The Honorable Brian A. Tsuchida

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

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

Plaintiff,

v.

REECE CONSTRUCTION COMPANY, a for-profit corporation; and STEVEN REECE, and the marital community thereof,

Defendants.

No. 23-cv-570-BAT

DEFENDANTS REECE CONSTRUCTION AND STEVEN REECE'S OPPOSITION TO PLAINTIFF'S MOTION TO REMAND

ORAL ARGUMENT REQUESTED

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I. INTRODUCTION

Plaintiff Dan Kwate, who is neither Native American nor a Washington resident, would like to sue his former employer, Defendant Reece Construction, a corporation based on the Tulalip Reservation and incorporated under the Tulalip Tribal Code, and its owner, Defendant Steven Andrew ("Andy") Reece, who is a member of the Tulalip Tribe, in King County Superior Court. In a blatant attempt to evade federal jurisdiction, Plaintiff artfully crafted his complaint to suggest that he *is* a Washington resident (when he is not), and he has exclusively asserted claims under Washington laws and the Seattle Municipal Code (as opposed to under federal or Tulalip law) for alleged wage-and-hour violations occurring on and off tribal land. Plaintiff also seeks to represent a proposed class of current and former Reece Construction employees (including a Tulalip tribal member) who primarily worked on tribal land (despite Plaintiff's declaration about his own unique experiences). Despite Plaintiff's artful attempts, his complaint necessarily raises substantial federal questions that are disputed by the parties and that this Court will need to decide, including:

- whether Congress has delegated to Washington the adjudicatory power to hear civil claims brought against tribal corporations;
- whether state and local laws, which are regulatory in nature, apply to Defendants;
- whether Washington law is preempted by Tulalip or federal law; and
- whether Plaintiff was first required to exhaust his remedies in the Tulalip Tribal Court.

Binding federal precedent holds that the answers to these questions depend on the resolution of "federal questions" within the meaning of 28 U.S.C. § 1331. Resolving them will require this Court

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to consider a complex body of federal Indian law, and Defendants understandably would like to avail themselves of the experience and uniformity that the federal forum offers. This is particularly true where the alternative state forum refuses to follow binding federal precedent seeking to protect tribal rights—as Plaintiff candidly admits.

At a later point in this litigation, the Court will need to address the merits of these complex federal questions. The issue presented to the Court in this motion, however, is much simpler: has Plaintiff satisfied his burden to show that the Court lacks jurisdiction over this action under 28 U.S.C. § 1331, thereby justifying Plaintiff's request to remand this action back to state court? Plaintiff has not met his burden. As detailed herein, Plaintiff's complaint presents a series of important federal questions that are disputed by the parties and will ultimately have to be resolved. This Court should therefore retain federal-question jurisdiction over this matter and deny Plaintiff's motion to remand.

II. RELEVANT BACKGROUND

A. Factual Background

Defendant Reece Construction is a "foreign for-profit corporation[] registered in the State of Washington." Dkt. #1-3, ¶2.3 (Am. Compl.).[1] Specifically, Reece Construction is a tribal corporation incorporated under the Tulalip Tribal Code ("TTC") 14.05.440.[2] *See* Dkt. #2, ¶4

[1] Although Defendants deny many of Plaintiff's factual allegations, it assumes them as true for purposes of this brief. *See Brennan v. Sw. Airlines Co.*, 134 F.3d 1405, 1409 (9th Cir. 1998). Still, the Court may look outside the four corners of the complaint where, as here, a plaintiff "articulates an inherently federal claim in state-law terms." *Id.*

[2] The TTC is available online at https://www.codepublishing.com/WA/Tulalip/#!/TulalipNT.html.

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(Reece Decl. dated 4/13/2023).[3] Reece Construction's Certificate of Incorporation, issued by the Tulalip Tribes ("Tulalip" or "Tribe") on October 23, 2008, states that Reece Construction "is entitled to all the powers and privileges provided by [TTC 14.05.010 *et seq.*]." *Id.*, Ex. C.[4] Reece Construction's principal office is located at 1607 114th St. NE, Tulalip, WA 98271, within the boundaries of the Tulalip Reservation. Reece Decl. dated 2/19/2024, Ex. 1 (SOS Business Information); Ex. 2 (DOR Business Information). Today, about 10% of Reece Construction's workforce is Native American. *Id.*, ¶8.

Defendant Andy Reece is a member of the Tribe and is the sole shareholder of Reece Construction. Dkt. #2, ¶2 & Exs. A-C. He is the registered agent of Reece Construction with a registered address of 1525 114th St. NE, Marysville, WA 98271, which is also within the boundaries of the Tulalip Reservation. Reece Decl. dated 2/19/2024, Ex. 1.

Plaintiff Dan Kwate, who is not Native American, was at all relevant times a citizen and resident of Idaho. Dkt. #2, ¶7 & Ex. E (Kwate Information Sheet); Dkt. #28, ¶2 (Kwate Decl.). Plaintiff initially represented to the courts, falsely, that he "is a resident of the State of Washington." Dkt. #1-2, ¶2.6 (Compl.). Plaintiff subsequently amended the complaint, striking that allegation. Dkt. #1-3, ¶2.6 (Am. Compl.). The operative complaint still fails to disclose Plaintiff's Idaho citizenship and residence. *See* Dkt. #2, ¶7 & Ex. E.

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[3] Declarations referenced herein are cited as "[Last Name] Decl. [Date]."

[4] Before 2015, Reece Construction was organized under the name Reece Trucking and Excavating, Inc. Dkt. #2, ¶5.

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Plaintiff worked as a "sweeper operator" for Reece Construction on a seasonal, non-continuous basis from April 2021 to October 2022. Reece Decl. dated 2/19/2024, ¶13. A sweeper operator operates equipment that removes dirt and debris during road construction. *Id*. When working for Reece Construction, Plaintiff temporarily resided in his trailer parked on Reece Construction's property on the Tulalip Reservation. *Id.* ¶14. Plaintiff clearly understood that Reece Construction was a Tulalip corporation based on the Tulalip Reservation when he executed his employment agreement. Dkt. #2, Ex. E (Kwate Information Sheet).

B. Procedural Background

Plaintiff filed his initial complaint in King County Superior Court on February 2, 2023. Although he was a sweeper operator, Plaintiff seeks to represent a proposed class of "current and former non-exempt driver employees who have been employed by Defendants in the State of Washington and who have been victimized by the Defendants' unlawful compensation practices." Dkt. #1-3, ¶1.7. The proposed class includes non-Indians, like Plaintiff, and at least one tribal member. Reece Decl. dated 2/19/2024, ¶15. Plaintiff asserts that Reece Construction violated multiple wage-and-hour statutes, regulations, and ordinances under Washington law and the Seattle Municipal Code, including: RCW 39.12 *et seq.*; RCW 49.12 *et seq.*; RCW 49.28 *et seq.*; RCW §§ 49.46.090, 49.46.130, 49.48.010, 49.52.050; WAC 296-127 *et seq.*; WAC §§ 296-126-092, 296-126-040, 296-128-010, 296-128-020; SMC 14.19 *et seq.*; and SMC 14.20 *et seq.*). Dkt. #1-3, ¶¶5.1-9.6 (Am. Compl.).

The complaint's sweeping language asserts class claims for violations of state and local law regardless of location, whether on or off tribal land. For example, Plaintiff alleges that Plaintiff

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and the other class members "performed all relevant work in the State of Washington" and that the "principal injuries resulting from the alleged conduct were incurred in Washington." *Id.* ¶¶1.2, 2.6-2.7. Plaintiff also alleges that "some of the specific acts alleged occurred in King County, including the City of Seattle," but he does not limit his individual or class claims to activities in that jurisdiction. *Id.*, ¶2.1 (emphasis added).

The complaint was served on Defendants on or about March 14, 2023. *See* Dkt. #1, ¶25.

On April 13, 2023, Defendants removed this action to the U.S. District Court for the Western District of Washington on the ground that this Court has original jurisdiction to hear actions arising under federal law, *see* 28 U.S.C. § 1331, and removal jurisdiction, *see id.* § 1441(a). Dkt. #1. Because Defendants are a Tulalip corporation and a Tulalip member operating from the Tulalip Reservation, Defendants maintain that Plaintiff's complaint establishes that his alleged right to relief for himself and the proposed class members necessarily raises substantial questions of federal Indian law. *Id.*, ¶7.

When Defendants initially removed this putative class action in April 2023, Reece Construction had conducted "approximately 75% of its business" on tribal land in the prior year. Dkt. #2, ¶8; Reece Decl. dated 2/19/2024, ¶12. Plaintiff acknowledges this. Dkt. #26, ¶2 (Lane Decl.) (acknowledging Reece Construction earned 72.54% of its revenues on tribal land in 2022).[5] During the proposed class period, from 2020 to 2023, Reece Construction has earned the majority

[5] Plaintiff's assertion that Andy Reece misrepresented that the company earned "approximately 75% of its business" on tribal land when he filed his declaration in early 2023, Dkt. #25 at 3, is false.

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of its revenue (about ***57%***) from private and public works projects on tribal land—including projects for the Tulalip Tribes, the Stillaguamish Tribe, the Swinomish Tribe, the Lummi Nation, and the Sauk-Suiattle Tribe. Reece Decl. dated 2/19/2024, ¶¶9-10, 12 (revenue for tribal projects amounted to about 55% in 2020, 27% in 2021, 73% in 2022, and 57% in 2023). Over that same period, Reece Construction has earned only ***1.1%*** of its revenue from projects in King County and only ***0.3%*** from projects in the City of Seattle. *Id.*, ¶11.[6]

Plaintiff asserts that both he "and other proposed Class members performed most of their work off reservation." Dkt. #25 at 4. While Plaintiff submitted a declaration averring that he worked "on the reservation" just 5% of the time (which Defendants do not dispute for purposes of this motion), Dkt. #28, ¶¶4-5, he provides no evidence in support of his statement that the other proposed Class members performed most of their work off reservation; and Defendants' evidence demonstrates otherwise. *See* Reece Decl. dated 2/19/2024, ¶¶ 9-12.

After unsuccessful settlement discussions throughout 2023, Plaintiff now seeks to remand this putative class action to King County Superior Court. Dkt. #25.

C. Background on the Tulalip Government and Court System

The Tulalip Tribes has treaty rights under the 1855 Treaty of Point Elliott and is a federally acknowledged tribe. In 1935, the Tribe adopted its Constitution and Bylaws in accordance with

[6] Reece Construction's revenue for projects in King County was about 2.1% in 2020, 1.8% in 2021, 1% in 2022, and .2% in 2023; likewise, revenue for projects in Seattle was about .9% in 2020, .4% in 2021, .1% in 2022, and .1% in 2023. Reece Decl. dated 2/19/2024, ¶11.

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the Indian Reorganization Act.[7] As a sovereign, the Tribe has historically asserted its autonomy and independence from Washington State. For example, in 2000, at the Tribe's request, Washington retroceded to the federal government partial criminal jurisdiction over the Tribe. 25 U.S.C. § 1326; Notice of Acceptance of Retrocession of Jurisdiction for the Tulalip Tribes, Washington, 65 Fed. Reg. 75948 (Dec. 5, 2000).

The Tribe has adopted a comprehensive civil and criminal code that regulates, in relevant part, employment and contracting (Title 9 TTC) and tribal businesses (Title 14 TTC). The Tribe operates its own court system, the Tulalip Tribal Court. The Tribal Court Code, Chapter 2.05 TCC, provides for the administration of the Tulalip Tribal Court, including civil and criminal procedure and rules governing special proceedings and appeals. Under TTC 2.05.020, the Tribe's "jurisdiction . . . shall extend . . . to [] all persons . . . and to [] all subject matters which, now and in the future, are permitted to be within the jurisdiction of any Tribal Court of a sovereign Indian tribe or nation." Likewise, under TTC 14.05.900, the "Courts of the Tulalip Tribes shall have jurisdiction over any corporation, its directors, officers or employees organized under [Chapter 14.05 TTC] or for any matter having to do with the administration, operations or business of the corporation."

The Tribe extends its sovereign immunity, which renders the Tribe "immune from suit," not just to the "Tulalip Tribe, its Board of Directors, [and] its agencies" but also to "enterprises,

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[7] The Tribe's website is available at https://www.tulaliptribes-nsn.gov/. The Tribe's Constitution and Bylaws are available at https://www.codepublishing.com/WA/Tulalip/#!/TulalipCT.html.

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chartered organizations, corporations, or entities of any kind, and its officers, employees, agents, contractors, and attorneys, in the performance of their duties." TTC 2.05.020(3).

Because Reece Construction is a Tulalip corporation, Defendants and any of its employees, including Plaintiff, are subject to the Tulalip Tribal Court's jurisdiction.

III. ARGUMENT

A. Legal Standard

"[A]ny civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by . . . defendants, to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a). "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." *Id.* § 1331.

A removing party has the initial burden of showing that removal is proper. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (per curiam). But once the defendant makes that showing, *see* Dkt. #1, it is the plaintiff's "burden to prove that an express exception to removal exists." *Luther v. Countrywide Home Loans Servicing LP*, 533 F.3d 1031, 1034 (9th Cir. 2008). A plaintiff's motion to remand challenging the district court's federal-question jurisdiction is "the functional equivalent of a defendant's motion to dismiss for lack of subject-matter jurisdiction under Rule 12(b)(1)." *Leite v. Crane Co.*, 749 F.3d 1117, 1122 (9th Cir. 2014).

B. The Court Has Federal-Question Jurisdiction Because Plaintiff's Artful Complaint Raises Substantial Federal Questions Disputed by the Parties

The Court should deny Plaintiff's remand motion because his complaint raises substantial, disputed questions relating to federal Indian law.

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"In general, district courts have federal-question jurisdiction only if a federal question appears on the *face* of a plaintiff's complaint." *Brennan v. Sw. Airlines Co.*, 134 F.3d 1405, 1409 (9th Cir. 1998). "However, the artful pleading doctrine creates an exception to this general rule" that "exists where a plaintiff articulates an inherently federal claim in state-law terms." *Id.* The Supreme Court has "recognized for nearly 100 years that in certain cases federal-question jurisdiction will lie over state-law claims that implicate significant federal issues." *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312 (2005) ("[A] state-law claim could give rise to federal-question jurisdiction so long as it 'appears from the complaint that the right to relief depends upon the construction or application of federal law.'").

In the Ninth Circuit, removal of an action is proper under 28 U.S.C. § 1441(a) "when 'a well-pleaded complaint establishes . . . that the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal law." *Sauk-Suiattle Indian Tribe v. City of Seattle*, 56 F.4th 1179, 1185 (9th Cir. 2022) (quoting *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 27-28 (1983)). "A substantial federal question exists when the question is '(1) necessarily raised, (2) actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting the federal-state balance approved by Congress.'" *Id.* (quoting *Gunn v. Minton*, 568 U.S. 251, 258 (2013)).

Plaintiff's alleged right to relief under state and local law necessarily raises substantial federal questions, including:

- Did Congress fail to grant Washington courts the adjudicative jurisdiction to resolve civil claims against a tribal corporation?
- Are state statutes or local ordinances, which are regulatory in nature,

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inapplicable to tribal corporations or members operating from tribal land?

- Does the Tribe or federal government have concurrent jurisdiction that preempts Washington and local law?
- Does binding federal common law require Plaintiff to first exhaust his remedies in the Tulalip Tribal Court?

Each question raises distinct, significant issues of federal law that the parties dispute. Plaintiff asserts that each of these questions "revolves around Defendants' incorrect assertion that they have sovereign immunity as members of the Tulalip Tribe"; and because Defendants allegedly "do not have tribal sovereign immunity, . . . none of the other purported questions raised . . . are relevant." Dkt. #25 at 2, 4-5. Plaintiff is wrong. Although Defendants have asserted a sovereign immunity defense to preserve their rights (*see* Dkt. #1, ¶17)—that defense is *not* why Defendants removed this case to federal court. Even if this Court concludes that Defendants' immunity defense fails (it should not), Defendants are *still* entitled to dismissal of this action if the Court answers any one of the disputed federal questions in the affirmative.

Because these federal questions will require the Court to consider the U.S. Constitution, federal statutes, and federal common law, these questions should be decided by a federal court, not a Washington court. Further, exercising federal jurisdiction over this action—brought by a non-Washington plaintiff who voluntarily entered into an employment relationship with a Tulalip corporation while residing on Tulalip land—will not disrupt the federal-state balance of power.

1. Do Washington courts lack adjudicatory jurisdiction to resolve state and local law claims against a tribal corporation?

Defendants ask the Court to decide whether Congress has ever delegated to Washington the "jurisdiction" to adjudicate claims against a "foreign for-profit corporation"—namely, a

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Tulalip corporation operating on the Tulalip Reservation—as alleged in Plaintiff's complaint. *See* Dkt. #1-3, ¶¶2.2-2.3. The Court undoubtedly has jurisdiction to answer that federal question under 28 U.S.C. § 1331.

Longstanding Supreme Court precedent recognizes that Congress—not the states—has "plenary and exclusive power . . . to deal with Indian tribes." *Bryan v. Itasca County*, 426 U.S. 373, 376 n.2 (1976); *see Worcester v. Georgia*, 31 U.S. 515 (1832) (holding Indian tribes are "distinct political communities, having territorial boundaries, within which their authority is exclusive" and "guaranteed by the United States," which is not dependent on or subject to state authority).[8] Congress's plenary power is "drawn both explicitly and implicitly" from the Indian Commerce Clause, U.S. Const. art. I, § 8, cl. 3. *Morton v. Mancari*, 417 U.S. 535, 551–52 (1974). In a recent landmark case, *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), the Supreme Court reaffirmed that Congress "wields significant constitutional authority when it comes to tribal relations . . . [b]ut that power . . . 'belongs to Congress alone.'" *Id.* at 2462. If Congress intends to cede power over tribal affairs to states, it must "clearly express its intent to do so." *Id.* at 2463.

In 1953, Congress extended limited civil jurisdiction over Indians to certain states (including, eventually, Washington) by enacting a statute commonly known as Public Law 280. Pub. L. No. 83-280, 67 Stat. 588 (1953) (codified in relevant part as 28 U.S.C. § 1360); *see* RCW 37.12.010. As the Supreme Court has recognized, however, "nothing in [Public Law 280's]

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[8] Although recent cases have called into question *Worcester*'s holding that Indian country is entirely separate from state territory and jurisdiction, the Supreme Court recognizes today that reservations are subject to state jurisdiction "except as forbidden by federal law." *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 652 (2022).

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legislative history remotely suggests that Congress" intended for it to "undermin[e] or destruct[] such tribal governments." *Bryan*, 426 U.S. at 388. Further, the Supreme Court indicated that Public Law 280 extends jurisdiction to states over "Indians," but *not* the tribes themselves. *Id.* (noting the absence of statutory language conferring "state jurisdiction over the tribes themselves").

Since the Supreme Court issued its decision in *Bryan*, federal (and state) courts have concluded that Public Law 280 extends civil jurisdiction to states only over individual "Indians," *not* Indian tribes or other "tribal entities," like the tribal corporation at issue here. *E.g.*, *Parker Drilling Co. v. Metlakatla Indian Community*, 451 F. Supp. 1127, 1139 (D. Alaska 1978) (accepting tribal corporation's argument that a tribal corporation is not an "Indian" within the meaning of Public Law 280); *see also Great W. Casinos, Inc. v. Morongo Band of Mission Indians*, 88 Cal. Rptr. 2d 828, 842 (Cal. Ct. App. 1999) ("It is settled 28 U.S.C. § 1360 confers jurisdiction only over individual Indians, and not over Indian tribes or tribal entities.").

Notwithstanding Public Law 280, the Supreme Court has held that state courts are not free to exercise adjudicatory jurisdiction over civil suits by non-Indians against individual Indians where "[n]o Federal Act has given state courts jurisdiction over such controversies." *Williams v. Lee*, 358 U.S. 217, 222-23 (1959); *Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998) (*"Kiowa Tribe"*) ("As a matter of federal law, an Indian tribe is subject to suit [in state court] only where Congress has authorized the suit *or* the tribe has waived its immunity."); *see also Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 15 (1987) ("If state-court jurisdiction over Indians or activities on Indian lands would interfere with tribal sovereignty and self-government, the state courts are generally divested of jurisdiction as a matter of federal law."). In *Kiowa Tribe*, the Court

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explained that although states have the power to "apply their substantive laws to tribal activities" within state boundaries, "[t]here is a difference between the right to demand compliance with state laws and *the means available to enforce them*." 523 U.S. at 755 (emphasis added). The *Kiowa Tribe* Court held that even if states have *legislative* jurisdiction over tribal entities, they lack the *adjudicatory* jurisdiction over them, even for cases involving conduct that occurred on state territory (off the reservation). *See id.* at 754-56.

This threshold jurisdictional issue, whether Washington courts have the congressionally delegated authority to assert jurisdiction over Reece Construction in this action, is undoubtedly a question "arising under the Constitution, laws, or treaties of the United States," 28 U.S.C. § 1331. This is because the right that Reece Construction asserts—a right to be protected from an unlawful exercise of a state court's judicial power—has its source in federal law, which defines the outer boundaries of a state's power over tribal corporations (and tribal members). *Williams*, 358 U.S. at 218 (asserting federal jurisdiction to correct a state's "doubtful determination of the important [federal] question of state power over Indian affairs"); *see Chilkat Indian Village v. Johnson*, 870 F.2d 1469, 1475 (9th Cir. 1989) (tribe's "allegations of sovereign power, as a matter of federal statute and 'reserved powers' (which could only be cognizable as a matter of federal common law)" raises a federal question, even though the tribe did not expressly plead the federal question in the complaint); *cf. Nat. Farmers Union Ins. Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 852, 850-53 (1985) ("*Crow Tribe*") ("[W]hether an Indian tribe retains the power to compel a non-

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Indian property owner to submit to the civil jurisdiction of a tribal court is . . . a 'federal question'").[9]

Because Congress has never clearly expressed its intention to extend adjudicatory jurisdiction to state courts over civil cases brought against tribal corporations (as opposed to individual "Indians"), through Public Law 280 or otherwise, Washington courts lack adjudicatory power over Reece Construction, as a Tulalip-owned corporation, incorporated under Tulalip law, and operating from the Tulalip Reservation. *See Kiowa Tribe*, 523 U.S. at 754; *Williams*, 358 U.S. at 222-23. This is true *regardless* of whether Reece Construction's purported violations occurred, at times, off the reservation. *See Kiowa*, 523 U.S. at 754-56.

2. Are wage statutes and ordinances inapplicable to tribal corporations and tribal members operating on tribal land?

Defendants will likewise ask the Court to decide whether the wage statutes and ordinances asserted in Plaintiff's operative complaint, Dkt. #1-3, ¶¶5.1-9.6, can *ever* be applied to a "foreign for-profit" tribal corporation or tribal member under Public Law 280 or otherwise. *Id*. ¶2.3. The presence of this federal question gives rise to the Court's jurisdiction under 28 U.S.C. § 1331.

Public Law 280 provides that state laws "shall have the same force and effect within such Indian country . . . as they have elsewhere within the State." 28 U.S.C. § 1360(a). The Supreme Court interprets that federal statute narrowly, concluding that if Congress had intended to confer

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[9] Although *Crow Tribe* involved a tribal court's attempt to assert adjudicatory jurisdiction over a non-Indian, *see* 471 U.S. 845, it would be odd to conclude that a federal question is present in that context, but not here—where a state court attempts to assert adjudicatory jurisdiction over a tribal corporation.

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on states "general civil regulatory powers" over Indians, "it would have expressly said so." *Bryan*, 426 U.S. at 390. Accordingly, courts distinguish between *prohibitory* laws (over which the state has jurisdiction) and *regulatory* laws (over which the state lacks jurisdiction). *E.g.*, *Santa Rosa Band v. Kings County*, 532 F.2d 655, 662 (9th Cir. 1975) (concluding "Congress did not contemplate immediate transfer to local governments of civil regulatory control over reservations"); *Middletown Rancheria of Pomo Indians v. W.C.A.B.*, 71 Cal. Rptr. 2d 105, 114-15 (Cal. Ct. App. 1998) ("*Middletown Rancheria*") (concluding California's Workers Compensation Laws did not apply to the tribe because that law "does not prohibit industrial injuries; it regulates them" and Public Law 280 "did not grant states regulatory jurisdiction over Native American Indian tribes"). Here, too, Defendants will argue that the wage statutes and local ordinances asserted in Plaintiff's complaint do not *prohibit* employers' conduct, they *regulate* it. *E.g.*, Dkt. No. 1-3 at ¶¶5.5-5.6 (citing RCW 49.12.005, WAC 296-126-002, & WAC 296-126-092 that regulates "conditions of labor" and affirmatively mandates "rest and meal periods").

This federal precedent is consistent with federal and state agency guidance to tribal corporations. For example, the U.S. Department of the Interior represents to tribal corporations that the "major advantages" of incorporating a corporation under tribal law is "[a]voidance of state regulation and taxation." Stoner Decl., Ex. 1 (U.S. Dept. of Interior, *Choosing a Tribal Business Structure*). Indeed, the Washington Department of Labor & Industries, which administers the wage statutes asserted in Plaintiff's complaint, has issued Administrative Policy ES.C.1 that states: "*none of the provisions of RCW 49.12 apply to tribal enterprises* operating within the confines of their tribal lands." Stoner Decl., Ex. 2 (Admin. Policy ES.C.1 (rev. Apr. 6, 2023)).

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Beyond the limits of state law, the Ninth Circuit also holds that Pubic Law 280 does not subject Indians to *local* regulations, such as ordinances adopted by the City of Seattle. *E.g.*, *Santa Rosa Band*, 532 F.2d at 664 ("Given the present Federal policies of fostering tribal self-government and economic self-development, . . . an interpretation of P.L. 280 excluding local jurisdiction is mandated."); *Cabazon Band*, 480 U.S. at 212 n.11 (noting "it is doubtful that Pub. L. 280 authorizes the application of any local laws to Indian reservations"). Defendants will thus argue that the City of Seattle lacks *any* jurisdiction over Defendants (regulatory or prohibitory), based on binding Ninth Circuit precedent interpreting Public Law 280. *But see* Dkt. #1-3 at ¶¶7.6-7.7 (citing SMC 14.19.035 & SMC 14.20.020 that imposes "minimum wage" and "payment intervals" requirements).

Again, these are inherently "federal questions" giving rise to jurisdiction under 28 U.S.C. § 1331. *Cf. Chilkat Indian Vill.*, 870 F.2d at 1473-74 (concluding tribe's claim for enforcement of ordinance applicable to non-Indian defendants necessarily raised federal questions, as court must resolve the tribe's power under federal law to enact the ordinance). Because Plaintiff's complaint will ask the Court to decide whether certain state and local laws can ever apply to a tribal corporation or a tribal member operating from and principally doing business on tribal land, federal issues "inhere in the complaint." *Id.* at 1475.

3. Does tribal or federal law preempt Washington and local law?

Even assuming that Washington or the City of Seattle has the authority to regulate Defendants' conduct off tribal land, Defendants will also ask the Court to determine whether either the Tribe or the federal government has concurrent jurisdiction over Plaintiff's action; and if so,

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whether tribal or federal law preempts Washington and local law. As discussed below, federal courts hold that whether state or local law is preempted by tribal or federal law is a "federal question" within the meaning of 28 U.S.C. § 1331.

Where a state has concurrent jurisdiction with a tribe, "State jurisdiction is preempted by the operation of federal law if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the State interests at stake are sufficient to justify the assertion of State authority." *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983).[10] The Supreme Court has cited several reasons for adopting the doctrine of tribal preemption, including "traditional notions of Indian sovereignty"; tribes' and the federal government's "firm[] commit[ment] to the goal of promoting tribal self-government," as "embodied in numerous federal statutes"; and "Congress' overriding goal of encouraging 'tribal self-sufficiency and economic development.'" *Id.* at 334-35, 344 (concluding application of the state's hunting and fishing laws to non-members on the reservation was preempted by tribal law); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 148 (1980) (concluding application of state taxes to non-members on the reservation was preempted by federal law because "[t]here is no room for these taxes in the comprehensive federal regulatory scheme").

Federal courts have also upheld federal or tribal regulatory jurisdiction over conduct by tribal members occurring both on and off the reservation. *E.g.*, *United States v. 43 Gallons of*

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[10] Plaintiff asserts that "Washington has a strong interest in ensuring the payment of wages to employees who perform work in Washington." Dkt. #25 at 8-9. Defendants dispute that assertion, particularly given that neither Reece Construction nor Plaintiff is a Washington resident.

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Whiskey, 93 U.S. 188 (1876) (affirming Congress's power under Indian Commerce Clause to enact preemptive federal regulations prohibiting liquor trade outside Indian country); *Chilkat Indian Vill.*, 870 F.2d 1469 (affirming tribal jurisdiction over parties' dispute concerning ownership of tribal property); *United States v. Sohappy*, 770 F.2d 816, 819 (9th Cir. 1985) (affirming tribal regulation of off-reservation treaty rights).

Determining whether state or local law is preempted by tribal or federal law necessarily raises "federal questions." *E.g., Crow Tribe*, 471 U.S. at 852 ("The question whether an Indian tribe retains the power to compel a non-Indian property owner 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 § 1331."); *Segundo v. City of Rancho Mirage*, 813 F.2d 1387, 1389 (9th Cir. 1987) (concluding "extent to which federal law divests the cities of the power to exercise jurisdiction over non-Indians operating an enterprise on Indian land[] is a sufficient basis for federal question jurisdiction"). Further, deciding these federal questions will require the Court to "examine the relevant federal treaties and statutes," "notions of sovereignty that have developed from historical traditions of tribal independence," and "the nature of the state, federal, and tribal interests at stake"; and to decide whether "the exercise of state authority *would violate federal law*." *Bracker*, 448 U.S. at 144-45 (emphasis added).

Here, Defendants will argue that the Tribe has preempted state law by enacting Title 9 TTC, which regulates employment and contracting on the Tulalip Reservation. *See* TTC 9.05.010 *et seq.*; *see also Solis v. Matheson*, 563 F.3d 425, 433 (9th Cir. 2009) ("The Supreme Court has found that Indian tribes have 'a strong interest as a sovereign in regulating economic activity

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involving its own members within its own territory and . . . may enact laws governing such activity.'"). Even assuming that the Tribe has not "enacted wage and hour laws" that sufficiently preempt all other laws, there is little doubt that *federal law* applies to Plaintiff's class claims for alleged wage-and-hour violations on the Tulalip Reservation—specifically, the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq*. *See Solis*, 563 F.3d at 434 (concluding "[b]ecause the Puyallup Tribe ha[d] not enacted wage and hour laws, . . . the overtime provisions of the FLSA apply to" tribal members that employed Indians and non-Indians on the Puyallup Reservation). Recognizing that Washington is expressly divested of jurisdiction to apply its wage-and-hour laws to "tribal enterprises operating within the confines of their tribal lands," Stoner Decl., Ex. 2 (Admin. Policy ES.C.1)—the *only* wage-and-hour laws that could potentially apply to Defendants while doing business on tribal land is either Title 9 TTC or the FLSA, both of which regulate the conduct of which Plaintiff complains. Dkt. #1-3, ¶¶5.1-9.6.

Because Plaintiff's complaint asserts that Washington has the jurisdiction to apply its laws to a "foreign for-profit" tribal corporation and tribal member operating from and principally doing business on tribal land, *id.*, ¶¶2.2-2.4, the complaint requires the Court to decide whether state law is precluded on account of tribal or federal preemption, which is undoubtedly a federal question.

4. Was Plaintiff first required to exhaust his remedies in the Tulalip Tribal Court?

Plaintiff's complaint likewise begs the question: If the Tulalip Tribal Court has concurrent jurisdiction over Plaintiff's claims, was Plaintiff required to first pursue his remedies in the Tulalip Tribal Court under the so-called "tribal remedies doctrine"? In this litigation, Defendants will ask

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the Court to decide whether the tribal remedies doctrine applies, which necessarily presents federal questions and gives rise to the Court's jurisdiction under 28 U.S.C. § 1331.

Federal courts developed the tribal exhaustion doctrine based on longstanding policy to encourage tribal self-government. *Iowa Mut.*, 480 U.S. at 17 (holding that the tribal court did not have "a full opportunity to evaluate the claim and federal courts should not intervene" until the tribal court's review is complete). The Supreme Court has found that a plaintiff's "unconditional access" to non-tribal courts would create "direct competition with the tribal courts" and thereby impair tribal court authority over reservation affairs. *Id.* at 16. The Court added that "[a]djudication of such matters by any nontribal court also infringes upon tribal law-making authority, because tribal courts are best qualified to interpret and apply tribal law." *Id*.

In the Ninth Circuit, "[p]rinciples of comity require federal courts to dismiss or to abstain from deciding claims over which tribal court jurisdiction is 'colorable,' provided that there is no evidence of bad faith or harassment." *Marceau v. Blackfeet Housing*, 540 F.3d 916, 920 (9th Cir. 2008); *see also Iowa Mut.*, 480 U.S. at 15. In *Marceau*, for example, the Ninth Circuit concluded that the tribal court's jurisdiction was "unquestionably colorable" because at least "some" of the key events occurred on tribal lands. 540 F.3d at 921 (concluding "the tribal court must have the first opportunity to address all issues within its jurisdiction" where defendant was a tribal entity and "at least some key events . . . occurred on tribal lands").

Whether issues involving tribal rights "should be conducted in the first instance in the Tribal Court itself" presents a "federal question" under 28 U.S.C. § 1331. *Crow Tribe*, 471 U.S. at 852-53; *see Iowa Mut.*, 480 U.S. at 15-16 (in *Crow Tribe*, the Supreme Court "concluded that,

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although the existence of tribal court jurisdiction presented a federal question within the scope of 28 U.S.C. § 1331, considerations of comity direct[ed] that tribal remedies be exhausted before the question is addressed by the District Court"). The "existence and extent of a tribal court's jurisdiction" not only requires "a careful examination of tribal sovereignty" and "the extent to which tribal sovereignty has been altered, divested, or diminished," it will also require "a detailed study of relevant statutes, Executive Branch policy as embodied in treaties and elsewhere, and administrative or judicial decisions"—all of which require a special knowledge and understanding of federal Indian law. *Crow Tribe*, 471 U.S. at 855-56.

Here, Plaintiff's complaint, asserting claims against a Tulalip corporation and Tulalip member for purported state and local violations both on and off tribal land, necessarily raises federal questions under 28 U.S.C. § 1331—namely, whether Plaintiff should have exhausted his remedies in Tulalip Tribal Court, so that the tribal court may address its jurisdiction in the first instance. *See id.* at 852-53. Applying the tribal remedies doctrine here, Defendants are likely to prevail on their argument that Plaintiff was required to first bring claims in Tulalip Tribal Court under Tulalip law (or, if applicable, under federal or state law). Plaintiff voluntarily entered into an employment contract with a Tulalip corporation and Tulalip member based on the Tulalip Reservation. *See* Reece Decl. dated 2/19/2024, ¶13. Plaintiff also lived on company property within the Tulalip Reservation at all times that he worked for Defendants—which is expressly within the Tulalip Tribal Court's jurisdiction under TTC 2.10.010. *Id.*, ¶14. Most of the violative conduct he alleges on behalf of the class (including a Tulalip tribal member) occurred in Indian

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country, on the Tulalip Reservation and other reservations. *Id.*, ¶¶9-12, 15; Lane Decl. ¶2.[11] Further, Plaintiff has every right to seek relief on the Tulalip Reservation because the Tribe regulates "employment and contracting" (*see* Title 9 TTC), and the Tulalip Tribal Court has express jurisdiction over the parties and the specific claims alleged by Plaintiff. *See* TTC 14.05.900 (asserting jurisdiction "over any [Tulalip] corporation, its directors, officers or employees . . . or for any matter having to do with the administration, operations or business of the corporation").

Still, while Defendants will likely prevail on the issue of whether the tribal remedies doctrine applies to this case, Defendants face an unsurmountable hurdle if this case is remanded to state court: Washington courts ignore binding federal precedent and do *not* require non-Indian plaintiffs to first exhaust remedies in tribal court. *See Maxa v. Yakima Petroleum, Inc.*, 83 Wn. App. 763, 766, 770, 924 P.2d 372 (1996) (reversing trial court's conclusion that "it was bound by federal case law to require exhaustion of remedies in the tribal court system"); *see also McCrea v. Denison*, 76 Wn. App. 395, 885 P.2d 856 (1994) (concluding "[s]tate courts … are a more appropriate forum for the resolution of" torts committed by tribal members on tribal land because such torts are "well settled by state statutes and state common law"); *see* Pete Heidepriem, *Tribal Remedies, Exhaustion, and State Courts*, 44 Am. Indian L. Rev. 241, 258-59 (2020) (concluding Washington is one of only four states nationwide that refuses to recognize the tribal remedies doctrine).

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[11] Plaintiff attempts to mislead the Court by emphasizing his own experience of working primarily off tribal land, *see* Dkt. #28 at ¶¶4-5; however, the class as a whole worked primarily *on* tribal land. *See* Reece Decl. dated 2/19/2024, ¶¶ 9-12.

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These Washington decisions not only misconstrue binding federal precedent, they only prove Defendants' point: Washington courts are not well equipped to resolve complicated federal and tribal questions of whether a nontribal plaintiff must first exhaust remedies in a tribal court when bringing wage-and-hour claims against a tribal corporation or a tribal member. As federal courts have held, state courts should *not* create exceptions to the federally-mandated tribal exhaustion requirement, based on state courts' "[a]llegations of local bias and tribal court incompetence." *Burrell v. Armijo*, 456 F.3d 1159, 1168 (10th Cir. 2006) (citing *Iowa Mut.*, 480 U.S. at 19). The Ninth Circuit also recognizes that "state courts have long been at least perceived as 'inhospitable to Indian rights.'" *Bodi v. Shingle Springs Band of Miwok Indians*, 832 F.3d 1011, 1023 (9th Cir. 2016). The Washington cases refusing to apply the tribal remedies doctrine, including the *Maxa* case on which Plaintiff heavily relies, strongly suggest that a state court will exhibit "local bias" against the Tulalip Tribal Court or will be "inhospitable" to Defendants' position that Plaintiff should have first exhausted his remedies in Tulalip Tribal Court.

Because Defendants ask this Court to decide whether federal precedent compels Plaintiff to submit to the civil jurisdiction of the Tulalip Tribal Court before seeking state-court remedies—raising a "federal question"—this Court must reject Plaintiff's attempts to remand this action to Washington courts, which do not recognize the tribal remedies doctrine.

C. Plaintiff's Cursory Assertion that No Federal Questions Exist Should Be Rejected

Plaintiff argues that the "federal issues" raised in his complaint each "revolves around Defendants' incorrect assertion that they have sovereign immunity." Dkt. #25 at 4. This is incorrect. Although Defendants assert an immunity defense to preserve their rights post-removal,

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see Dkt. #1 at ¶17, their act of removing this action to federal court does *not* rely on the potential availability of a sovereign immunity defense. Separate and apart from any such defense, and as discussed above, Defendants argue that Washington lacks adjudicatory jurisdiction over tribal corporations, like Reece Construction, for any acts that occur on tribal or state territory. *See Kiowa Tribe*, 523 U.S. at 754.[12] Defendants will alternatively argue, even assuming Washington courts have concurrent jurisdiction over civil claims brought against Defendants, there are distinct federal questions that inhere in Plaintiff's complaint, including whether the City of Seattle (or Washington) has the congressionally delegated power to regulate Defendants on tribal land; whether federal or tribal law preempts Washington and local law; or whether Plaintiff was required to first exhaust his remedies in Tulalip Tribal Court.

Plaintiff's reliance on *Maxa v. Yakima Petroleum, Inc.*, a Washington decision, likewise demonstrates why this case must be adjudicated in this Court, not in a Washington court. In *Maxa*, a Washington appellate court disregarded binding U.S. Supreme Court case law "mandat[ing] that federal courts abstain or dismiss when tribal courts assert civil jurisdiction" because it "disagree[d]" with the trial court's conclusion that state courts were bound by this federal precedent; the *Maxa* court ultimately concluded that "[s]tate civil adjudicatory authority over litigation involving tribe members . . . is not specifically preempted by federal law." *Id.* 83 Wn. App. at 767.

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[12] *Kiowa Tribe* demonstrates an assertion of sovereign immunity is only one possible defense for a tribal corporation to avoid suit in state court; there, it held: "a tribe is subject to suit *only* where Congress has authorized the suit *or* the tribe has waived its immunity." 523 U.S. at 754 (emphases added).

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The Washington appellate decision in *Maxa* was based on a fundamental misunderstanding of federal Indian law:

- First, the *Maxa* court ignored longstanding Supreme Court precedent holding that states lack *any* jurisdiction over Indians unless and until Congress clearly delegates such jurisdiction to states. 83 Wn. App. 763; *but see McGirt*, 140 S. Ct. at 2463.

- Second, the *Maxa* court failed to distinguish between Public Law 280's conferral of jurisdiction over individual "Indians" but not over tribal *entities*. 83 Wn. App. at 767-69; *but see* 28 U.S.C. § 1360(a) (referencing only "Indians"); *Bryan*, 426 U.S. at 389 (Public Law 280 does not clearly confer "state jurisdiction over the tribes themselves").

- Third, the *Maxa* court failed to distinguish between *regulatory* jurisdiction (conferred to states through Public Law 280) and *adjudicatory* jurisdiction (which was not conferred). To support this position, the *Maxa* court relied on the Supreme Court's decision in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), *abrogated by statute*. *See Maxa*, 83 Wn. App. at 267. Yet, the *Cabazon Band* case said nothing about whether a state court had *adjudicatory* jurisdiction to hear civil claims against an Indian entity and instead held that "[s]tate regulation would impermissibly infringe on tribal government." 480 U.S. at 222.

- Fourth, the *Maxa* court simply ignored that even if a Washington court has concurrent jurisdiction over a tribal corporation, it is still required (under binding federal precedent) to dismiss the action when the non-Indian plaintiff fails to exhaust remedies in tribal court. *See* 83 Wn. App. at 767.

Other courts and academics have acknowledgfed that the *Maxa* decision is inconsistent with binding federal precedent.[13]

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[13] For example, in *Drumm v. Brown*, 716 A.2d 50 (Conn. 1998), Connecticut's highest court rejected *Maxa*'s holding that the exhaustion doctrine is inapplicable to state courts and instead held that Connecticut courts "must apply the exhaustion of tribal remedies doctrine" because the federal "exhaustion rule is substantive federal law, which is *binding* in state courts pursuant to the *supremacy clause of the federal constitution*." *Id.* at 61 n.11, 62 (emphasis added); *see also supra*, Heidepriem, 44 Am. Indian L. Rev. at 258-59, 263 (concluding Washington is one of only four states that refuses to acknowledge binding federal case law requiring exhaustion of remedies before a tribal court).

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Finally, Plaintiff argues that because Reece Construction is registered as a foreign for-profit company with Washington, employs Washington residents (although not Plaintiff), and performs work off the reservation, "Reece cannot credibly claim it can sue in state court but that it cannot be sued in state court." Dkt. #25 at 6-7. Contrary to Plaintiff's position, the Supreme Court does hold that, although Indians may seek relief against non-Indians in state courts, non-Indians may not bring suits *against* Indians unless Congress has expressly delegated to state courts jurisdiction over such suits. *See Williams*, 358 U.S. at 220 ("[S]uits by Indians against outsiders in state courts have been sanctioned . . . But if the crime was by or against an Indian, tribal jurisdiction or that expressly conferred on other courts by Congress has remained exclusive" and "absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them"). Further, Plaintiff's unsubstantiated representation that the "proposed Class members performed most of their work off reservation" is simply not true. *See* Reece Decl. dated 2/19/2024, ¶¶ 9-12.

In short, the parties dispute a substantial questions of federal law, all of which have been held to give rise to federal-question jurisdiction under 28 U.S.C. § 1331. *E.g.*, *Williams*, 358 U.S. at 218; *Crow Tribe*, 471 U.S. at 852-53; *Segundo*, 813 F.2d at 1389. Exercising federal jurisdiction is necessary to preserve Defendants' rights because this Court must follow binding federal precedent (not errant state court rulings) and is in a better position to ensure application of these federal authorities.

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D. Exercising Federal Jurisdiction Will Not Disrupt the Federal-State Balance

The exercise of federal jurisdiction over rare actions like this one—involving a non-Washington Plaintiff who brings claims against a non-Washington corporation—would *not* threaten to affect the federal-state balance of power.

The Supreme Court has held that "[f]or the federal issue [to] ultimately qualify for a federal forum . . . federal jurisdiction [must be] consistent with congressional judgment about the sound division of labor between state and federal courts governing the application of [28 U.S.C. § 1331]." *Grable & Sons*, 545 U.S. at 313-14. When a "constitutional question" is present, like here, courts are more willing to find that such questions "reach the level of substantiality that can justify federal jurisdiction." *Id.* at 320 n.7 (citation omitted). Even where constitutional issues are not in question, courts must consider whether exercising federal jurisdiction over state claims would "attract[] a horde of original filings and removal cases [in federal court] raising other state claims with embedded federal issues" or "herald[] a potentially enormous shift of traditionally state cases into federal courts." *Id*. at 318-19.

That Congress reserved for itself plenary power over Indian affairs, *see McGirt*, 140 S. Ct. at 2463, supports Defendants' position that exercising federal-question jurisdiction in this case will not disrupt the "federal-state balance." *See Sauk-Suiattle Indian Tribe*, 56 F.4th at 1185. Federal courts regularly interpret the U.S. Constitution, federal statues like Public Law 280, and federal common law, "[a]nd it does not appear that Washington State has any special responsibility" in deciding these issues. *Id*. This Court is thus better equipped to determine whether Congress has delegated to Washington the jurisdiction to adjudicate state or local claims against (or to regulate)

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tribal corporations and tribal members operating from and principally doing business on tribal land. *See id.* at 319, 320 n.7. This Court is also better equipped to decide whether, under federal common law, Plaintiff's claims should otherwise be dismissed based on the doctrine of tribal or federal preemption or on exhaustion grounds. *See id*.

Because resolving these federal questions requires the Court to consider a complex body of federal Indian law, Defendants would understandably "prefer to litigate [the issue] in federal court" and "avail themselves . . . of the 'experience, solicitude, and hope of uniformity that a federal forum offers on such federal issues.'" *Bodi*, 832 F.3d at 1022-23 (quoting *Grable & Sons Metal Prods.*, 545 U.S. at 312).

On a practical level, asking this Court to resolve these inherent federal questions will not "attract[] a horde of original filings and removal cases," nor will it "herald[] a potentially enormous shift of traditionally state cases into federal courts." *Grable & Sons*, 545 U.S. 319 (holding plaintiff's action was "the rare state quiet title action that involve[d] contested issues of federal law . . . [federal] jurisdiction over actions like [that one] would not materially affect, or threaten to affect, the normal currents of litigation"). Similarly here, this action is one of the rare wage-and-hour actions brought by a non-Washington Plaintiff against non-Washington Defendants, i.e., a Tulalip corporation and Tulalip tribal member operating from and primarily doing business on tribal land. While Washington courts have an interest in affording Washington-based employees (or those working for Washington corporations) the protection of Washington law, *see Failla v. FixtureOne Corp.*, 181 Wn.2d 642, 653, 336 P.3d 1112 (2014), there is *no* indication that Washington courts have an interest in affording non-Washington employees working for non-

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Washington employers (tribal employers nonetheless) such protection, or that these tribal Defendants should have "reasonably anticipate[d] defending a wage dispute" in Washington. *Id.*

Accordingly, exercising federal jurisdiction over actions like this one would not threaten to affect the proper division of labor between state and federal courts.

IV. CONCLUSION

Because Plaintiff's complaint, brought against a Tulalip corporation based on the Tulalip Reservation and a Tulalip tribal member, necessarily raises substantial federal questions that are disputed by the parties—and because the "federal-state balance of power" is not threatened by the exercise of federal jurisdiction in this case—the Court should retain federal-question jurisdiction and ***deny*** Plaintiff's Motion to Remand (Dkt. #25).

DATED this 20th day of February, 2024.

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I certify that this memorandum contains 8,167 words, in compliance with LCR 7(e)(3).

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