Karla J. Kraft, State Bar No. 205530
kkraft@stradlinglaw.com
Sean Thomas Lobb, State Bar No. 324213
stlobb@stradlinglaw.com
STRADLING YOCCA CARLSON & RAUTH,
A Professional Corporation
660 Newport Center Drive, Suite 1600
Newport Beach, CA 92660-6422
Telephone: (949) 725-4000
Facsimile: (949) 725-4100

Attorneys for Defendant
The Honorable ANN C. MOORMAN,
Judge of the Superior Court of California,
County of Mendocino

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

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

Plaintiff,

vs.

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. 4:22-cv-00607-JST
Assigned to Hon. Jon S. Tigar

DEFENDANT JUDGE MOORMAN'S NOTICE OF MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

[Filed concurrently with Declaration of Sean Thomas Lobb, Request for Judicial Notice, and Proposed Order]

[Related to ECF No. 91]

Date: December 15, 2022
Time: 2:00 p.m.
Judge: Hon. Jon S. Tigar
Location: Remote via ZOOM
https://cand-uscourts.zoomgov.com/j/1619067542?pwd=YktBS2VoNm1JYW9xMS91dk9rUzZudz09
Webinar ID: 161 906 7542
Password: 959588

Complaint Filed: January 31, 2022
Trial Date: Not set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 15, 2022 at 2:00 p.m., before the Honorable Jon S. Tigar, at Courtroom 6 at the above-captioned Court, located at 130 Clay Street, Oakland, CA 94612 (by remote Zoom appearance), defendant the Honorable Ann C. Moorman, Judge of the Superior Court of California, County of Mendocino ("Judge Moorman") will move the Court for an order dismissing the Second Amended Complaint (ECF No. 91) without leave to amend under Federal Rule of Civil Procedure 12(b)(1).

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of Sean Thomas Lobb in support, the Request for Judicial Notice, and all pleadings, records, and other documents on file with the Court in this action, and upon such oral argument as may be presented at, before, and after the hearing of this Motion.

Dated: September 16, 2022

STRADLING YOCCA CARLSON & RAUTH, P.C.

By: */s/ Karla J. Kraft*
Karla J. Kraft
Sean Thomas Lobb
Attorneys for Defendant
The Honorable Ann C. Moorman,
Judge of the Superior Court of California,
County of Mendocino

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

I. INTRODUCTION

Plaintiff Coyote Valley Band of Pomo Indians ("Plaintiff") has spent over a decade in California state court litigating its dispute concerning a construction contract with defendant Robert Findleton ("Findleton"). Now, because Plaintiff is unhappy with the result obtained in state court, Plaintiff seeks federal injunctive relief against pending state court judgments. This relief is sought in relation to all defendants, including defendant the Honrable Ann C. Moorman, Judge of the Superior Court of California, County of Mendocino ("Judge Moorman"). In August, the Court dismissed the First Amended Complaint ("FAC") for lack of subject matter jurisdiction based on the *Rooker-Feldman* doctrine but granted Plaintiff leave to amend "solely to correct the deficiencies identified in [the] order." (ECF No. 89 at 7.) Plaintiff's newly filed Second Amended Complaint ("SAC") adds new causes of action against other defendants but is otherwise substantively the same as the FAC and fails to correct the deficiencies identified by the Court. (ECF No. 91.)

This Court still lacks jurisdiction over this dispute under multiple doctrines established by the United States Supreme Court: the *Rooker-Feldman* doctrine, *Younger* Abstention, the *Colorado River* doctrine, and judicial immunity. Additionally, Plaintiff's claims are barred by the Eleventh Amendment and the Anti-Injunction Act. For each and all of these reasons, Plaintiff's SAC must be dismissed for lack of subject-matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). Plaintiff has made three attempts to file a complaint that can demonstrate subject matter jurisdiction, and has failed. Further amendment would be futile, thus the SAC should be dismissed without leave to amend.

II. FACTUAL BACKGROUND

This case arises out of a long-running dispute concerning a construction contract for a casino and a related equipment rental contract between Plaintiff and Findleton. The lengthy history of that dispute is chronicled in *Findleton v. Coyote Valley Band of Pomo Indians*, 69 Cal. App. 5th 736, 741-52 (2021). (Decl. of Sean Thomas Lobb, **Ex. A**.) Initially, Findleton filed suit in the state court in March 2012. *Findleton*, 69 Cal. App. 5th at 742. Plaintiff sought dismissal for lack of jurisdiction based on tribal sovereign immunity. *Id.* The state trial court

dismissed the case for lack of jurisdiction, and the California Court of Appeal reversed. *Id.* at 743. Since then, the state court has actively supervised this case, spending significant judicial time and resources during the last decade. *Id.* at 742-54.

In the many years that the state court litigation has been pending, Plaintiff has (a) refused to comply with orders to mediate and arbitrate, (b) refused to pay awards of attorney fees on appeal, (c) refused to comply with orders to produce documents, (d) refused to cooperate in the orderly examination of debtors to effectuate collection of valid state court judgments, (e) refused to pay sanctions awards, (f) refused to comply with orders of the state appellate court, (g) had the rare disentitlement doctrine applied against it based on the Plaintiff's "flagrant, repeated, and continuous" violation of state court orders, and (h) attempted to thwart the state court's orders by enlisting the aid of a tribal court that did not previously exist, among other things. *See id.* at 740-54.

Judge Moorman was assigned to the underlying state court case in January 2020. (Decl. of Sean Thomas Lobb, **Ex. B**.) The state court case is still pending before Judge Moorman. (*Id.*)

The FAC in this case was filed on February 3, 2022 (ECF No. 26). The Court dismissed the FAC because "this case falls within the *Rooker-Feldman* doctrine and [the Court] lacks subject matter jurisdiction over this case." (ECF No. 89 at 7.) On September 2, 2022, Plaintiff filed the SAC. (ECF No. 91.) The SAC adds two short causes of action for breach of contract and unjust enrichment related to the underlying state court litigation, neither of which are asserted against Judge Moorman. (ECF No. 93 at 40-41.) Additionally, the SAC adds some background information about the history of the tribal constitution and tribal court system, which does not impact the Court's conclusion that the *Rooker-Feldman* doctrine precludes federal jurisdiction of this matter. (ECF No. 93 at 6-13, 18-21.) Otherwise, the SAC is substantially identical to the FAC.

III. LEGAL STANDARD

"If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3). A defendant may raise the defense of lack of subject matter jurisdiction by motion under Federal Rule of Civil Procedure 12(b)(1). The

plaintiff always bears the burden of establishing subject matter jurisdiction. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994).

IV. ARGUMENT

A. As Previously Held, The Court Lacks Jurisdiction Under The *Rooker-Feldman* Doctrine

Under the *Rooker-Feldman* doctrine, a federal district court does not have jurisdiction over "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005); *see Unified Data Servs., LLC v. FTC,* 39 F.4th 1200, 1207 n.6 (9th Cir. 2022); *United States Bank Nat'l Ass'n v. New*, No. 13-cv-03418-JST, 2013 U.S. Dist. LEXIS 197467, at *2 (N.D. Cal. Dec. 23, 2013) (holding court lacked subject-matter jurisdiction under *Rooker-Feldman*). The *Rooker-Feldman* doctrine prohibits federal district courts from acting as appellate courts over state court judgments. *See Chabrowski v. Cretan*, No. C-12-4443 EMC, 2013 U.S. Dist. LEXIS 25588, at *6 (N.D. Cal. Feb. 21, 2013) (granting motion to dismiss under *Rooker-Feldman* doctrine where "the gist of Plaintiff's claim is a challenge to Defendant's issuance of injunctive relief in a state court action . . . [b]y bringing the matter before this Court, Plaintiff is essentially seeking an appeal of that decision"). "The United States District Court, as a court of original jurisdiction, has no authority to review the final determinations of a state court in judicial proceedings." *Worldwide Church of God v. McNair*, 805 F.2d 888, 890 (9th Cir. 1986).

As previously held by this Court and as Plaintiff impliedly concedes, this case fits squarely within the *Rooker-Feldman* criteria. (ECF No. 89 at 4, 7.) Plaintiff commenced this case after the California Court of Appeal ruled against Plaintiff on its tribal sovereign immunity claim. And Plaintiff claims injury stemming from that ruling. Plaintiff is now asking this Court to reject that decision and enjoin the relief that the state court granted to defendant Findleton. This constitutes a "horizontal appeal" of those state court decisions, which the *Rooker Feldman* doctrine "squarely bars." *See Javidi v. Superior Court*, No. 21-cv-05393 SBA, 2022 U.S. Dist.

LEXIS 117812, at *7 (N.D. Cal. July 5, 2022) (dismissing complaint filed against state court judges under *Rooker-Feldman* doctrine).

The United States Supreme Court is the only federal court with appellate jurisdiction over state courts. *C & L Enters. v. Citizen Band Potawatomi Indian Tribe of Okla.*, 532 U.S. 411, 414 (2001) demonstrates the appropriate procedure for cases like this. There, the case involved the question of whether a tribe waived its sovereign immunity. *Id.* The tribe first raised a sovereign immunity argument in a state trial court. *Id.* at 416. The trial court ruled against the tribe, and the tribe appealed that decision to the state civil court of appeals. *Id.* The state appellate court upheld the trial court's decision, and the tribe then filed a petition for writ of certiorari with the U.S. Supreme Court. *Id.* The petition was granted, and the U.S. Supreme Court performed its duty as appellate court over a state court decision on a federal issue. *Id.* at 417.

C & L Enters. mandates the process contemplated by the *Rooker-Feldman* doctrine. 532 U.S. at 414-17. When a state court issues a decision on a federal issue—such as denying a tribe's claim of sovereign immunity—a federal district court lacks jurisdiction to review that decision. *See Rosebud Sioux Tribe v. Duwyenie*, No. CV 09-1660-PHX-MHM, 2010 U.S. Dist. LEXIS 60679, at *9 (D. Ariz. June 17, 2010) (granting state court judge's motion to dismiss complaint where it "was only after the [state court] had ruled on the matter that the [Tribe] filed this action, seeking a de facto appellate ruling that the [state court] impinged on its sovereign immunity. This Court is not the proper forum for such a request . . . [e]ntertaining the Tribe's claim would necessarily require the Court to review and invalidate the state court decision, a result that is inconsistent with the *Rooker-Feldman* doctrine"). The state court's decision is subject to review only by the U.S. Supreme Court. Thus, this Court lacks jurisdiction over Plaintiff's claims under the *Rooker-Feldman* doctrine.

This Court correctly held that the *Rooker-Feldman* doctrine applied to the FAC and that this case must be dismissed. (ECF No. 89 at 7.) The SAC adds some background information about the history of Plaintiff's tribal constitution and tribal court system, but this information in no way impacts the Court's analysis on the *Rooker-Feldman* doctrine. (*See* ECF No. 93 at 6-13, 18-21.) As such, Plaintiff has failed to "correct the deficiencies identified" in the Court's order

dismissing the FAC (ECF No. 89 at 7), and the SAC should be dismissed without leave to amend.

B. The Court Also Lacks Jurisdiction Because Of The *Younger* Abstention Doctrine, The *Colorado River* Doctrine, Judicial Immunity, Eleventh Amendment Immunity, And The Anti-Injunction Act

In its order dismissing the FAC, the Court did not previously reach the subject matter jurisdiction arguments discussed below, but each of them still apply as independent, additional grounds for dismissing the SAC. Further, Plaintiff's newly filed SAC does not remedy any of the below subject matter jurisdiction issues.

1. The *Younger* Abstention Doctrine Applies

In *Younger v. Harris*, 401 U.S. 37, 44 (1971), the U.S. Supreme Court "espouse[d] a strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances." *See Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982). *Younger* abstention is appropriate in civil cases "when the state proceedings (1) are ongoing, (2) are quasi-criminal enforcement actions or involve a state's interest in enforcing the orders and judgments of its courts, (3) implicate an important state interest, and (4) allow litigants to raise federal challenges." *See ReadyLink Healthcare, Inc. v. State Compensation Ins. Fund*, 754 F.3d 754, 759 (9th Cir. 2014). If those "threshold elements" are met, the court then considers "whether the federal action would have the practical effect of enjoining the state proceedings and whether an exception to *Younger* applies." *See id.* When a case is one where the *Younger* doctrine applies, the district court has no discretion; it must dismiss. *Ward v. Palmer*, No. 21-cv-00530-JST, 2022 U.S. Dist. LEXIS 131035, at *6 (N.D. Cal. July 22, 2022) (dismissing complaint under *Younger* abstention doctrine).

This case meets the *Younger* elements. *See Matrai v. Hiramoto,* No. 20-cv-05241-MMC, 2020 U.S. Dist. LEXIS 234654, at *19 (N.D. Cal. Dec. 14, 2020) (dismissing case with prejudice under *Younger* abstention doctrine). First, the proceedings in the California state court are ongoing. The case was filed in 2012, has been up and down to the California Court of Appeal multiple times, and currently is pending in the state court before Judge Moorman. *Findleton*, 69

Cal. App. 5th at 741-52. A case management conference was held this week on September 13, 2022. (SAC at 25.) Thus, the underlying case is still ongoing.

Second, this case involves California's interest in enforcing the orders and judgments of its courts. "The second *Younger* abstention factor is met where the order is 'at the core of California's court system, implicating the State's interest in enforcing the orders and judgment of its courts. Court orders involve the administration of the state judicial process—for example, an appeal bond requirement, a civil contempt order, or an appointment of a receiver.'" *Soderstrom v. Ocampo*, No. SACV 19-422 JVS (KESx), 2019 U.S. Dist. LEXIS 227802, at *13 (C.D. Cal. June 17, 2019) (quoting *ReadyLink*, 754 F.3d at 759)). Here, this element is satisfied because any ruling issued by this Court on the question of declaratory relief would necessarily interfere with previous orders issued by the California Court of Appeal and Superior Court. *See Hueter v. Kruse,* No. 21-00226 JMS-KJM, 2021 U.S. Dist. LEXIS 241738, at *56 (D. Haw. Dec. 17, 2021) (second *Younger* element met where "any ruling issued by this court on the question of declaratory relief would necessarily interfere with previous orders issued" in the underlying case).

Third, this case involves important state interests. For instance, *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 4 (1987) involved a dispute over an alleged breach of contract with large dollar amounts at stake. In determining that the federal courts should have abstained from intervention, the U.S. Supreme Court held:

> There is little difference between the State's interest in forcing persons to transfer property in response to a court's judgment and in forcing persons to respond to the court's process on pain of contempt. Both . . . involve challenges to the processes by which the State compels compliance with the judgments of its courts. Not only would federal injunctions in such cases interfere with the execution of state judgments, but they would do so on grounds that challenge the very process by which those judgments were obtained. So long as those challenges relate to pending state proceedings, proper respect for the ability of state courts to resolve federal questions presented in state-court litigation mandates that the federal court stay its hand.

Id. at 13-14.

California has an interest in enforcing contracts entered within its borders. An injunction by this Court would interfere with the state court's ability to enforce obligations between

individuals and entities within the state. Abstention honors the "notion of comity" and "proper respect for state functions." *Younger*, 401 U.S. at 44. This Court should abstain under the principles of *Younger*.

Fourth, the State of California provides adequate forums for Plaintiff to raise its issues and allows litigants to raise federal challenges. Only "an 'opportunity to present . . . federal claims in the state proceedings' is required" under this element. *See Matrai,* 2020 U.S. Dist. LEXIS 155223, at *6 (quoting *Juidice v. Vail*, 430 U.S. 327, 337 (1977)). Indeed, even "when a litigant has not attempted to present his federal claims in related state-court proceedings, a federal court should assume that state procedures will afford an adequate remedy, in the absence of unambiguous authority to the contrary." *See Pennzoil*, 481 U.S. at 15.

Here, Plaintiff raised the issue of tribal sovereign immunity, and Plaintiff was fully heard by the state trial court and California Court of Appeal. Where there is a final, appealable order, Plaintiff may be able to appeal (if necessary) to the California appellate courts and have a full opportunity to reargue the issues. *See Shingle Springs Band of Miwok Indians v. Sharp Image Gaming, Inc.,* No. 2:10-cv-1396 FCD GGH, 2010 WL 4054232, at *3 (E.D. Cal. Oct. 15, 2010) (bringing the case to federal court after "the California Supreme Court dissolved the stay and denied the petition" to overturn the Superior Court's decision); *White Mountain Apache Tribe v. Smith Plumbing Co., Inc.,* 856 F.2d 1301, 1303 (9th Cir. 1988) (bringing case to federal court after "[t]he Arizona Supreme Court granted review and a divided court . . . agreed with the court of appeals that a state court had jurisdiction to decide the merits of [the] case"). Where appropriate, Plaintiff may also have the opportunity to ask the U.S. Supreme Court to address the issues if necessary.

2. The *Colorado River* Doctrine Also Applies

In *Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 800, 814-16 (1976) the U.S. Supreme Court identified three general categories of abstention: "cases presenting a federal constitutional issue which might be mooted or presented in a different posture by state court determination of pertinent state law," "[cases] where there have been presented difficult questions of state law bearing on policy problems of substantial public import whose importance

transcends the result in the case then at bar," and "[cases] where, absent bad faith, harassment or a patently invalid state statute, federal jurisdiction has been invoked for the purpose of restraining state criminal proceeding." *See Montanore Minerals Corp. v. Bakie,* 867 F.3d 1160, 1168 (9th Cir. 2017).

This case presents difficult questions of state law bearing on policy problems of substantial public import. The state is making decisions on jurisdiction over contractual obligations between Native American tribes and non-Native Americans within the State's borders. Tribes throughout California engage in commercial transactions with non-Native American citizens and corporations. Californians and the tribes need to know, before engaging in contracts, whether the state will enforce sovereign immunity waiver clauses. This is an issue that could potentially be litigated time and again in the federal courts, because each case will involve the interpretation of a specific contract. Rather than repeatedly litigating the issue in federal courts, the federal courts should defer to the state courts, which can interpret each contract as appropriate under applicable state law.

Further, "the state question itself need not be determinative of state policy. It is enough that exercise of federal review . . . would be disruptive of state efforts to establish coherent policy with respect to a matter of substantial public concern." *Id.* at 814. This case should be dismissed to allow the state courts to continue to rule on this important public issue. *See Gold Coast Search Partners LLC v. Career Partners, Inc.*, No. 19-cv-03059-EMC, 2019 U.S. Dist. LEXIS 155317, at *2 (N.D. Cal. Sep. 11, 2019).

If this Court were to determine that this case does not present a difficult state law question bearing on policy of substantial public import, notably *Colorado River* allows for abstention even in cases falling outside of the three general categories. The Supreme Court has held:

> Although this case falls within none of the abstention categories, there are principles . . . which govern in situations involving the contemporaneous exercise of concurrent jurisdictions . . . . These principles rest on considerations of "[wise] judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation."

Id. at 817 (quoting *Kerotest Mfg. Co. v. C-O-Two Fire Equipment Co.*, 342 U.S. 180, 183 (1952)). The Court identified three non-exclusive factors for courts to consider when making dismissal decisions in concurrent jurisdiction cases: "the inconvenience of the federal forum, the desirability of avoiding piecemeal litigation, and the order in which jurisdiction was obtained by the concurrent forums." *Id.* at 818 (citations omitted).

Here, the underlying case shows the problems with piecemeal litigation, *i.e.*, the federal courts weighing in on the matter of the state court's jurisdiction over Plaintiff. Findleton filed suit in the state court in March 2012. *Findleton*, 69 Cal. App. 5th at 742. Plaintiff objected for lack of jurisdiction based on sovereign immunity. *Id.* The state trial court dismissed the case for lack of jurisdiction, and the California Court of Appeal reversed. *Id.* at 743. Since then, the state court has actively supervised this case, spending significant judicial time and resources for a decade. *Id.* at 742-54.

Plaintiff brought this action in federal court only after facing substantial sanctions for its repeated and deliberate failure to comply with the state court's orders. *Id.* Plaintiff waited over five years to file this action after the state court denied its sovereign immunity argument. *Id.* Aside from arbitration or mediation, the California courts will hear all issues relevant to the applicable contract between Plaintiff and Findleton. This Court should defer to the state courts to avoid different provisions of the contract being litigated in different forums. It is evident that "wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation" weigh heavily in favor of this Court deferring to the state court.

3. Judicial Immunity Precludes Plaintiff's Claims

Judicial immunity bars Plaintiff's action against Judge Moorman. The judges of this country have long been protected by judicial immunity, which allows judges to exercise their authority without fear of lawsuits.

In *Stump v. Sparkman*, 435 U.S. 349, 355 (1978), the U.S. Supreme Court recognized that "a judicial officer, in exercising the authority vested in him, should be free to act upon his own convictions, without apprehension of personal consequences to himself. For that reason . . .

judges of courts of superior or general jurisdiction are not liable to civil action for their judicial acts." *See Martin v. State Bar of Cal*., No. 21-cv-01451-JST, 2021 U.S. Dist. LEXIS 254182, at *10 (N.D. Cal. Dec. 15, 2021) (granting motion to dismiss complaint filed against state judicial officers on judicial immunity grounds); *Koshnick v. Lynott,* No. 20-cv-13818 (JXN) (ESK), 2021 U.S. Dist. LEXIS 199009, at *21 (D. N.J. Oct. 15, 2021) (same); *Sanai v. McDonnell*, 2018 U.S. Dist. LEXIS 228226, at *7-9 (C.D. Cal. Aug. 1, 2018) (holding that judicial immunity barred plaintiff's complaint against a judge); *Chabrowski*, 2013 U.S. Dist. LEXIS 25588, at *7 (granting defendant's motion to dismiss based on judicial immunity, *Younger* abstention, and *Rooker-Feldman* doctrine).

Judicial immunity from suit is "broad, barring civil liability even where their actions were taken in error or maliciously and corruptly." *Sanai*, 2018 U.S. Dist. LEXIS 228226, at *7. "This absolute immunity insulates judges from charges of erroneous acts or irregular action, even when it is alleged that such action was driven by malicious or corrupt motives, [citation], or when the exercise of judicial authority is 'flawed by the commission of grave procedural errors.'" *In re Castillo*, 297 F.3d 940, 952 (9th Cir. 2002) (quoting *Stump*, 435 U.S. at 359)). More specifically, the text of 42 U.S.C. § 1983 prohibits federal courts from granting injunctive relief against any judicial officers acting in their official capacity "unless a declaratory decree was violated or declaratory relief was unavailable." Declaratory relief has been deemed to be unavailable if the plaintiff demonstrates it lacks "the ability . . . to 'appeal[] the judge's order[]' [Citations]." *Owens v. Cowan*, No. CV 17-03674-FMO (JDE), 2018 WL 1002313, *11 (C.D. Cal. Jan. 17, 2018), *adopted by* 2018 WL 1009268 (C.D. Cal. Feb. 16, 2018); *see Weldon v. Kapetan*, No. 1:17-cv-01536-LJO-SKO, 2018 WL 2127060, at *4 (E.D. Cal. May 9, 2018). And there are only two situations where judges are not immune from civil suit: (1) where their actions were taken in a nonjudicial capacity and (2) where their actions, though judicial in nature, were taken in the absence of all jurisdiction. *See Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (affirming dismissal of action against state judge).

Here, Judge Moorman took the actions at issue in her judicial capacity. And, even if Plaintiff were correct and Judge Moorman's orders were erroneous under the law, this would not

abrogate her judicial immunity. *See Ashelman*, 793 F.3d at 1075 ("Judicial immunity applies however erroneous the act may have been, and however injurious in its consequences it may have proved to the plaintiff.") (internal citations and quotations omitted). Therefore, Judge Moorman is immune from suit for injunctive relief in this case. Judge Moorman must be able to make decisions on cases—without the concern of being sued in federal court to answer for those decisions.

4. Plaintiff's Claims Are Barred By Eleventh Amendment Immunity

The Eleventh Amendment to the U.S. Constitution protects a state from being sued in federal court, unless the state has consented to being sued. *See Krainski v. Nev. ex rel. Bd. of Regents of Nev. Sys. of Higher Educ.,* 616 F.3d 963, 967 (9th Cir. 2010) (internal quotation marks and citations omitted) ("The Eleventh Amendment bars suits against the State or its agencies for all types of relief, absent unequivocal consent by the state. The Eleventh Amendment jurisdictional bar applies regardless of the nature of relief sought and extends to state instrumentalities and agencies.") Eleventh Amendment immunity applies here because Judge Moorman is a state actor in her official capacity as a judicial officer, and California has not consented this lawsuit.

In *Will v. Mich. Dep't of State Police*, 491 U.S. 58, 71 (1989) the Supreme Court held that a suit against a state actor in his or her official capacity is a suit against the state, and such a lawsuit is prohibited under the Eleventh Amendment. Whether the action is against the court as a whole or against an individual judge, it is an action against the state. The state did not consent to suit against it in this case, and consequently, this action is barred. *See Martin*, 2021 U.S. Dist. LEXIS 254182, at *10 (granting motion to dismiss complaint filed against state judicial officers because case was barred by Eleventh Amendment); *Koshnick,* 2021 U.S. Dist. LEXIS 199009, at *15 (holding that state court judges were "cloaked with Eleventh Amendment immunity" and dismissing claims asserted against the judges).

5. Plaintiff's Claims Are Barred By The Anti-Injunction Act

The federal Anti-Injunction Act also bars Plaintiff's claims. The Act states:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. § 2283. Congress adopted this restriction in deference to the federalist nature of our national government. *See Atlantic Coast Line R.R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 285 (1970). Our federal system of parallel state and federal judicial systems would not function if the courts were free to fight each other over control of a particular case. *Id.* at 286. The Supreme Court emphasized that the Act "is an absolute prohibition against enjoining state proceedings, unless the injunction falls within one of [the] three specifically defined exceptions" to the Act. *Id.* The three exceptions to the Act are for injunctions that: (1) Congress has expressly authorized; (2) are necessary in aid of the federal court's jurisdiction; or (3) are necessary to protect or effectuate the federal court's judgments. *Gold Coast Search Partners LLC*, 2019 U.S. Dist. LEXIS 155317, at *10 (citing *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 805 (9th Cir. 2002)).

Nowhere here, however, does Plaintiff provide any basis for the Court to conclude that one of the three exceptions in the Anti-Injunction Act applies. *See Safapou v. Marin Cty. of Cal.*, No. 15-cv-04603-JST, 2015 U.S. Dist. LEXIS 137106, at *3 (N.D. Cal. Oct. 7, 2015) (dismissing case under Anti-Injunction Act where plaintiff failed to provide a basis for the court to conclude an exception to the Act applied). Plaintiff's requested injunctive relief—directed at the power of the state court to adjudicate a pending action filed over ten years ago—falls squarely within the Anti-Injunction Act. *See KAG W., LLC v. Malone,* No. 15-cv-03827-TEH, 2016 U.S. Dist. LEXIS 96156, at *17 (N.D. Cal. July 22, 2016) (denying injunctive relief under the Anti-Injunction Act where no exceptions applied).

First, Plaintiff points to no act of Congress allowing the tribe, after ten years of unsuccessful litigation in state court and deliberate refusal to comply with state court orders, to then seek federal declaratory relief to disrupt orderly proceedings to enforce the judgments. The policy of the federal system in a matter like this is to allow the state proceedings to run their course, with possible right to petition the U.S. Supreme Court for relief upon a final ruling of the

Supreme Court of California. But a federal district court does not sit in direct review of still-pending state proceedings commenced a decade ago.

Second, an injunction is not necessary in aid of the Court's jurisdiction. Instead, there is every reason to dismiss. There is no pending federal action, in rem or otherwise, justifying an exception.

Third, the Court need not enjoin this action to "protect or effectuate its judgments." This recent suit by Plaintiff is the first federal action, and there is no judgment to protect or effectuate at the federal level. There are several pending orders and judgments in the state court. Plaintiff seeks to merely avoid compliance with those valid state court judgments and enforcement of those judgments under California law.

C. Leave To Amend Should Be Denied

The allegations in the SAC cannot be cured to properly allege subject-matter jurisdiction. Because filing a fourth version of this complaint would be futile, dismissal should be without leave to amend. *See Ashelman*, 793 F.2d at 1078 (affirming district court's dismissal of amended complaint with prejudice where allegations against state court judge could not overcome lack of subject-matter jurisdiction); *Javidi*, 2022 U.S. Dist. LEXIS 117812, at *9 (granting motion to dismiss without leave to amend and terminating state court judges as defendants where district court lacked subject matter jurisdiction under *Rooker-Feldman* doctrine).

V. CONCLUSION

For each and all of these reasons, Judge Moorman respectfully requests that the Court dismiss the SAC, without leave to amend.

Dated: September 16, 2022

STRADLING YOCCA CARLSON & RAUTH, P.C.

By: */s/ Karla J. Kraft*
Karla J. Kraft
Sean Thomas Lobb
Attorneys for Defendant
The Honorable Ann C. Moorman,
Judge of the Superior Court of California,
County of Mendocino