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

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

Attorneys for the Coeur d'Alene Tribe

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

STIMSON LUMBER COMPANY,

Plaintiff,

v.

COEUR D'ALENE TRIBE,

Defendant.

Case No. 2:22-cv-00367-DCN

COEUR D'ALENE TRIBE'S REPLY IN SUPPORT OF MOTION TO DISMISS OR STAY [Dkt. 20]

Defendant Coeur d'Alene Tribe ("Tribe") respectfully submits this reply in support of its motion to dismiss plaintiff Stimson Lumber Company's ("Stimson") Complaint or, in the alternative, to stay this case pending the exhaustion of tribal remedies.

INTRODUCTION

Stimson's response (Dkt. 25) fails to remedy the primary defect in its Complaint—that it does not present a federal question. The Court does not have subject matter jurisdiction over this dispute and should dismiss this case. However, even if the Court had jurisdiction, it should nevertheless dismiss or stay this case because Stimson has not exhausted tribal remedies or established that any of the exceptions to the exhaustion requirement applies. Stimson's response asserts tribal jurisdiction is plainly lacking. It is not. The Lease and Option Agreement ("Agreement") does not preclude the Coeur d'Alene Tribal Court's ("Tribal Court") jurisdiction, as Stimson contends it does. And Tribal Court jurisdiction is at least plausible, if not likely, under federal law. Accordingly, even if the Court had subject matter jurisdiction in this case, it should dismiss or stay the case and require Stimson to exhaust tribal remedies.

ARGUMENT

I. The Court Lacks Subject Matter Jurisdiction Because Stimson Fails to Allege a Federal Question.

A claim presents a federal question if it "aris[es] under the Constitution, laws, or treaties of the United States," 28 U.S.C. § 1331, meaning either that "federal law creates the cause of action" or that "the vindication of a right under state law necessarily turns on some construction of federal law," *Unite Here Local 30 v. Sycuan Band of Kumeyaay Nation*, 35 F.4th 695, 702 (9th Cir. 2022) (quotation omitted). In its Complaint, Stimson invokes *National Farmers Union Insurance Cos. v. Crow Tribe of Indians*, 471 U.S. 845 (1985), in support of the proposition that the Court has federal question jurisdiction over this case. Dkt. 1 ¶ 5. As set forth in the Tribe's

memorandum in support of its motion to dismiss, in *National Farmers*, the Supreme Court found that federal law provides the "governing rule of decision," 471 U.S. at 852, for questions regarding a tribal court's exercise of jurisdiction over non-Indians in circumstances where the question presented is whether a tribal court's exercise of jurisdiction in a particular instance would fall beyond the "outer boundaries of an Indian tribe's power over non-Indians" as defined by federal law, *id*. at 851. That is not the circumstance here. Stimson's Complaint does not assert that federal law restricts the Coeur d'Alene Tribal Court's ("Tribal Court") jurisdiction over the Tribe's action in that court. Rather, it asserts that a provision of the Agreement "is enforceable against the Tribe," thereby depriving the Tribal Court of jurisdiction, Dkt. 1 ¶ 21, which it does not.

Stimson fails to remedy this defect. Stimson's response merely contains a conclusory statement that Stimson "raised a federal question because it asked this Court to decide the bounds of the Tribal Court's jurisdiction over" what it notably characterizes as an "ongoing lease dispute," and thus that "there is no question that this Court has jurisdiction." Dkt. 25 at 2-3. Whether a provision of the Agreement is enforceable or prevents the Tribal Court from hearing a dispute between the Tribe and Stimson does not implicate federal law. *See Newtok Vill. v. Patrick*, 21 F.4th 608, 617 (9th Cir. 2021) ("[F]ederal common law does not cover all contracts entered into by Indian tribes because that might open the doors to the federal courts becoming a 'small claims court for all such disputes.'") (citation omitted). In short, Stimson's claim is an ordinary contract claim and does not give rise to this Court's federal question jurisdiction.

II. Tribal Exhaustion is Required Because Tribal Jurisdiction is Plausible, if Not Likely.

Even if the Court were to find it has jurisdiction, it should dismiss or stay this case as a matter of comity until tribal remedies are exhausted. The Supreme Court has long recognized the doctrine of tribal exhaustion. *See* Dkt. 21 at 8-9; *Nat'l Farmers*, 471 U.S. at 855-56 (holding that

"the question whether a tribal court has the power to exercise . . . jurisdiction over . . . a case" is one that should be addressed "in the first instance in the Tribal Court itself"). Stimson has not exhausted tribal remedies, and it did not allege facts in its Complaint sufficient to support that any of the four narrow exceptions to the exhaustion requirement apply. Dkt. 21 at 8-9. Stimson does not address the first three exceptions and responds only to the Tribe's argument on the fourth exception, contending that the Tribal Court plainly lacks jurisdiction over the Tribe's action in that court. In support of that contention, Stimson asserts that the Agreement precludes the Tribal Court's jurisdiction in this instance, Dkt. 25 at 3, and that the Tribal Court generally lacks jurisdiction over non-Indians on fee land, *id.* at 4-5. Stimson contends, therefore, that it "is not required to exhaust tribal remedies." *Id.* at 6. Stimson's argument fails on both fronts.

A. The Agreement Does Not Preclude Tribal Court Jurisdiction.

Stimson argues that the Tribal Court action relates to the Agreement and, therefore, that the Agreement's forum-selection clause applies, depriving the Tribal Court of jurisdiction. Dkt. 25 at 3. In support, Stimson relies on *Yei A. Sun v. Advanced China Healthcare, Inc.*, 901 F.3d 1081 (9th Cir. 2018), for the premise that "forum-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." *Id.* at 1086. Stimson is wrong that this defeats Tribal Court jurisdiction.

To begin, the fourth exception to the exhaustion requirement applies when "it is plain" a case lies beyond the bounds of tribal jurisdiction permitted by federal law. *Strate v. A-1 Contractors*, 520 U.S. 438, 459 n.14 (1997). On its face, Stimson's contention that a contract or a provision therein precludes Tribal Court jurisdiction cannot, and does not, meet this standard. *See* Dkt. 21 at 9-10 (citing *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 12 (1972) (finding

no "serious[] conten[tion]" that a forum-selection clause "oust[s]" a court of jurisdiction); *Kamm v. ITEX Corp.*, 568 F.3d 752, 754 (9th Cir. 2009) ("a forum selection clause does not deprive a federal court of subject matter jurisdiction") (citing *M/S Bremen*)). Accordingly, this Court has held that the enforcement of dispute resolution provisions in a contract must be addressed "initially . . . by the . . . tribal court." *Snowbird Constr. Co. v. United States*, 666 F. Supp 1437, 1444 (D. Idaho 1987). Stimson does not dispute this.

Furthermore, the circumstances here are quite unlike those in *Yei A. Sun*. In that case, the Ninth Circuit determined two identical forum-selection clauses, which committed "any disputes . . . related to" the agreements to the "exclusive jurisdiction" of the California state courts, applied. *Yei A.* Sun, 901 F.3d at 1085-87. Its decision hinged on its finding that the alleged fraudulent conduct of the defendant was logically or causally connected to the agreements because the conduct occurred "*when* the [parties] entered into the agreements"—not before their execution, as the plaintiffs had contended. *Id.* at 1087 (emphasis added). In contrast, the Tribal Court case arises from Stimson's occupancy of the Tribe's land *after* the Agreement's expiration or termination. The Tribe seeks to evict Stimson from unlawfully occupying tribal land without the Tribe's permission since March 31, 2022, and no earlier. The Agreement's forum-selection clause thus does not apply under the reasoning of *Yei A. Sun*. Even the Agreement's own terms, which Stimson selectively omits from its discussion, reaffirm as much. The Agreement provided only that no action could be filed "in any tribal court" for "as long as th[e] Agreement shall remain in effect according to its terms." Dkt. 1 at 54 (§ 19.6.4). The corollary is that the Tribe was free to file suit in Tribal Court after the Agreement was no longer in effect. *Cf. Litton Fin. Printing Div. v. NLRB*, 501 U.S. 190, 204-05 (1991) (emphasizing that a presumption in favor of the applicability of arbitration clauses in the post-contract period—which applies when a "dispute arises under the

contract [] in question"—does not apply when "'negated expressly or by clear implication'" (quoting *Nolde Bros., Inc. v. Bakery Workers*, 430 U.S. 243, 255 (1977))). Regardless, the Tribe is not seeking to "establish or assert" the Tribal Court's jurisdiction "with respect to th[e] Agreement," Dkt. 1 at 54 (§ 19.6.4), and the Tribal Court dispute is not logically or causally connected to the Agreement. The Agreement, therefore, does not preclude the Tribal Court's jurisdiction.

B. Tribal Court Jurisdiction is Plausible Under the Right-to-Exclude Framework and the *Montana* Exceptions.

As mentioned already, Stimson contends only that it is not required to exhaust tribal remedies because, pursuant to the fourth exception, Tribal Court jurisdiction is plainly lacking. "If [tribal] jurisdiction is colorable or plausible," however, "then the exception does not apply and exhaustion of tribal court remedies is required." *Elliott v. White Mountain Apache Tribal Ct.*, 566 F.3d 842, 848 (9th Cir. 2009) (quotations omitted).

Stimson asserts tribal jurisdiction is plainly lacking because tribal jurisdiction over nonmembers on non-Indian land is generally prohibited. *See* Dkt. 25 at 4 (citing *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 328-29 (2008)). But the two cases Stimson primarily relies on contemplate tribal jurisdiction over nonmembers on *nonmember-owned fee land* and are inapplicable for that reason. *Plains Commerce* involved fee land within the Cheyenne River Sioux Tribe's reservation which was owned by a non-Indian Bank, 554 U.S. at 320-21, and *Montana v. United States*, 450 U.S. 544 (1981), involved fee land within the Crow Tribe's reservation which was owned by nonmembers of the tribe, *id.* at 557.[1] The Tribal Court case here

[1] Stimson also incorporates pages five through seven of its reply brief in support of its motion for a preliminary injunction. *See* Dkt. 22. There, it mentions *Brendale v. Confederated Tribes & Bands of Yakima Indian Nation*, 492 U.S. 408 (1989), and *South Dakota v. Bourland*, 508 U.S. 679 (1993). Dkt. 22 at 6. *Brendale* also involved nonmember-owned fee land, 492 U.S. at 414,

involves Stimson's voluntary and purposeful occupation of tribally owned land without the Tribe's permission. Stimson's contention that there is only "one avenue"—the *Montana* exceptions—that "the Tribe could have used to pursue an action in Tribal Court" is simply incorrect. Dkt. 25 at 4-5.

The "caselaw has long recognized" there are "two distinct frameworks for determining whether a tribe has jurisdiction over a case involving a non-tribal-member defendant: (1) the right to exclude, which generally applies to nonmember conduct on tribal land; and (2) the exceptions articulated in *Montana* . . . , which generally apply to nonmember conduct on *non-tribal land.*" *Window Rock Unified Sch. Dist. v. Reeves*, 861 F.3d 894, 898 (9th Cir. 2017) (emphasis added). Plainly stated, *Montana* and its exceptions apply "almost exclusively to questions of jurisdiction arising on non-Indian land or its equivalent." *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 809 (9th Cir. 2011). Accordingly, "where the non-Indian activity in question occurred on tribal land, the activity interfered directly with the tribe's inherent power to exclude and manage its own lands, and there are no competing state interests at play, the tribe's status as landowner is enough to support regulatory jurisdiction without considering *Montana*." *Id.* at 814. And if "regulatory jurisdiction exists and neither Congress nor the Supreme Court ha[s]

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and *Bourland* involved former trust lands and nonmember-owned fee lands that had been acquired by the United States pursuant to federal statute, 508 U.S. at 681-82. Both cases are thus inapplicable. Stimson also invokes *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005), and *Oneida Tribe of Indians of Wisconsin v. Vill. of Hobart*, 542 F. Supp. 2d 908 (E.D. Wis. 2008), in an attempt to show the Tribe does not have jurisdiction over its own land within its reservation. *See* Dkt. 22 at 6-7. But both of those cases considered the effect of tribal reacquisition of land on state or local regulation of the land. State and local regulatory authority are not at all in play here, and thus *Sherrill* and *Hobart* are inapposite. In fact, the Tribe's land is exempt from state taxation under a state statute that exempts all tribal property, including tribally owned fee land, within a reservation from state taxation. Idaho Code § 63-602A.

said otherwise, [a] tribal court may also exercise adjudicative jurisdiction." *Id.* at 810; *accord Grand Canyon Skywalk Dev., LLC v. 'Sa' Nyu Wa Inc.*, 715 F.3d 1196, 1204 (9th Cir. 2013).

Remarkably, Stimson fails to even acknowledge the right-to-exclude framework in its response, let alone discuss it. As the Tribe demonstrated in significant detail in its memorandum in support of its motion to dismiss or stay this case, however, the Tribal Court's jurisdiction is at least plausible, if not likely, on that theory. *See* Dkt. 21 at 9-13. Stimson occupies and operates a sawmill located on tribal land over which the Tribe maintains the right to exclude and, accordingly, the resultant regulatory and adjudicatory jurisdiction to enforce that right. *See Water Wheel*, 642 F.3d at 810, 814-17. Stimson's continued presence on the Tribe's land since March 31, 2022, in contravention of the Tribe's demand that Stimson vacate by that date, directly interferes with the Tribe's powers to exclude and manage its lands. *See id.* at 814-17.

Even putting the right-to-exclude framework aside, though, and assuming the *Montana* exceptions applied—which they do not, because this is not nonmember-owned fee land—Tribal Court jurisdiction is still at least plausible. The first *Montana* exception applies to nonmembers "who enter consensual relationships with the tribe . . . through commercial dealing, contracts, leases, or other arrangements." 450 U.S. at 565. Here, a consensual relationship arises from Stimson's voluntary occupation of tribal land after March 31, 2022. It is well established that tribal authority extends to the regulation of nonmembers "entering the reservation to engage in economic activity." *Washington v. Confederated Tribes of Colville Indian Rsrv.*, 447 U.S. 134, 153 (1980). This is because such individuals or entities choose to "accept [the] privileges of trade, residence, etc." *Id.* Stimson has undoubtedly accepted the privilege of occupying land within the reservation and doing business thereon and, consequently, tribal regulation. In voluntarily continuing to occupy the land without the Tribe's consent, Stimson assumed the risk that it would

be brought into Tribal Court. The Tribal Court action is a direct challenge to these circumstances and thus bears the requisite nexus to find jurisdiction under the first *Montana* exception. *See Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 656 (2001) (first *Montana* exception requires a "nexus" between the tribal authority and consensual relationship). Tribal Court jurisdiction is, therefore, at least plausible under *Montana*'s first exception.

So, too, under the second *Montana* exception, which applies to nonmember conduct that "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." 450 U.S. at 566. "[L]and constitutes" the Tribe's "single most valuable economic asset." *Water Wheel*, 642 F.3d at 807 (quotation omitted). Thus, the Tribe's ability to manage its lands within the Reservation is crucial for it to ensure the welfare of its members and its economic and cultural survival. Stimson's occupation of the land without the Tribe's permission directly endangers this fundamental ability of the Tribe. It deprives the Tribe of lost revenue that could be generated from higher rent payments that accurately reflect the current fair market value of the land and used to provide crucial services to reservation residents. And it prevents the Tribe from using the land in ways to foster economic development and create employment opportunities for tribal members within the reservation. Situations like this, where Stimson continues to use the land without permission and disregard tribal authority in the process, directly impacts the Tribe's ability to manage its lands and, in turn, threatens its political integrity, economic security, and the welfare of its members. Tribal Court jurisdiction is also, therefore, at least plausible under *Montana*'s second exception.

Ultimately, in considering the matter of exhaustion here, this Court "need not"—and should not—"make a definitive determination of whether tribal court jurisdiction exists; [it] must decide only whether jurisdiction is plausible." *Elliott,* 566 F.3d at 849 (citation omitted). As

shown above, under the right-to-exclude framework and the *Montana* exceptions, Tribal Court jurisdiction is at least colorable or plausible, if not likely. It is not plainly lacking. Whether the Tribal Court has jurisdiction is therefore a question that must be addressed "in the first instance in the Tribal Court itself." *Nat'l Farmers*, 471 U.S. at 856.

Therefore, even if the Court finds it has subject matter jurisdiction in this case—which it does not—the Court should dismiss or stay the case and require Stimson to exhaust tribal remedies.

CONCLUSION

For the reasons above, the Tribe respectfully requests that this Court grant its motion to dismiss or, in the alternative, to stay this case pending the exhaustion of tribal remedies (Dkt. 20).

Respectfully submitted this 19th day of December, 2022.

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

Eric R. Van Orden, Legal Counsel (ISB #4774)
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P.O. Box 408
Plummer, Idaho 83851
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Email: ervanorden@cdatribe-nsn.gov

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