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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF IDAHO

STIMSON LUMBER COMPANY,	)	
	)	Case No. 2:22-CV-00367-DCN
Plaintiff,	)	
	)	<b>RESPONSE IN OPPOSITION</b>
vs.	)	<b>TO DEFENDANT’S MOTION</b>
	)	<b>TO DISMISS OR STAY</b>
THE COEUR D’ALENE TRIBE,	)	
	)	
Defendant.	)	
	)	

Plaintiff Stimson Lumber Company (“Stimson”) responds in opposition to Defendant Coeur D’Alene Tribe (the “Tribe”)’s Motion to Dismiss or Stay as follows and additionally incorporates Stimson’s Memorandum and Reply in Support of Motion for Temporary

RESPONSE IN OPPOSITION TO DEFENDANT’S MOTION TO DISMISS OR STAY- 1

Restraining Order and Motion for Preliminary Injunction, and accompany declarations, in support of its argument.

## I. INTRODUCTION

The Tribe's Motion to Dismiss or Stay (the "Tribe's Motion") raises several of the same issues discussed in detail in briefing on Stimson's pending Motion for Temporary Restraining Order and Motion for Preliminary Injunction ("Stimson's Motion"). To increase efficiency and avoid duplicative briefing, Stimson does not repeat those arguments in full but makes specific references to its recent briefing throughout this memorandum.

The Court should deny Stimson's Motion because: (1) this Court has subject-matter jurisdiction because Stimson's complaint raises a federal question; (2) the Coeur d'Alene Tribal Court (the "Tribal Court") does not have jurisdiction over the parties' dispute; and (3) Stimson is not required to exhaust tribal court remedies where jurisdiction is plainly lacking.

### A. **This Court has Subject Matter Jurisdiction Because Stimson's Complaint Raises a Federal Question**

It is well established that the question of whether an Indian tribe can compel non-members to "submit to the civil jurisdiction of a tribal court is one that must be answered by reference to federal law and is a federal question under [28 U.S.C.] § 1331." *National Farmers Union Ins. Co. v. Crow Tribe*, 471 U.S. 845, 853 (1985) (internal quotation marks omitted). (*See also* Docket No. 22, p. 2-3.) Stimson brought this action to defend against the Tribe's improper assertion that the Tribal Court has jurisdiction over this dispute. (*See* Docket No. 9, p. 7.) Contrary to the Tribe's assertions, Stimson's Complaint specifically raised a federal question because it asked this Court to decide the bounds of the Tribal Court's jurisdiction over this ongoing lease dispute by issuing a declaratory judgment. (Docket No. 1, ¶ 20.) The fact that the

Tribe filed an unlawful detainer action against Stimson in the Tribal Court *the next day* only proves the necessity and timeliness of this action. (*Id.*) Ultimately, there is no question that this Court has jurisdiction.

**B. The Tribal Court Does Not Have Jurisdiction over Disputes Relating to the Agreement**

Not only *can* this Court decide the limits of the Tribal Court’s jurisdiction, both the facts and the law support finding that the Tribal Court does not have jurisdiction over Stimson for any disputes relating to the Agreement.

**1. The Tribe Specifically Disclaimed the Jurisdiction of the Tribal Court in the Agreement**

The Agreement’s valid forum-selection clause provides that “[w]ith respect to any Proceeding each party irrevocably submits to the exclusive jurisdiction of the United States District Court for the District of Idaho.” (Docket No. 1, Ex. 1, Section 19.3.2.) Furthermore, “[e]ach Party . . . waives the right to object . . . that such court should not exercise its jurisdiction or should defer to some other judicial or administrative tribunal, whether federal, state or tribal.” (*Id.*) Additionally, the Tribe’s unlawful detainer action is a “proceeding” for purposes of the forum-selection clause because it “relates to” the Agreement. (*Id.*, Section 19.3.1). “[F]orum-selection clauses covering disputes relating to a particular agreement apply to any disputes that reference the agreement or have some logical or causal connection to the agreement.” *Yei A. Sun v. Advanced China Healthcare, Inc.*, 901 F.3d, 1081, 1086 (9th Cir. 2018). (*See also* Docket No. 22, p. 3-4.) The Tribe’s unlawful detainer action has an obvious “logical” and “causal connection to the [A]greement.” Therefore, the forum-selection clause applies and prevents the Tribe from forcing Stimson to litigate in the Tribal Court.

## 2. The Tribe Does Not Have Jurisdiction over Non-Indians on Fee Land

Federal courts have repeatedly held that a tribe “does not possess any inherent sovereign right to regulate nonmembers on non-tribal land, even if the land falls within the boundaries of a reservation.” *Window Rock Unified Sch. Dist. v. Reeves*, 861 F.3d 894, 900 (9th Cir. 2017). While the Mill property may have been “tribal land” at some point in the past, it ceased to be “tribal land” when it was converted into fee simple. (*See* Docket No. 23, Ex. 1-3.) “As a general rule, then, the tribe has no authority itself, by way of tribal ordinance or actions in the tribal courts, to regulate the use of fee land.” *Plains Com. Bank v. Long Fam. Land & Cattle Co.*, 554 U.S. 316, 328-29 (2008) (internal quotation marks omitted). Furthermore, a tribe “cannot unilaterally revive [the land’s] ancient sovereignty, in whole or in part . . . [once a tribe] relinquishe[s] the reins of government [it] cannot regain them through open-market purchases from current titleholders.” *City of Sherrill, N.Y. v. Oneida Indian Nation of N. Y.*, 544 U.S. 197, 202–03 (2005). (*See also* Docket No. 22, p. 5-7.)

Additionally, the Tribe cannot rely on either *Montana* exception because neither applies here. *See Montana v. United States*, 450 U.S. 544, 565 (1981). First, it would contravene the express language of the Agreement to find that Stimson’s lease of the Mill created a “consensual relationship” under the first *Montana* exception. (Docket No. 1, Ex. 1, Section 19.3.2 (“Lessee’s entry into this Agreement shall not be deemed to give rise to a ‘consensual relationship’ as that term would be used for the purpose of alleging Lessor’s jurisdiction over this Agreement.”).) This contract language demonstrates that the parties were well aware of the Tribal Court’s limited jurisdiction and even though the Agreement included other safeguards, they specifically

cut off the one avenue the Tribe could have used to pursue an action in the Tribal Court. (*See also* Docket No. 22, p. 8-9.) A “consensual relationship” is lacking because Stimson specifically withheld consent. Second, Stimson’s continued lease of the Mill does not “threaten” nor does it have a “direct effect on the political integrity, the economic security, or the health or welfare of the [T]ribe.” *Montana*, 450 U.S. at 565. Furthermore, Stimson’s “conduct must do more than injure the [T]ribe, it must imperil the subsistence of the tribal community.” *Plains Com. Bank*, 554 U.S. at 341. That standard is not met here. Rather than imperiling the existence of the Tribe, Stimson’s mill operations have financially benefitted both the Tribe and the tribal community for over 15 years. The Tribe does not suffer any harm from Stimson’s continued operations during the litigation over the parties’ rights under the Agreement. To the contrary, the consistency benefits the Tribe; if Stimson were to leave and take its valuable personal property with it, any other tenant would have to incur (or the Tribe would have to incur) substantial start-up costs to operate the Mill. (*See also* Docket No. 22, p. 9-10.) The language of the Agreement, the status of the land, and federal law limiting tribal sovereignty over fee lands all support the conclusion that the Tribal Court lacks jurisdiction over Stimson not only for the purposes of the Tribe’s unlawful detainer action, but for any other proceeding with a logical or causal connection to the Agreement.

**C. Stimson is Not Required to Exhaust Tribal Remedies Where the Tribal Court’s Jurisdiction is Plainly Lacking**

Exhaustion of tribal court remedies is not required “when it is plain that tribal court jurisdiction is lacking, so that the exhaustion requirement would serve no purpose other than delay.” *Elliott v. White Mountain Apache Tribal Ct.*, 566 F.3d 842, 847 (9th Cir. 2009) (quoting *Nevada v. Hicks*, 533 U.S. 353, 369 (2001) (internal quotation marks omitted)). As explained

above (and in Stimson's prior briefing), there is no basis for the Tribal Court's exercise of jurisdiction over any disputes relating to the Agreement. Requiring further proceedings in the Tribal Court would only delay justice. Therefore, Stimson's is not required to exhaust tribal remedies; the parties' dispute over the bounds of the Tribal Court's jurisdiction is ripe for this Court's review.

## II. CONCLUSION

For the foregoing reasons, Stimson respectfully requests that this Court deny the Tribe's Motion.

DATED THIS 5th day of December, 2022.

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