribunal] with subject matter jurisdiction."); *Cardin v. De La Cruz*, 671 F.2d 363, 366 (9th Cir. 1982) (observing that, in *Williams v. Lee*, 358 U.S. 217 (1959), the Supreme Court "held that tribal courts had exclusive jurisdiction over a civil suit by a non-Indian against reservation Indians arising out of a transaction on the reservation").

There is no such congressional authorization here. As with the Utah state court in *Ute Indian Tribe of the Uintah & Ouray Rsvn. (Lawrence II)*, 22 F.4th 892 (10th Cir. 2022), *cert. denied sub nom Becker v. Ute Indian Tribe et al.*, 21-1340, 2022 WL 4657178 (U.S. Oct. 3, 2022), the State Court here does not have jurisdiction under 25 U.S.C. § 1322 because the Tribe never consented to state-court jurisdiction as 25 U.S.C. § 1326 requires. Similarly, although California is one of the states to which Congress granted "jurisdiction over civil causes of action between Indians or to which Indians are parties," 28 U.S.C § 1360(a), Congress did not grant the courts any state subject-matter jurisdiction over civil causes of action against Indian tribes. Indeed, in *Bryan v. Itasca County*, the U.S. Supreme Court rejected the proposition that Congress intended for 28 U.S.C. § 1360 to subordinate Indian tribes "to the full panoply of civil regulatory powers . . . of state and local governments," and observed that "any conferral of state jurisdiction over the tribes themselves" is "notably absent" from the statute. 426 U.S. 373, 388 (1976). The Supreme Court also made clear that 28 U.S.C. § 1360 preserves tribal sovereign immunity and does not change the long-established policy of guarding tribal sovereignty. *Three Affiliated Tribes of Ft. Berthold Rsvn. v. World Eng'g*, 476 U.S. 877, 892 (1986) ("We have never read [28 U.S.C. § 1360] to constitute a waiver of tribal sovereign immunity, nor found [it] to represent an abandonment of the federal interest in guarding Indian self-governance.").

In the absence of express congressional authorization, an Indian tribe cannot "selectively consent," by way of a waiver of immunity in a contract like the AIA Agreement, to "a state's exercise of . . . jurisdiction' over a specific legal action." *Lawrence II*, 22 F.4th at 904. The only way a state court

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may assert jurisdiction for claims involving an Indian tribe arising arise out of obligations incurred on, and pertaining to, tribal land is through an express authorization from Congress as to the subject matter of the claim *in addition to* an express waiver of sovereign immunity. See *e.g.*, *Alvarado*, 509 F.3d at 1016 ("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 [the tribunal] with subject matter jurisdiction."). Accordingly, any disagreement between the Tribal Court and the State Court as to whether the Tribe waived its sovereign immunity is inapposite[1]; as the Supreme Court made clear in *Bryan*, Congress never conferred subject-matter jurisdiction on the State Court to adjudicate, in any form, Findleton's claims against the Tribe.

2. Implied Exceptions to *Rooker-Feldman* Apply.

Judge Moorman and Findleton also fail to acknowledge that the *Rooker-Feldman* doctrine is inapplicable to actions seeking recognition and enforcement of tribal court judgments that do not "conflict[] with another final judgment *entitled to recognition*." *Wilson*, 127 F.3d at 810 (emphasis added); *see also Lawrence II*, 22 F.4th at 9092910. In other words, to undertake the analysis required under *Wilson*, a court must determine not only whether a state court judgment exists, but also whether the state court judgment is "entitled to recognition." *Wilson*, 127 F.3d at 810. This is contrary to the analysis under *Rooker-Feldman*, which looks only to whether a state court judgment exists. Thus, application of the *Rooker-Feldman* doctrine here would foreclose the *Wilson* comity framework. And unlike the Tribe, which cites *Lawrence II* to support its position, Judge Moorman cites no case[2] in which a court applied the *Rooker-Feldman* doctrine instead of the comity framework in a case when, as here, the nonmember failed to exhaust tribal remedies and a tribal court's judgments conflict with the judgments and orders from a state court that lacks subject-matter jurisdiction.

[1] Notably, the State Court's Order Compelling Mediation—which is in direct conflict with the Tribal Court Orders and Petition Opinion—is based on the flawed logic that the Tribe consented to State Court jurisdiction "when it agreed to arbitrate its disputes with Findleton" because "[w]hen a tribe waives sovereign immunity it, in effect, consents to state court jurisdiction." Ex. I to SAC at 2 ¶ ix. The State Court's conclusion is not merely wrong as a matter of contractual interpretation; it plainly contravenes binding precedent. In *Park Place Associates*, the Ninth Circuit described equating sovereign immunity with subject-matter jurisdiction as a mistake that courts should avoid committing. 563 F.3d at 923. "Although the concepts are related," the court explained, "sovereign immunity and subject matter jurisdiction present distinct issues." *Id.*

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Another aspect of the "entitled to recognition" component of the Ninth Circuit's comity framework further undercuts the proposition that *Rooker-Feldman* applies in this case. When the *Rooker-Feldman* doctrine applies, federal courts lack jurisdiction and cannot exercise any discretion whatsoever. *See, e.g.*, *Cooper v. Ramos*, 704 F.3d 772, 777 (9th Cir. 2012); *Fleming v. Gordon & Wong L. Grp., P.C.*, 723 F. Supp. 2d 1219, 1222 (N.D. Cal. 2010). This contrasts with the Ninth Circuit's comity framework, which does not require the Court to decline recognition and enforcement of a tribal court judgment even if it conflicts with a state court judgment that is entitled to recognition. In that scenario, the Court "may, *in its discretion*, decline to enforce [the] tribal judgment on equitable grounds." *Wilson*, 127 F.3d at 810 (emphasis added). This is notably distinct from the enumerated scenarios when the Court "must neither recognize nor enforce tribal judgments." *Id.*

The inquiry embodied in the "entitled to recognition" component of the Ninth Circuit's comity framework echoes the Supreme Court's consistent conclusion that state court judgments are not entitled to recognition and enforcement if the court lacked subject-matter jurisdiction:

> Chief among the[] limitations [on the full-faith-and-credit doctrine] is the caveat, consistently recognized by this Court, that 'a judgment of a court in one State is conclusive upon the merits in a court in another State only if the court in the first State had power to pass on the merits—had jurisdiction, that is, to render the judgment.' Consequently, before a court is bound by the judgment rendered in another State, it may inquire into the jurisdictional basis of the foreign court's decree. If that court did not have jurisdiction over the subject matter or the relevant parties, full faith and credit need not be given.
>
> This limitation flows directly from the principles underlying the Full Faith and Credit Clause. It is axiomatic that a judgment must be supported by a proper showing of jurisdiction over the subject matter and over the relevant parties. One State's refusal to enforce a judgment rendered in another State when the judgment is void for lack of jurisdiction merely gives to that judgment the same 'credit, validity, and effect' that it would receive in a court of the rendering state.

Underwriters Nat. Assur. Co. v. N. Carolina Life & Acc. & Health Ins. Guar. Ass'n, 455 U.S. 691, 705 (1982) (citation omitted) (quoting *Durfree v. Duke*, 375 U.S. 106, 110 & n.10 (1963); *accord People of State of N.Y. ex rel. Halvey v. Halvey*, 330 U.S. 610, 614 (1947) ("If the court of the State which rendered the judgment had no jurisdiction over the person or the subject matter, the jurisdictional infirmity is not saved by the Full Faith and Credit Clause.").

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Consistent with *Underwriters National Assurance Co.*, the Ninth Circuit concludes that "state-federal full faith and credit principles concern the enforceability of judgments, and therefore incorporate otherwise applicable limitations on enforceability." *Hawthorne Sav. F.S.B. v. Reliance Ins. Co. of Ill.*, 421 F.3d 835, 849 (9th Cir. 2005). Representative in this regard is *Swett v. Schenk*, in which the Ninth Circuit refused to recognize and enforce a state court's orders because the "state court lacked jurisdiction to enter its order in the first instance," such that the "comity and full faith and credit . . . doctrines do not apply." *Swett v. Schenk*, 792 F.2d 1447, 1452 (9th Cir. 1986). Other circuits likewise conclude that a state court's judgment is not entitled to recognition if the state court lacked jurisdiction in the first place. *See, e.g.*, *Fehlhaber v. Fehlhaber*, 681 F.2d 1015, 1020 (5th Cir. 1982) ("[F]ull faith and credit will not be given a judgment if the rendering court did not have jurisdiction over the parties and the subject matter."); *Stone v. Williams*, 970 F.2d 1043, 1057 (2d Cir. 1992) ("Because a court's adjudication is conclusive only if it had power to pass on the merits of the action . . . one may collaterally attack the subject matter or *in personam* jurisdiction of the court rendering a judgment put forth as preclusive.").

The proceedings in *Lawrence II* demonstrate the application of this principle in nearly identical circumstances. To begin, Judge Moorman asserts that *Lawrence II* is an "unpublished case," which is plainly incorrect, and that "[t]he appellees in [*Lawrence II*] did not raise . . . the *Rooker-Feldman* doctrine, *Younger* [a]bstention, the *Colorado River* doctrine, judicial immunity, the Eleventh Amendment, and the Anti-Injunction Act," which is demonstrably inaccurate. Moorman Resp. [Doc. 51] at 19. As the district court observed, the Hon. Barry Lawrence and Lynn Becker, both of whom are named defendants in *Lawrence II*, raised the very arguments Judge Moorman asserts here:

> Judge Lawrence argued that several doctrines—including *Rooker–Feldman*, *Younger* and *Colorado River* abstention, judicial immunity, and Eleventh Amendment immunity—protected the state court from being sued in federal court, especially by a losing party complaining of injuries caused from state court judgments. Becker likewise filed a motion to dismiss the Tribe's Complaint, incorporating by reference Judge Lawrence's arguments and alleging the court lacked subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1362.

Ute Indian Tribe of Uintah and Ouray Reservation v. Lawrence, 289 F. Supp. 3d 1242, 1248 (D. Utah 2018). Moreover, although the district court ruled that *Younger* and the Anti-Injunction Act precluded it from granting the Ute Tribe's request for a preliminary injunction, *id.* at 1255–56, the Tenth Circuit

later rejected application of abstention doctrines. *Lawrence II*, 22 F.4th at 908 n.17 ("[T]his case does not present the 'exceptional circumstances' required to abandon our duty to 'adjudicate a controversy properly before [us].'" (alterations original) (quoting *Colorado River*, 424 U.S. at 813)).

In his Motion to Dismiss, Findleton relies on excerpted language from *In re Gruntz*, 202 F.3d 1074 (9th Cir. 1999), to support applying the *Rooker-Feldman* doctrine here. *See* Findleton Mot. [Doc. 100-1] at 7. But the excerpted language misses the point of *Gruntz*, in which the court rejected application of the *Rooker-Feldman* doctrine because of federal courts' plenary power over bankruptcy matters, with which state courts may not interfere. *Gruntz*, 202 F.3d at 1084. As the Ninth Circuit explained in *Gruntz*, "a reverse *Rooker-Feldman* situation is presented when state courts decide to proceed in derogation of the stay [mandated by 11 U.S.C. § 362], because it is the state court which is attempting impermissibly to modify the federal court's injunction." *Id.*

Viewed through this lens, *Gruntz* undermines applying the *Rooker-Feldman* doctrine here because this case presents a similar "reverse *Rooker-Feldman* situation." *Id.* Indeed, the State Court impermissibly disregarded the Tribe's sovereignty and sovereign immunity, which includes matters relating to the Tribal Court's jurisdiction, and continues to exercise jurisdiction without congressional authorization. *See Iowa Mut. Ins. Co.*, 480 U.S. at 18 (stating that "[c]ivil jurisdiction over" "the activities of non-Indians on reservation lands" "presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or federal statute"); *Alvarado*, 509 F.3d at 1016 (stating that state courts lack subject-matter jurisdiction over a sovereign "absent statutory authority vesting the [state] court with subject matter jurisdiction"); *Window Rock Unifed Sch. Dist. v. Reeves*, 861 F.3d at 897 (9th Cir. 2017) ("A tribal adjudicative body generally must have the first opportunity to evaluate its jurisdiction over a matter pending before it."). Thus, consistent with *Gruntz*, the Court should not apply the *Rooker-Feldman* doctrine because doing so would interfere with the "plenary federal control and definition" of all "aspect[s] of tribal sovereignty." *Three Affiliated Tribes of Fort Berthold Rsvn. v. Wold Eng'g*, 476 U.S. 877, 891 (1986).

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C. NEITHER *YOUNGER* NOR *COLORADO RIVER* BAR THE COURT FROM EXERCISING JURISDICTION OVER THE TRIBE'S CLAIMS.

1. The *Younger* Doctrine Does Not Apply.

Judge Moorman and Findleton invoke *Younger* for the proposition that the Court should allow the State Court proceedings to run their course, but the doctrine is inapposite. Although *Younger* is a doctrine under which federal courts abstain from interfering with ongoing state-court proceedings, it applies only to "civil proceedings involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial functions." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 78–81 (2013). "[A]bstention from the exercise of federal jurisdiction is the exception, not the rule," *id.* at 82, and several courts, including the Ninth Circuit, have held that no sufficiently important state interest is involved when an Indian tribe seeks to enjoin state actions over which the state lacks jurisdiction. *See, e.g.*, *Fort Belknap Indian Cmty. of Fort Belknap Indian Rsrv. v. Mazurek*, 43 F.3d 428, 430 (9th Cir. 1994); *Seneca-Cayuga Tribe of Okla. v. State of Oklahoma ex rel. Thompson*, 874 F.2d 709, 713 (10th Cir. 1989).

As discussed in the Tribe's Renewed Emergency Motion, *Younger* abstention does not apply when the state court lacks jurisdiction in the first place. This is so because, as the Ninth Circuit expressly stated in *Sycuan Band of Mission Indians v. Roache*, "the threshold jurisdictional issue" of whether a state court has jurisdiction to begin with is a "question of federal, not state law," and a state "can have no legitimate interest" in intruding on another tribunal's exclusive jurisdiction. 54 F.3d 535, 541 (9th Cir. 1994); *accord, e.g.*, *Gartrell Const. Inc. v. Aubry*, 940 F.2d 437, 441 (9th Cir. 1991) (emphasizing that "[n]o significant state interest is served where the state law is preempted by federal law and that preemption is 'readily apparent'" because, in such a case, "the state tribunal is acting beyond its authority and *Younger* abstention is not required"); *Champion Int'l Corp. v. Brown*, 731 F.2d 1406 (9th Cir. 1984) (similar). *Younger* abstention, therefore, is "not appropriate in a case in which a state tribunal is acting beyond its authority." *Sycuan*, 54 F.3d at 541.

Younger does not apply to this case because, as raised in the Tribe's Motion for Preliminary Injunction [Doc. 9 at 19–24], Findleton's claims arise out of conduct occurring exclusively on tribal land, and Congress has not authorized the State Court to exercise jurisdiction—points Findleton and Judge Moorman do not dispute. *See Alvarado*, 509 F.3d at 1016 ("[For a state court to have] subject

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matter jurisdiction in an action against a sovereign, in addition to a waiver of sovereign immunity, there must be statutory authority vesting the [state] court with subject matter jurisdiction."). It is also "readily apparent" that the "state tribunal is acting beyond its authority," such that *Younger* does not apply. *See Gartrell Const.*, 940 F.2d at 441. Indeed, the State Court's conclusion that it has subject-matter jurisdiction is based on the reasoning, which the Ninth Circuit repeatedly rejected, that "[w]hen a tribe waives sovereign immunity it, in effect, consents to state court jurisdiction." Ex. I to Verif. Compl. [Doc. 1-2] at 125. This contravenes the Ninth Circuit's unequivocal statement that "the absence of immunity does not establish the presence of subject matter jurisdiction." *Alvarado*, 509 F.3d at 1016; *accord, e.g.*, *U.S. v. Park Place Assoc., Ltd.*, 563 F.3d 907, 923 (9th Cir. 2009) ("We have occasionally 'mistakenly equate[d] sovereign immunity with lack of subject matter jurisdiction.' Although the concepts are related, sovereign immunity and subject matter jurisdiction present distinct issues." (citation omitted)). Thus, because the State Court plainly lacks subject-matter jurisdiction, *Younger* abstention does not apply.

2. The *Colorado River* Doctrine Does Not Apply.

There is no merit to Judge Moorman's and Findleton's assertions that the *Colorado River* doctrine applies because this case "presents difficult questions of state law bearing on policy problems of substantial public import." Moorman Mot. [Doc. 95] at 14. According to Judge Moorman, the State Court "is making decisions on jurisdiction over contractual obligations between Native American tribes and non-Native Americans within the state's borders." *Id.* Judge Moorman further asserts that "Californians and tribes need to know . . . whether the state will enforce sovereign immunity waiver clauses," and she implies that *Colorado River* abstention is proper because the State Court purportedly has "concurrent jurisdiction" over Findleton's claims. *Id.* at 13–14. Contrary to Judge Moorman's assertions, whether the State Court has jurisdiction and will recognize sovereign immunity clauses are matters of federal law. The State Court does not have any jurisdiction whatsoever over Findleton's claims.

The State Court has no interest in deciding whether it has jurisdiction over Findleton's claims (and claims like his) because, as mentioned, that matter is for Congress alone to decide. *See, e.g.*,

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Alvarado, 509 F.3d at 1016 ("[For a state court to have] subject matter jurisdiction in an action against a sovereign, in addition to a waiver of sovereign immunity, there must be statutory authority vesting the [state] court with subject matter jurisdiction."). And Congress decided the issue when it declined to vest the State Court with subject-matter jurisdiction in enacting and later amending 28 U.S.C. § 1360. *See Bryan v. Itasca Cnty.*, 426 U.S. 373, 388 (1976) (observing that "any conferral of state jurisdiction over the tribes themselves" is "notably absent" from 28 U.S.C. § 1360). Moreover, Judge Moorman's assertions that Findleton's dispute is one arising "within the state's borders" and the State Court has "concurrent jurisdiction" over it ignore the Tribe's sovereignty and the Tribal Court's legitimacy and ignores that the activities giving rise to the suit exclusively occurred within the federally recognized borders of the Tribe's reservation. The Tribal Court, and not the State Court, has jurisdiction over Findleton's claims, which involve a transaction exclusively on the Coyote Valley Reservation, not in California. *See Iowa Mut. Ins. Co.*, 480 U.S. at 18 (stating that "[c]ivil jurisdiction over" "the activities of non-Indians on reservation lands" "presumptively lies in the tribal courts unless affirmatively limited by a specific treaty provision or federal statute"). This alone defeats application of *Colorado River*, in which the Supreme Court expressly stated that dismissal under abstention principles "clearly would have been inappropriate if the state court had no jurisdiction." 424 U.S. at 809.

Also misleading and incorrect is Judge Moorman's argument regarding recognition of "sovereign immunity waiver clauses." Moorman Resp. [Doc. 51] at 13. As discussed in the Tribe's Motion for Preliminary Injunction, the clauses at issue here state that the Tribe *does not* waive sovereign immunity, Mot. [Doc. 8] at 17–19, and it is misleading to characterize them as "sovereign immunity waiver clauses." In any event, there is no need for the State Court to provide additional clarity on the interpretation and enforcement of sovereign immunity waivers because the U.S. Supreme Court has already done so: "*It is settled* that a waiver of sovereign immunity 'cannot be implied but must be unequivocally expressed," *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978) (emphasis added) (quoting *United States v. Testan*, 424 U.S. 392, 399 (1976)), and a sovereign's "consent to be sued 'must be construed strictly in favor of the sovereign' and not 'enlarge[d] . . . beyond what the language requires,'" *United States v. Nordic Village Inc.*, 503 U.S. 30, 34 (1992) (citations omitted) (third

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alteration original). And, the Tribal Court, the court with subject-matter jurisdiction over the matter, found that no waiver of the Tribe's soverign immunity exists as to Findleton's claims. The Court should follow the Tenth Circuit's lead in *Lawrence II* and reject the argument that *Colorado River* abstention applies here. *See Lawrence II*, 22 F.4th at 907 n.17.

D. THE ANTI-INJUNCTION ACT DOES NOT PRECLUDE THE COURT FROM EXERCISING JURISDICTION OVER THE TRIBE'S CLAIMS, INCLUDING ITS CLAIMS FOR INJUNCTIVE RELIEF.

The Anti-Injunction Act does not apply here because the Tribe's request for injunctive relief falls squarely within the Act's "necessary in aid" exception. As mentioned above, all "aspect[s] of tribal sovereignty " are subject to "plenary federal control and definition," *Three Affiliated Tribes*, 476 U.S. at 891, and as described in the Tribe's Renewed Emergency Motion [Doc. 34], the Ninth Circuit and courts in other circuits conclude that the Anti-Injunction Act does not apply when an injunction is necessary to preserve federal jurisdiction, *e.g. Sycuan Band of Mission Indians v. Roache*, 54 F.3d 535, 540 (9th Cir. 1994); *Bowen v. Doyle*, 880 F. Supp. 99, 130 (W.D.N.Y. 1995); *Tohono O'odham Nation v. Schwartz*, 837 F. Supp. 1024, 1028 (D. Ariz. 1993). The "necessary in aid" exception to the Anti-Injunction Act applies when, as here, an injunction is required to prevent a state court from interfering with federal jurisdiction over tribal matters.

Representative is *Pueblo of Santa Ana v. Nash*, in which the court invoked Ninth Circuit precedent to explain that the "necessary in aid" exception "applies to preserve the integrity of tribal claims and/or tribal sovereignty." 854 F. Supp. 2d 1128, 1142–43 (D.N.M. 2012); *accord White Mtn. Apache Tribe v. Smith Plumbing Co., Inc.*, 856 F.2d 1301, 1304 (9th Cir. 1988) (concluding that the Act "does not bar [a] Tribe's request for injunctive relief" against state court proceedings because "[t]he district court has jurisdiction to preserve the integrity of tribal claims"). Likewise, in *Bowen v. Doyle*, the court observed that the "necessary in aid" exception "has been expressly held to permit Indian tribes to bring federal court suits to enjoin state court proceedings where the threshold issue is whether the state court has jurisdiction over the subject matter of the dispute." 54 F.3d at 540. And in *Tohono O'odham Nation*, the court concluded that, because of the "necessary in aid" exception, the Anti-Injunction Act did not prohibit the court from *permanently enjoining* state court proceedings in which a

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non-Indian brought a claim for breach of contract arising from a housing project on tribal land. 837 F. Supp. at 1028.

As also considered in the Tribe's Renewed Emergency Motion [Doc. 34], the district court invoked the Anti-Injunction Act in dismissing the Ute Tribe's claims and denying its request to enjoin the concurrent state-court proceedings. *Ute Indian Tribe of the Uintah and Ouray Rsrv'n v. Lawrence*, 289 F.Supp.3d 1242, 154–58 (D. Utah, 2018). The Tenth Circuit reversed and ordered the court to "exercise its original jurisdiction . . . and decide the Tribe's request for injunctive relief against the state court proceedings." *Ute Indian Tribe of Uintah & Ouray Reservation v. Lawrence*, 2:16-CV-00579, 2018 WL 941720, at *1 (D. Utah Feb. 17, 2018). Acting pursuant to the Tenth Circuit's instructions, the district court invoked the "necessary in aid" exception to the Anti-Injunction Act and enjoined the state-court proceedings:

> Typically, this court would not enjoin the State court from proceeding because that sovereign has concluded it has jurisdiction, but the unique circumstances of three sovereigns contending for jurisdiction in this action and related litigation demand it. . . This court has the unique authority to determine jurisdiction between the State and the Tribe. . . . To aid in the court's jurisdiction, this court ***necessarily must enjoin the State court proceedings*** pursuant to its authority under [28 U.S.C. §] 1362 and the Anti-Injunction Act.

Id. at *2–3 (emphasis added). The Tenth Circuit's subsequent opinion granting the Ute Tribe a *permanent* injunction against the state-court proceedings underscores the district court's conclusion that the Anti-Injunction Act does not apply. *Lawrence II*, 22 F.4th at 909; *see also id.* at 900 n.17 ("[T]his case does not present the 'exceptional circumstances' required to abandon our duty to 'adjudicate a controversy properly before [us].'" (alteration original) (quoting *Colo. River*, 424 U.S. at 813). This outcome is consistent with the Ninth Circuit's reasoning in *Smith Plumbing Co.* that the Act "does not bar [a] Tribe's request for injunctive relief" against state court proceedings because "[t]he district court has jurisdiction to preserve the integrity of tribal claims." 856 F.2d at 1304.

The "necessary in aid" exception forecloses application of the Act. At its core, this case involves conflicting orders from the State Court and Tribal Court, and the aim of the Tribe's claims and request for injunctive relief is to protect the Tribe's sovereignty and sovereign immunity. Thus, the Act's "necessary in aid" exception applies because this Court "has jurisdiction to preserve the integrity of tribal claims," *Smith Plumbing*, 856 F.2d at 1304, and because the integrity of the Tribe's claims will be lost

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without injunctive relief. The Court should reject Defendants' arguments to the contrary.

E. THE CLAIM FOR RECOGNITION AND ENFORCEMENT OF THE TRIBAL COURT'S DOMESTICATION ORDER IS NOT SUBJECT TO DISMISSAL.

Although Judge Moorman's and Findleton's Motions fail for the reasons set forth above, it bears emphasizing that both Defendants conflate all of the Tribal Court's orders in asserting that the SAC is subject to dismissal under Fed. R. Civ. P. 12. This is improper because the permanent injunction the Tribal Court entered on April 6, 2019 (the "Second Permanent Injunction"), of which the Tribe seeks recognition and enforcement, pertains to matters that are not at issue in the State Court Proceedings, including whether Findleton is obligated to comply with the Coyote Valley Enforcement of Judgments Ordinance, No. CV-TC-12-14-17-01 (the "Judgements Ordinance"). Ex. T to SAC [Doc. 92] *passim*; *see also* 1st Am. Compl. [Doc. 26] at ¶¶ 161–166 (seeking recognition and enforcement of the Second Permanent Injunction). The same is true of the temporary restraining order the Tribal Court entered against Savings Bank on January 21, 2022 (the "Tribal Court TRO"). *See* SAC [Doc. 92] at ¶¶ X–X (seeking recognition and enforcement of the Tribal Court TRO).

The Second Permanent Injunction and Tribal Court TRO are based on the Judgments Ordinance, which governs "the enforcement of judgments against, and garnishments of assets belonging to, the Tribe, its Tribal Entities, its members, and the assets of any Person doing business, or having assets, on the [R]eservation." Ex. T to Compl. [Doc. 1-2] at 3. The Judgments Ordinance also governs "the garnishment of assets of the Tribe and Tribal Entities, whether those assets are located on or off the [R]eservation." *Id.* As the Tribal Court explained, "the [Judgments] Ordinance lays out a roadmap for the enforcement of final judgments against the Tribe and its Entities and spells out a clear path a Judgment Creditor holding a Foreign Judgment must follow to enforce such a judgment." *Id.* Among other things, the Judgments Ordinance vests the Tribal Court with "exclusive jurisdiction over the execution of a judgment on any property (real or personal) within the boundaries of the [Tribe's] Reservation, and over any property, regardless [of] where located, of the Tribe and Tribal Entities." *Id.* Moreover, the Judgments Ordinance requires a judgment creditor to "'domesticate' the foreign judgment in Tribal Court by petitioning for a Writ of Execution." *Id.*

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Pursuant to the Judgments Ordinance, the Second Permanent Injunction permanently enjoins Findleton from "taking any action to perfect a lien, levy, or garnishment on the Tribe's personal property, or engag[ing] in any other action to collect any Foreign Judgment, without first moving to domesticate such judgment in the Tribal Court pursuant to . . . [the Judgments] Ordinance." *Id.* at 17. Likewise, the Tribal Court TRO prohibits Savings Bank "from garnishing the funds in any of the Tribe's accounts held at [Savings] Bank, inclusive of the account ending in 7444, until further notice from th[e] [Tribal] Court." Ex. BB to 1st Am. Compl. [Doc. 26-1] at 2. These orders are consistent with Findleton's and Savings Bank's contracts with the Tribe, by which Findleton and Savings Bank consented to application of the Tribe's laws and the Tribal Court's jurisdiction. *See* 1st Am. Compl. [Doc. 26] at ¶¶ 24–29 (Findleton); Ex. B to Compl. [Doc. 1-2] at § 18.1.2 (same); PI Mot. [Doc. Emergency Mot. [Doc. 27] at 7 (savings bank); Renewed Emergency Mot. [Doc. 34] at 8 (same); PI Mot. Reply [Doc. 58] at 6 (same). It bears emphasizing that, on a motion to dismiss, the Court must accept these allegations as true and view them in the light most favorable to the Tribe. *See, e.g.*, *Lee*, 250 F.3d at 679.

Viewed through that lens, whether Findleton and Savings Bank are required to comply with the Judgments Ordinance is not at issue in the State Court proceedings, and so recognition and enforcement of the Second Permanent Injunction and Tribal Court TRO does not implicate abstention principles under *Rooker-Feldman*, *Younger*, or *Colorado River*. Thus, although Judge Moorman's and Findleton's Motions fail for the reasons set forth above, this is particularly so with respect to the Second Permanent Injunction and Tribal Court TRO. The Court should reject Judge Moorman's and Findleton's assertions to the contrary and deny the Motions.

IV. CONCLUSION

For the reasons above, the Tribe respectfully requests that the Court deny Judge Moorman's and Findleton's Motions.

DATED this 6th day of October, 2022.

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