

The Honorable Brian A. Tsuchida

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DAN KWATE, on his own behalf and on behalf  
of all other similarly situated,

Plaintiff,

vs.

REECE CONSTRUCTION COMPANY, a For-Profit  
Corporation; and STEVEN REECE and the  
marital community thereof,

Defendants.

NO. 2:23-cv-00570

**PLAINTIFF'S MOTION FOR REMAND**

NOTED ON MOTION CALENDAR:  
February 23, 2024

**I. INTRODUCTION**

Dan Kwate drove heavy machinery on road construction jobs in Washington State for Defendants without receiving proper compensation for all hours worked, including prevailing wage and overtime rates, and without receiving the rest and meal breaks to which he was entitled. He brings this proposed class action against Defendants to recover unpaid wages and damages for himself and a proposed Class of Washington drivers under Washington State law for violations of the Minimum Wage Act, Wage Rebate Act, and Prevailing Wage Act.

1 Steven Reece is the sole shareholder and director of Reece Construction Company,  
2 which employed Mr. Kwate and other proposed Class members in Washington. Mr. Reece and  
3 his company regularly bid for and perform work on public works projects for Washington State  
4 agencies, as well as city and municipality entities and agencies throughout the State. In fact, Mr.  
5 Reece and his company have been involved in public works contracts totaling millions of dollars  
6 during the proposed Class period alone. But Defendants seek to evade Washington's wage and  
7 hour laws on the ground that because Mr. Reece is a member of the Tulalip Tribe and  
8 registered Reece Construction under the Tulalip Tribal Code, they are entitled to tribal  
9 sovereign immunity. And this is the purported federal question that forms the basis for  
10 Defendants' removal of Plaintiff's complaint alleging only violations of Washington State wage  
11 and hour laws.

12 Despite Defendants' assertions to the contrary, tribal sovereign immunity does not  
13 extend to Mr. Reece and his company merely by virtue of being members of a tribe. Indeed, Mr.  
14 Reece also registered his company in Washington so that he and his company could perform  
15 work off reservation, with non-tribal member employees, for the State of Washington and  
16 other non-tribal entities. Mr. Reece and his company also bring lawsuits in Washington State  
17 courts to enforce contracts under Washington State law on the very same types of projects on  
18 which Plaintiff and proposed Class members worked. Mr. Reece's company is not an agent or  
19 instrumentality of the tribe and does not do work that affects the tribe's political integrity. As  
20 such, there is no question that Defendants do not have tribal sovereign immunity in this case.  
21 And because Defendants do not have tribal sovereign immunity, none of the other purported  
22 federal questions raised in their Notice of Removal are relevant.

23 Because there is no federal question here, this case should be remanded to Washington  
24 State Superior Court.

1 II. FACTUAL BACKGROUND

2 **A. Plaintiff alleges Defendants violated Washington wage and hour laws on construction**  
3 **jobs throughout the State, including on jobs for the State of Washington.**

4 Plaintiff Dan Kwate filed this action in State court alleging that Reece Construction and  
5 its sole owner, Steven Reece, failed to properly pay their employees who perform construction  
6 work throughout Washington. ECF No. 1-3 ¶¶ 1.1-1.7. In particular, Mr. Kwate alleges that  
7 Defendants have employed more than 40 such employees in Washington on public and private  
8 construction projects, including on prevailing wage jobs for the State of Washington. *Id.* ¶¶ 1.2,  
9 1.5. He alleges that Defendants have engaged in a common practice of failing to provide all  
10 such employees the rest and meal breaks to which they are entitled, failing to pay for all hours  
11 worked, failing to pay the proper rate of pay, including the prevailing wage for work performed  
12 on public works projects, and failing to pay overtime at the proper rate. *Id.* ¶¶ 1.2-1.6.

13 **B. Reece Construction is registered to and does business in Washington, obtains and**  
14 **works on contracts for the State of Washington, and uses Washington State courts to**  
15 **avail itself of the laws of the State of Washington.**

16 Reece Construction is registered to and admits that it does business in the State of  
17 Washington. ECF No. 2 ¶¶ 6, 8. While Mr. Reece represented to the Court that Reece  
18 Construction conducts approximately 75 percent of its business on the Tulalip Reservation and  
19 implied that Reece Construction earns approximately 95 percent of its revenue on reservation  
20 as well, Reece Construction has since admitted that is not true. *Id.* ¶ 8. Instead, Reece  
21 Construction has admitted that it has earned a significant amount of revenue off reservation  
22 during the proposed Class period. *See* Declaration of Erika Lane, Ex. 2. In 2020, Reece  
23 Construction earned 45.15% of its revenues off reservation; in 2021 it earned 72.73% of its  
24 revenues off reservation; in 2022 it earned 27.46% of its revenues off reservation; and, in 2023  
25 it earned 43.44% of its revenues off reservation. *Id.*

26 Reece Construction also regularly enters into contracts with Washington State agencies  
as well as city and municipality entities and agencies, including the Washington State

1 Department of Transportation. See Declaration of Jeff Mead, Ex. 1. In fact, during the Class  
2 period, Reece Construction has been involved in public works contracts totaling millions of  
3 dollars. See Declaration of Jeff Mead, Ex. 1. And Reece Construction has also availed itself of  
4 Washington State law in Washington State courts by suing other contractors for alleged  
5 damages for “materials and/or services” provided by Reece Construction. *Id.*, Exs. 2-4 ¶ 3.3. In  
6 each such case, Reece Construction represents that “[t]he superior courts of the State of  
7 Washington have jurisdiction over the parties and the subject matter of this litigation. *Id.* Exs. 2-  
8 4 ¶ 2.1.

9 **C. Plaintiff and other proposed Class members performed most of their work off  
10 reservation.**

11 Mr. Kwate is not a member of any tribe. See Declaration of Daniel Kwate ¶ 2. He learned  
12 about the job with Reece Construction off reservation and signed his employment paperwork,  
13 entering into the employment relationship at a job site that was off reservation. *Id.* ¶¶ 3-4. Mr.  
14 Kwate also performed most of his work for Defendants at sites that were off reservation. *Id.* ¶  
15 5. In fact, he estimates he performed just five percent of his work for Reece Construction on a  
16 reservation. *Id.* And he performed all of his work for Reece Construction in Washington and  
17 none in Idaho. *Id.* ¶ 6.

18 **III. ARGUMENT AND AUTHORITY**

19 **A. This case should be remanded because there is no federal question at issue.**

20 Removal of a civil action to federal district court is only proper where the federal court  
21 would have original jurisdiction over the state court action. 28 U.S.C. § 1441(a); *Ramirez v. Fox*  
22 *Television Station, Inc.*, 998 F.2d 743, 747 (9th Cir. 1993) (citing 28 U.S.C. § 1441(a), (b)). While  
23 Defendants contend that Plaintiff’s complaint raises “several” federal issues, each one revolves  
24 around Defendants’ incorrect assertion that they have sovereign immunity as members of the  
25  
26

1 Tulalip Tribe. See ECF No. 1 at 4-9.<sup>1</sup> “If at any time before final judgment it appears that the  
 2 district court lacks subject matter jurisdiction, the case shall be remanded.” 28 U.S.C. § 1447(c)  
 3 (emphasis added). Because Defendants do not have sovereign immunity, there is no federal  
 4 question and this Court therefore lacks subject matter jurisdiction. As such, the case must be  
 5 remanded to State court.

6 **B. Defendants are subject to the laws of the State of Washington because they are**  
 7 **registered to and do conduct business in this State and for this State, and they enter**  
 8 **contracts to and do perform work off the reservation.**

9 1. Washington has personal and subject matter jurisdiction over this action.

10 State civil jurisdiction over litigation involving tribe members is not specifically  
 11 preempted by federal law. See *Maxa v. Yakima Petroleum, Inc.*, 83 Wn. App. 763, 767, 924 P.2d  
 12 372 (1996) (citing *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 208, 107 S.Ct.  
 13 1083, 1087-88, 94 L.Ed.2d 244 (1987) (concerning grant of state civil jurisdiction to tribes for  
 14 conduct on reservations)); see also *Rice v. Rehner*, 463 U.S. 714, 103 S.Ct. 3291, 77L.Ed.2d 961  
 15 (1983) (finding commercial transactions between Indians and non-Indians—even when  
 16 conducted on a reservation—do not enjoy blanket immunity from state regulation); and see  
 17 *Thomsen v. King County*, 39 Wn. App. 505, 512, 694 P.2d 40 (1985) (state civil jurisdiction over  
 18 non-Indians on reservation land). Rather, an individual tribe member who is off Indian land is  
 19 subject to the laws of the State of Washington to the same extent as a nonmember. *Id.* (citing  
 20 *Powell v. Farris*, 94 Wn.2d 782, 785, 620 P.2d 525 (1980)).

21 The decision in *Maxa* is on all fours with this case. 83 Wn. App. 763. In *Maxa*, a non-  
 22 Indian employee of a fuel delivery company licensed by the Yakama Indian Nation sought  
 23 damages from the company and the owner, who was also a Yakama tribe member. *Id.* The  
 24 plaintiff alleged breach of employment agreements and promissory notes that were negotiated

25 <sup>1</sup> See also ECF No. 1 at n.4 stating that Defendants are removing “on the basis of *federal*  
 26 *question* jurisdiction, and not diversity jurisdiction or jurisdiction under the Class Action  
 Fairness Act....” (Emphasis added.)

1 and executed off reservation. *Id.* at 765-766. The plaintiff also spent most of his working time  
2 off reservation, “picking up petroleum products out of state and driving them to the  
3 reservation.” *Id.* The trial court deferred the matter to the Yakama Nation Tribal Court to  
4 determine whether the tribal court had jurisdiction over the parties and subject matter of the  
5 action. *Id.* at 766. The plaintiff’s motion for reconsideration was denied and the superior court  
6 affirmed. *Id.* On reversal, the court of appeals found “[i]n referring the jurisdictional issue first  
7 to the tribal court, the trial court did not decline jurisdiction, but felt it was bound by federal  
8 case law to require exhaustion of remedies in the tribal court system. We disagree.” *Id.*

9 In *Maxa*, the court of appeals reviewed the jurisdictional determination de novo, finding  
10 state civil jurisdiction given that “Mr. Maxa’s complaint ... centers on breaching conduct that  
11 occurred off reservation.” *Id.* 769. The court also found it important that the contracts  
12 themselves were executed off reservation and that “[i]f it were decided, in light of these facts,  
13 that the action arose off reservation, the state court would have exclusive subject matter  
14 jurisdiction.” *Id.* (citing *Powell*, 94 Wn.2d at 785). The court of appeals further noted “[w]hen, as  
15 here, a dispute does not clearly arise either on or off a reservation, the essential question is  
16 whether state assumption of jurisdiction would interfere with reservation self-government.” *Id.*  
17 (citing *Williams v. Lee*, 358 U.S. 217, 220, 79 S.Ct. 269, 270-71, 3 L.Ed.2d 251 (1959), cited in  
18 *Powell*, 94 Wn.2d at 786). As in *Maxa*, all the factors in this case support the exercise of civil  
19 jurisdiction by the State of Washington.

20 Here, Reece is registered in Washington as a foreign limited liability company, enters  
21 into contracts off reservation to perform work off reservation, enters into employment  
22 relationships off reservation, and performs a significant amount of its work off reservation. *See*  
23 Mead Decl., Exs. 5-9; Kwate Decl. ¶ 3-5. Indeed, Reece has availed itself of the laws of  
24 Washington by bringing suit in Washington state courts on numerous occasions, including at  
25 least three suits it filed just last year. *See* Mead Decl., Exs. 2-4. Reece cannot credibly claim it  
26

1 can sue in state court but that it cannot be sued in state court, particularly where Reece's  
2 lawsuits relate to the very same types of projects (if not the actual same projects) on which  
3 Plaintiff and potential Class members worked. Reece cannot seek all the benefits and  
4 protections of doing business in Washington and then turn around and claim immunity from  
5 those same laws.

6 2. Foreign limited liability companies can sue and be sued in Washington.

7 By statute, a foreign limited liability company can sue and be sued in Washington. *See*  
8 RCW 25.15.031; RCW 25.15.316; RCW 25.15.321; RCW 25.15.331; RCW 25.15.361; *see also*  
9 RCW 23.95.500. "Before doing business in this state, a foreign limited liability company must  
10 register with the secretary of state...." RCW 25.15.321. Once registered, RCW 25.15.316,  
11 provides that a foreign limited liability company "is subject to RCW 23.95.500...." That section  
12 provides, in turn, that "a foreign entity is subject to the same duties, restrictions, penalties, and  
13 liabilities now or later imposed on a domestic entity of the same type." RCW 23.95.500.

14 As previously mentioned, Reece is registered in Washington as a foreign limited liability  
15 company. By doing so, Reece Construction agreed to be subject to the "same duties,  
16 restrictions, penalties, and liabilities" Washington imposes on domestic entities of the same  
17 type. Reece Construction has therefore consented to Washington's exercise of jurisdiction over  
18 its conduct of business in Washington.

19 Moreover, despite Defendants' assertion to the contrary, tribal sovereign immunity  
20 does not extend automatically to tribal members and tribal corporations. Instead, "[w]hether or  
21 not tribal sovereign immunity protects a particular business enterprise depends on the nature  
22 of the enterprise and its relation to the tribe." *Wright v. Colville Tribal Enterprise Corp.*, 159  
23 Wn.2d 108, 113, 147 P.3d 1275 (2006); *see also Wright*, 159 Wn.2d 108, 122-123 (concurrency;  
24 noting "While neither the United States Supreme Court nor this court has formulated a test for  
25 determining whether tribal immunity extends to the tribe-created business corporations, other  
26

1 jurisdictions have addressed this issue.”); *and see also Inyo County, Calif. V. Paiute-Shoshone*  
2 *Indians of the Bishop Community of the Bishop Colony*, 538 U.S. 701, 705, n.1, 123 S.Ct. 1887,  
3 1890, 155 L.Ed.2d 933 (2003) (discussing “arm” of the tribe, referring to tribal “corporation”  
4 without discussing whether such “corporation” would share in the tribe’s immunity). Although  
5 no set formula is dispositive in determining whether a particular tribal organization is an “arm”  
6 of the tribe entitled to share in the tribe’s immunity from suit, courts generally consider such  
7 facts as whether:

8         the entity is organized under the tribe’s laws or constitution rather  
9         than Federal law; the organization’s purposes are similar to or serve  
10         those of the tribal government; the organization’s governing body is  
11         comprised mainly of tribal officials; the tribe has legal title or  
12         ownership of property used by the organization; tribal officials exercise  
13         control over the administration or accounting activities of the  
14         organization; and the tribe’s governing body has power to dismiss  
15         members of the organization’s governing body.

16 *Wright*, 159 Wn.2d 108, 122-123 (concurrence; citing cases). While Reece Construction was  
17 formed under tribal law, its purposes are not similar to and do not serve tribal government; its  
18 governing body—which is just Mr. Reece— is not comprised of any tribal officials; the tribe  
19 does not have legal title or ownership of Reece’s business property; tribal officials do not  
20 exercise control over the administration or accounting activities of the organization; and the  
21 tribe does not have power to dismiss Mr. Reece from his company. *Id.* There is simply no basis  
22 for extending tribal immunity to Mr. Reece and his company, neither of which generate  
23 revenue for the tribe and suit against them will in no way impact the tribe’s fiscal resources or  
24 have the power to bind or obligate funds of the tribe.

25         3. Washington has a strong interest in ensuring the payment of wages to employees  
26         who perform work in Washington.

       The assumption of jurisdiction by the State of Washington also would not interfere with  
reservation self-government. On the contrary, Washington’s assumption of jurisdiction would  
further this State’s “strong policy in favor of payment of wages due employees.” *Seattle Prof’l*



1 *Eng'g Emps. Ass'n v. Boeing Co.*, 139 Wn.2d 824, 830, 991 P.2d 1126 (2000); *Int'l Ass'n of Fire*  
2 *Fighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 34, 35, 42 \_3d 1265 (2002) (MWA is a  
3 remedial statute that must be liberally construed to carry out the legislature's goal of  
4 protecting employee's wages and assuring payment); *see also Bostain v. Food Exp., Inc.*, 159  
5 Wn.2d 700, 153 P.3d 846 (2007) (finding under MWA that all hours worked must be  
6 considered, whether worked within or outside Washington when determining overtime due a  
7 Washington employee); *see also Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 300, 996  
8 P.2d 582 (2000) (Washington has "long and proud history of being a pioneer in the protection  
9 of employee rights"). As in *Maxa*, any negligible threat to tribal self-government is outweighed  
10 by this important interest of the State. *See Maxa*, 83. Wn. App. At 770. Moreover, Mr. Kwate's  
11 residence makes no difference. Washington's MWA applies to all work performed in  
12 Washington. *See, e.g., Bostain*, 159 Wn.2d 700; *see also* RCW 49.46.005 (declaring purpose of  
13 MWA to establish "minimum standards of employment within the state of Washington").

14 In short, the Superior Court of the State of Washington has jurisdiction over the parties  
15 and the subject. This case must therefore be remanded.

#### 16 IV. CONCLUSION

17 For the foregoing reasons, Plaintiff respectfully requests the Court remand this case  
18 back to the Superior Court.

1 DATED: January 26, 2024

REKHI & WOLK, P.S.

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**CERTIFICATE OF SERVICE**

The undersigned declares under penalty of perjury under the laws of the State of Washington that on this day, I electronically filed a true and accurate copy of the document to which this declaration is affixed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

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The foregoing statement is made under the penalty of perjury under the laws of the United States of America and the State of Washington and is true and correct.

DATED January 26, 2024.

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