

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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

Plaintiff,

v.

REECE CONSTRUCTION COMPANY  
and STEVEN REECE,

Defendants.

CASE NO. 2:23-cv-00570-BAT

**ORDER GRANTING PLAINTIFF’S  
MOTION TO REMAND**

Defendants Reece Construction Company and Steven Reece removed this action from King County Superior Court, alleging Plaintiff Dan Kwate’s right to relief raises federal question jurisdiction because Defendant Reece is a member of the Tulalip Tribe and Defendant Reece Construction is registered under the Tulalip Tribal Code (“TTC”). Dkt. 1. Plaintiff moves to remand. Dkt. 25. Defendants oppose the motion (Dkt. 29) and Plaintiff filed a reply (Dkt. 32). Having considered the parties’ filings and balance of the record, the Court determines an oral hearing is not required and grants the motion.

FACTUAL BACKGROUND

Plaintiff filed this action in King County Superior Court (Case No. 23-2-021240-0-SEA) alleging that Reece Construction and its sole owner, Steven Reece, failed to properly pay their employees who perform construction work throughout Washington. Dkt. 1-3 ¶¶ 1.1-1.7. Plaintiff

1 alleges Defendants have employed more than 40 such employees in Washington on public and  
2 private construction projects, including on prevailing wage jobs for the State of Washington. *Id.*  
3 ¶¶ 1.2, 1.5. One proposed class member is a Tribal member. Dkt. 30, Reece Decl. 2/19/2024,  
4 ¶15. Plaintiff alleges Defendants have engaged in a common practice of failing to provide all  
5 such employees rest and meal breaks and failing to pay for all hours worked, including overtime,  
6 at the proper rate of pay and/or the prevailing wage for public work projects. *Id.* ¶¶ 1.2-1.6.  
7 Plaintiff asserts Reece Construction violated multiple wage-and-hour statutes, regulations, and  
8 ordinances under Washington law and the Seattle Municipal Code, including RCW 39.12 *et seq.*;  
9 RCW 49.12 *et seq.*; RCW 49.28 *et seq.*; RCW §§ 49.46.090, 49.46.130, 49.48.010, 49.52.050;  
10 WAC 296-127 *et seq.*; WAC §§ 296-126- 092, 296-126-040, 296-128-010, 296-128-020; SMC  
11 14.19 *et seq.*; and SMC 14.20 *et seq.*). Dkt. 1-3, ¶¶5.1-9.6.

12 Defendant Reece Construction is incorporated under the TTC 14.05.440, and its principal  
13 and registered offices are located on the Tulalip Reservation.<sup>1</sup> *See* Dkt. 2, Reece Decl.  
14 4/12/2023, ¶4, Ex. C; Dkt. 30, Reece Decl. 2/19/2024, Ex. 1. Defendant Andy Reece, a member  
15 of the Tulalip Tribe, is the sole director and shareholder of Reece Construction. Dkt. 2, ¶2 & Exs.  
16 A-C.

17 Reece Construction is registered in the State of Washington as a foreign for-profit  
18 corporation for the performance of construction projects in the State of Washington which occur  
19 off the reservation. Dkt. 1-3, ¶2.3. In 2020, Reece Construction earned 45.15% of its revenues  
20 off reservation; in 2021 it earned 72.73% of its revenues off reservation; in 2022 it earned  
21 27.46% of its revenues off reservation; and, in 2023 it earned 43.44% of its revenues off  
22

23  

---

<sup>1</sup> The TTC is available online at:  
<https://www.codepublishing.com/WA/Tulalip/#!/TulalipNT.html>.

1 reservation. Dkt. 26, Erika Lane Decl., Ex. 2. Reece Construction regularly contracts with  
2 Washington State agencies, cities, and municipal entities, including the Washington State  
3 Department of Transportation. Dkt. 27, Mead Decl., Ex. 1. During the proposed class period,  
4 Reece Construction was involved in public works contracts totaling millions of dollars. Dkt. 27,  
5 Jeff Mead Decl., Ex. 1. Reece Construction has also availed itself of Washington State law in  
6 Washington State courts by suing other contractors for alleged damages for “materials and/or  
7 services” provided by Reece Construction. *Id.*, Exs. 2-4 ¶ 3.3. In each such case, Reece  
8 Construction represented that “[t]he superior courts of the State of Washington have jurisdiction  
9 over the parties and the subject matter of this litigation. *Id.* Exs. 2-4 ¶ 2.1.

10 Plaintiff is not a member of any Tribe. Dkt. 28, Kwate Decl., ¶ 2. Plaintiff signed  
11 employment paperwork at Defendants’ job site located off the reservation. *Id.* ¶¶ 3-4. For  
12 purposes of this motion, Defendants do not dispute Plaintiff performed 95% of his work on  
13 projects located off the reservation. *Id.* ¶ 5; *see* Dkt. 29, p.12. The parties also do not dispute  
14 Plaintiff was allowed to park and reside in his trailer on the Tulalip Reservation during the time  
15 he worked for Defendants and before coming to work for Defendants, he was a resident of Idaho.  
16 Dkt. 20, Reece Decl. dated 2/19/2024, ¶13; Dkt. 2, Ex. E.

17 The Tulalip Tribe has treaty rights under the 1855 Treaty of Point Elliott and is a  
18 federally acknowledged tribe. The Tulalip Tribe has adopted a civil code, including Title 9 TCC,  
19 which regulates “employment discrimination against Native Americans” by creating a tribal  
20 Equal Employment Opportunity Commission and discrimination laws that promote “unique  
21 employment and contracting preference that provide Native American and Tulalip Tribe member  
22 preference, on Indian lands within the jurisdiction of the Tulalip Tribes.” Title 9, TTC does not  
23 regulate wage and hour, rest and meal break, or prevailing wage issues.

1  
2 Title 14, TTC, states the Tulalip Tribe Courts shall have jurisdiction over any  
3 corporation, its directors, officers, or employees, organized under Title 14, relating to any matter  
4 having to do with the administration, operations or business of the corporation. Title 14 does not  
5 govern civil disputes brought against a Title 14 corporation or its directors, officers, or  
6 employees.

### 7 LEGAL STANDARD

8 The federal removal statute provides that “any civil action brought in a state court of  
9 which the district courts of the United States have original jurisdiction ... may be removed by the  
10 defendant ... to the district court of the United States.” 28 U.S.C. § 1441(a). District courts have  
11 original jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the  
12 United States.” 28 U.S.C. § 1331. Where, as here, state law creates the cause of action, the action  
13 arises under federal law when “a well-pleaded complaint establishes ... that the plaintiff’s right to  
14 relief necessarily depends on resolution of a substantial question of federal law.” *Franchise Tax*  
15 *Bd. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 27–28, 103 S.Ct. 2841, 77 L.Ed.2d  
16 420 (1983). A substantial federal question exists when the question is “(1) necessarily raised, (2)  
17 actually disputed, (3) substantial, and (4) capable of resolution in federal court without disrupting  
18 the federal-state balance approved by Congress.” *Gunn v. Minton*, 568 U.S. 251, 258, 133 S.Ct.  
19 1059, 185 L.Ed.2d 72 (2013).

### 20 DISCUSSION

21 There is nothing on the face of Plaintiff’s complaint which raises a federal question.  
22 Defendants argue Plaintiff’s alleged right to relief under state and local wage and hour laws  
23 necessarily raises substantial questions of federal law, including whether Washington courts can

1 resolve civil claims against a “tribal corporation” operating on tribal land; whether state law is  
2 preempted by tribal and/or federal law; and whether Plaintiff must first exhaust his remedies in  
3 Tulalip Tribal Court.

4 A. Sovereign Immunity

5 Defendants assert a sovereign immunity defense (Dkt. 1, ¶17) but did not base removal of  
6 this action on that defense (Dkt. 1, ¶8). The parties agree a tribal immunity defense does not  
7 provide an independent basis for federal jurisdiction. *See Bodi v. Shingle Springs Band of Miwok*  
8 *Indians*, 832 F.3d 1011, 1023 n.16 (9th Cir. 2016); *see also, Atay v. Cty. of Maui*, 842 F.3d 688,  
9 697–98 (9th Cir. 2016) (“the character of the threatened action, and not of the defense”  
10 determines whether there is federal-question jurisdiction.”)

11 Although Defendants contend the purported federal questions are not related to their  
12 immunity defense, the questions cannot be fairly answered without first determining if tribal  
13 sovereign immunity applies to a tribal member and a corporation registered under Title 14  
14 because Defendants loosely refer to Reece Construction as a “Tulalip-owned corporation” but  
15 submitted documents reflecting that Reece Construction is a private for-profit corporation,  
16 owned and directed entirely by and for the benefit of Defendant Steven Reece.

17 Courts recognize tribal sovereign immunity to further tribal self-governance and out of  
18 respect for tribal sovereignty. *See Three Affiliated Tribes of the Ft. Berthold Reservation v. Wold*  
19 *Eng'g. P.C.*, 476 U.S. 877, 890, 106 S.Ct. 2305, 90 L.Ed.2d 881 (1986). Tribal sovereign  
20 immunity does not apply to individual Indians, but only to Indian tribes and their subordinate  
21 economic organizations. *Puyallup Tribe, Inc. v. Department of Game*, 433 U.S. 165, 172, 97  
22 S.Ct. 2616, 2621, 53 L.Ed.2d 667 (1977) (immunity not extended to individual Indians); *United*  
23 *States v. United States Fidelity & Guaranty Co.*, 309 U.S. 506, 60 S.Ct. 653, 84 L.Ed. 894 (1940)

1 (recognition of tribal immunity). The Supreme Court has extended tribal sovereign immunity to  
2 tribes' commercial and governmental activities. *Kiowa Tribe v. Mfg. Technologies, Inc.*, 523  
3 U.S. 751, 760, 118 S.Ct. 1700, 140 L.Ed.2d 981 (1998). This immunity extends to entities  
4 established by a Tribe to conduct activities when the entity functions as an arm of the Tribe.  
5 *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046 (9th Cir. 2006). For example, in *Allen*, the  
6 Ninth Circuit noted a tribal owned and operated casino was dependent on several layers of  
7 government approval, was intended to promote “tribal economic development, self-sufficiency,  
8 and strong tribal government;” was not solely to produce revenue; and benefitted the tribe  
9 economically and otherwise. *Id.* at 1047.

10 In contrast, immunity has not been extended to tribally chartered corporations that are  
11 completely independent of the tribe. *See Dixon v. Picopa Constr. Co.*, 160 Ariz. 251, 772 P.2d  
12 1104, 1109 (Ariz.1989). *See also, Wright v. Colville Tribal Enterprise Corp.*, 159 Wn.2d 108,  
13 113, 147 P.3d 1275 (2006); *see also Wright*, 159 Wn.2d 108, 122-123 (concurrence). Although  
14 no set formula is dispositive in determining whether a particular tribal organization is an “arm”  
15 of the tribe entitled to share in the tribe's immunity from suit, courts generally consider such  
16 facts as the corporation's organization, ownership, tribal control of the governing body; tribal  
17 ownership of corporate property; and tribal control over corporate finances. *Wright*, 159 Wn.2d  
18 108, 122-123 (concurrence; citing cases). The documents produced by Defendants reflect the  
19 governing body of Reece Construction is comprised of Mr. Reece alone. There is no evidence of  
20 tribal title or ownership of Reece Construction property, tribal control over the administration or  
21 accounting activities of Reece Construction, or tribal power to dismiss Mr. Reece. There is also  
22 nothing indicating that suit against Defendants will bind or obligate funds of the Tulalip Tribe.

23 Defendants aver that the questions they have crafted “raise distinct, significant issues of

1 federal law that the parties dispute.” However, where, as in this case, state wage law creates the  
2 cause of action, the action arises under federal law only when the plaintiff’s right to relief  
3 *necessarily depends* on resolution of a substantial question of federal law. The Court concludes  
4 that none of the purported federal questions posed by Defendants are “necessarily raised” by  
5 Plaintiff’s state law wage and hour claims.

6 B. Exercise of State Jurisdiction of Tribal Corporation on Tribal Land; Tribal and/or Federal  
7 Preemption

8 As to work performed by Defendants’ construction operations on the Tulalip Reservation  
9 and whether tribal and/or federal law preempts the application of Washington state wage laws,  
10 the “Constitution allows a State to exercise jurisdiction in Indian country,” because Indian  
11 country is part of the State, not separate from the State.” *Oklahoma v. Castro-Huerta*, 597 U.S.  
12 629, 636 (2022). State civil jurisdiction over litigation involving tribe members is not  
13 specifically preempted by federal law. *See Maxa v. Yakima Petroleum, Inc.*, 83 Wn. App. 763,  
14 767, 924 P.2d 372 (1996); *Rice v. Rehner*, 463 U.S. 714, 103 S.Ct. 3291, 77 L.Ed.2d 961 (1983)  
15 (finding commercial transactions between Indians and non-Indians—even when conducted on a  
16 reservation—do not enjoy blanket immunity from state regulation); *and see Thomsen v. King*  
17 *County*, 39 Wn. App. 505, 512, 694 P.2d 40 (1985) (state civil jurisdiction over non-Indians on  
18 reservation land). And, an individual tribe member who is off Indian land is subject to the laws  
19 of the State of Washington to the same extent as a nonmember. *Id.* (citing *Powell v. Farris*, 94  
20 Wn.2d 782, 785, 620 P.2d 525 (1980)).

21 Here, the dispute does not clearly arise either on or off the Tulalip Reservation. Thus, the  
22 essential question is whether state assumption of jurisdiction would interfere with reservation  
23 self-government. “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 State interests

1 at stake are sufficient to justify the assertion of State Authority.” *New Mexico v. Mescalero*  
2 *Apache Tribe*, 462 U.S. 324, 334 (1983). Defendants argue TTC Title 9 preempts application of  
3 Washington state wage and hour laws to Plaintiff’s claims. Title 9 regulates employment  
4 discrimination against Native Americans by promoting employment and contracting preferences  
5 on Indian lands within the jurisdiction of the Tulalip – it does not regulate wage and hour  
6 violations on Tribal land. Defendants also argue TTC Title 14 preempts suit in state court against  
7 Defendant Reece Construction. However, Title 14 governs the administration and operations of  
8 the corporation – it does not govern civil disputes brought against a Title 14 corporation or its  
9 directors, officers, or employees.

10 Defendants also argue the Fair Labor Standards Act (“FLSA”) applies to Plaintiff’s class  
11 claims for alleged wage-and-hour violations on the Tulalip Reservation. Dkt. 29 at 25. The  
12 FLSA does not regulate rest and meal breaks and it does not regulate prevailing wages on public  
13 works projects, while Washington State law does. Washington law is also more protective of  
14 workers with respect to minimum and overtime wages. *See Pacific Merchant Shipping Ass’n v.*  
15 *Aubry*, 918 F.2d 1409, 1423-25 (9th Cir. 1990) (finding the FLSA sets a floor rather than a  
16 ceiling on protective legislation).<sup>2</sup> Defendants reliance on *Solis v. Matheson*, 563 F.3d 425 (9th  
17 Cir. 2009) is unavailing as in that case, the Secretary of Labor brought an action on behalf of the  
18 federal government in federal court, based on alleged violations of the FLSA by a purely  
19 commercial non-tribal business (although owned by tribe members) engaged in interstate  
20 commerce. There, because the Puyallup Tribe had not enacted wage and hour laws, the overtime

21  
22  
23  

---

<sup>2</sup> Defendants question Plaintiff’s entitlement to protection by Washington’s wage and hour laws because he was an Idaho resident when he signed his employment documents with Defendants. However, Defendants admit Plaintiff lived in Washington while he worked for them. Dkt. 29 at 27.



1 provisions of the FLSA applied to the owners of the non-tribal business. *Id.* at 433-34. Here, a  
2 non-tribal plaintiff brought a state court action based on violations of state and local laws by a  
3 non-tribal business (although owned by a tribe member). The Tulalip Tribe has not acted on its  
4 right of self-governance to enact wage and hours laws, and therefore, Washington state wage and  
5 hour laws apply to Defendants.

6 Further, Washington’s wage and hour laws are not incompatible with, nor do they  
7 interfere with, tribal or federal law. And, it is not disputed that Washington has a strong interest  
8 in ensuring the payment of wages to Washington based workers. Conversely, there is no express  
9 authorization extending the sovereign powers of the Tulalip Tribe over Plaintiff and other non-  
10 tribal members. *See Strate v. A-1 Contractors*, 520 U.S. 438 (1997) (“In the absence of express  
11 authorization by federal statute or treaty, tribal jurisdiction over the conduct of nonmembers  
12 exists only in limited circumstances).

13 Defendants provide no evidence of the amount and situs of the work performed by other  
14 members of the purported class, but it is undisputed that Defendant Reece Construction is  
15 registered as a foreign corporation to do business in the State of Washington and much of its  
16 revenue comes from projects performed on non-tribal land by non-tribal employees. Reece  
17 Construction regularly contracts with Washington State agencies, cities, and municipal entities,  
18 including the Washington State Department of Transportation. A foreign limited liability  
19 company can sue and be sued in Washington. *See* RCW 25.15.031; RCW 25.15.316; RCW  
20 25.15.321; RCW 25.15.331; RCW 25.15.361; *see also* RCW 23.95.500. “Before doing business  
21 in this state, a foreign limited liability company must register with the secretary of state....”  
22 RCW 25.15.321. Once registered, a foreign limited liability company “is subject to the same  
23 duties, restrictions, penalties, and liabilities now or later imposed on a domestic entity of the

1 same type.” RCW 23.95.500. Thus, by registering to and conducting business in Washington,  
2 employing Washington-based employees, and performing work in Washington, Defendants have  
3 availed themselves of the state’s labor markets and must comply with the State’s laws protecting  
4 Washington workers.

5 C. Exhaustion of Tribal Remedies

6 Defendants next assert there is a federal question as to whether Plaintiff was required to  
7 “first pursue his remedies in the Tulalip Tribal Court.” Dkt. 29 at 25-26. Defendants contend  
8 Plaintiff has every right to seek relief in the Tulalip Court because the Tribe regulates  
9 “employment and contracting” under Title 9 and has “express jurisdiction” over the parties and  
10 Plaintiff’s claims under Title 14. However, Title 9 does not regulate wage and hour issues and  
11 Title 14 does not govern civil actions brought against a Title 14 corporation, so Plaintiff has no  
12 tribal remedies to pursue. Defendants also devote some time to the “doctrine of tribal court  
13 remedies” and question if a Washington state court is a friendly forum to enforce the doctrine.

14 Under the doctrine of exhaustion of tribal court remedies, relief may not be sought in  
15 federal court until appellate review of a pending matter in a tribal court is complete. *Iowa Mutual*  
16 *Ins. Co. v. LaPlante*, 480 U.S. 9, 107 S.Ct. 971, 94 L.Ed.2d 10 (1987); *Nat’l Farmers Union Ins.*  
17 *Cos. v. Crow Tribe of Indians*, 471 U.S. 845, 856-57, 105 S.Ct. 2447, 85 L.Ed.2d 818 (1985).  
18 Principles of comity mandate that federal courts abstain or dismiss when tribal courts assert civil  
19 jurisdiction. *Iowa Mutual*, 480 U.S. at 15, 107 S.Ct. at 976; *National Farmers Union*, 471 U.S. at  
20 857, 105 S.Ct. at 2454. Here, there is no pending tribal court matter. And, as previously  
21 discussed, state civil adjudicatory authority over litigation involving tribe members is not  
22 specifically preempted by federal law.

23 //

1 //

2

CONCLUSION

3

Based on the foregoing, the Court concludes the State of Washington has jurisdiction of

4

the parties and subject matter of this action and **GRANTS** Plaintiff's motion to remand (Dkt.

5

25).

6

The Clerk of the Court is directed to remand this case to the King County Superior Court.

7

DATED this 1st day of March, 2024.

8



9

\_\_\_\_\_  
BRIAN A. TSUCHIDA  
United States Magistrate Judge

10

11

12

13

14

15

16

17

18

19

20

21

22

23