

No. 19-

IN THE
Supreme Court of the United States

DUANNA KNIGHTON,

Petitioner,

v.

CEDARVILLE RANCHERIA OF NORTHERN PAIUTE
INDIANS; CEDARVILLE RANCHERIA TRIBAL
COURT; PATRICIA R. LENZI, IN HER CAPACITY
AS CHIEF JUDGE OF THE CEDARVILLE
RANCHERIA TRIBAL COURT,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

PATRICK L. DEEDON
Counsel for Record
MAIRE & DEEDON
2851 Park Marina Drive, Suite 300
Redding, CA 96001
(530) 246-6050
pdeedon@maire-law.com

Counsel for Petitioner

289981



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

“[T]he inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.” *Montana v. United States*, 450 U.S. 544, 565 (1981). The *Montana* Court recognized two limited narrow exceptions to that rule. But the Court has never resolved the question of whether tribal courts may ever exercise civil tort jurisdiction over nonmembers. In *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008) and in *Dollar General Corporation and Dolgencorp, LLC v. The Mississippi Band of Choctaw Indians, et. al.* 136 S.Ct. 2159 (2016) the issue was brought before this Court, but unanswered. This case presents the issue of: Whether Indian tribal courts have jurisdiction to adjudicate civil tort claims against nonmembers?

Further this case presents the issue of: If the Indian tribal courts have jurisdiction to adjudicate civil tort claims over nonmembers, what is the prerequisite notice of any such authority, what is the prerequisite consent thereto by a nonmember, and what is the viable scope of such jurisdiction so as to satisfy the Due Process rights of a nonmember?

PARTIES TO THE PROCEEDINGS

The petitioner is Duanna Knighton.

Respondents are Cedarville Rancheria of Northern Paiute Indians; Cedarville Rancheria Tribal Court, and Patricia R. Lenzi, in her capacity as Chief Judge of the Cedarville Rancheria Tribal Court.

RELATED CASES

Duanna Knighton v. Cedarville Rancheria of Northern Paiute Indians, et. al., Ninth Circuit Court of Appeals, Case 17-15515 (April 24, 2019)

Duanna Knighton v. Cedarville Rancheria of Northern Paiute Indians, et. al., Eastern District Court of California, Case No. 2:16-cv-02438-WHO (February 15, 2017)

Cedarville Rancheria of Northern Paiute Indians, et. al. v. Duanna Knighton, et. al., Court of Appeals for the Cedarville Rancheria, Case No.: CED-CI-2014-0002 (March 7, 2016)

Cedarville Rancheria of Northern Paiute Indians, et. al. v. Duanna Knighton, et. al., Cedarville Rancheria of Northern Paiute Indians Tribal Court, Case No.: CED-CI-2014-00002 (March 11, 2015)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Duanna Knighton, respectfully petitions for a writ of *certiorari* to review the opinion of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The order and opinion of the United States Court of Appeals for the Ninth Circuit (App. A) is reported at 922 F.3d 892. The order of the district court (App. B) is reported at 234 F.Supp. 3d 1042.

The opinion of the Court of Appeals For The Cedarville Rancheria (App. C) is unpublished. The order of the Cedarville Rancheria of Northern Paiute Tribal Court (App. D) is unpublished.

JURISDICTION

The order and opinion of the court of appeals was entered on April 24, 2019. (App. A) This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Fifth Amendment to the United States Constitution, “No person shall... be deprived of life, liberty or property, without due process of law...”

Fourteenth Amendment, Section 1, to the United States Constitution, “...nor shall any State deprive any person of life, liberty, or property, without due process of law.”

Indian Civil Rights Act, 25 U.S.C § 1302(a)(8), “No Indian tribe in exercising powers of self-government shall – deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;”

STATEMENT OF THE CASE

Petitioner Duanna Knighton is a nonmember being haled into a tribal court which should not have any jurisdiction over her. No Cedarville Rancheria judicial code nor a Cedarville Rancheria tribal court existed during Ms. Knighton’s employment with the Cedarville Rancheria. *After* Ms. Knighton’s employment with the Cedarville Rancheria ceased, its twelve adult members created, for the first time, a judicial code and tribal court. Respondents seek to apply this judicial code and Tribal Court *ex post facto* upon Ms. Knighton without Due Process. The Tribal Court process denies Ms. Knighton a jury. The Tribal Court process is completely confidential. The Tribal Court process permits application of unknown and unwritten tribal laws of any tribe. The Cedarville Rancheria seeks over a million dollars in compensatory damages and it further seeks punitive damages. Ms. Knighton challenged tribal court jurisdiction within the tribal court through a motion to dismiss, which was denied. Petitioner’s appeal thereof to the tribal appellate division was denied. Having exhausted tribal court remedies, Ms. Knighton subsequently sought relief within the federal court. The district court granted the Respondents’ motion to dismiss, finding tribal court jurisdiction. The Ninth Circuit upheld tribal court jurisdiction, greatly expanding tribal court jurisdiction in direct conflict to *Montana*.

I. Legal Background

The issue of tribal court jurisdiction was recently argued on December 7, 2015, and a *per curiam* opinion was issued on June 23, 2016, in the matter of *Dollar General Corporation v. Miss. Band of Choctaw Indians*, 136 S.Ct. 2159 (2016). Following oral argument, Justice Scalia passed away, resulting in an equally divided court. It was anticipated that this Court's decision in *Dollar General* would have greatly defined tribal court jurisdiction. The issue presented in *Dollar General*, is strikingly similar to the issue in this case, *to wit.*, the narrow scope of tribal court jurisdiction.

Tribal court jurisdiction is not expansive; it is very narrow. This Court held that “exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation.” *Montana v. United States*, 450 U.S. 544, 564 (1981). This Court has further stated, “[T]he Indian tribes have lost any right of governing every person within their limits except themselves.” *Id.* at 565. The tribes thus have restrictions upon the right of “self-government” and “to control internal relations” over tribal members; and even further restriction over nonmembers. Additionally, the Court draws a further distinction between a tribe's legislative power for rules covering nonmembers conduct on tribal land and the tribe's adjudicative authority to enforce those rules against nonmembers in tribal court.

A. The Scope of Tribes' Legislative Authority

It has been clearly defined by this Court that, “the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.” *Montana*, 450 U.S. at 565; see also *Strate v. A-1 Contractors*, 520 U.S. 438, 445 (1997) (tribal court jurisdiction over nonmember conduct exists in only limited circumstances.) The Court held that tribes cannot apply their criminal laws to nonmembers. See *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, (1978); See also *Duro v. Reina*, 495 U.S. 676 (1990). Similarly, the Court has generally prohibited civil jurisdiction over nonmembers as well. *Montana*, 450 U.S. at 565. The Court in *Montana* established two narrow exceptions:

First, a “tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealings, contracts, leases, or other arrangements.” *Id.* at 565.

Second, a “tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” *Id.* at 566. This exception permits tribes to regulate nonmember activities in the absence of consent only when the conduct “imperil[s] the subsistence of the tribal community.” *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 341 (2008).

B. The Scope of a Tribes' Adjudicative Jurisdiction

The *Montana* exceptions describe the scope of a tribe's legislative or regulatory authority; the power to levy taxes or issue rules governing nonmember conduct on a reservation. *Nevada v. Hicks*, 533 U.S. 353, 358 (2001). This Court held that whether tribes may enforce those rules against nonmembers in tribal court is another question. *Id.* at 357-58. *Hicks* made clear that this court "never held that a tribal court had jurisdiction over a nonmember defendant." *Hicks*, 533 U.S. at 358 n.2. The issue remains open whether, and to what extent, a tribal court may exercise civil jurisdiction over nonmembers.

C. Tribal Court Jurisdiction Must Comport With Fair Play and Substantial Justice to Comply With the Requirements of Due Process.

Jurisdiction is only found if traditional notions of fair play and substantial justice are met. *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir. 1987). This Court has required predictability in the legal system so that a defendant can reasonably anticipate being haled into court. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980). Similarly, this Court echoed that same need for "predictability to the legal system" in the context of tribal jurisdiction in *Plains Commerce Bank*, 554 U.S. at 337, where it held that a nonmember can only meaningfully consent to the "jurisdictional consequences" of a consensual relationship that are reasonably foreseeable.

II. Factual Background

The Cedarville Rancheria of Northern Paiute Indians (“Cedarville Rancheria”) is a federally recognized Native American Indian Tribe, with its reservation, housing, travel and community centers located on trust lands in Cedarville, Modoc County, California. (App. 5a) The tribe’s administrative headquarters is located approximately 30 miles away in Alturas, California, on land owned in fee by the tribe. (App. 35a)

Ms. Knighton was employed by the Cedarville Rancheria from approximately July 1996 to March 2013 and served as Tribal Administrator at the time her employment ended. (App. 6a) She is not a member of the Cedarville Rancheria and has never resided in, nor owned, property on tribal land. Knighton is currently employed by Resources for Indian Student Education (RISE), a California not-for-profit corporation that provides education services and programs to Indian children, where she has been employed since 1995. (App. 7a)

Prior to creating a Constitution and Bylaws in 2011, and Tribal Court and Judicial Code in December 2013, the Cedarville Rancheria regulated employment matters pursuant to Articles XIII-XVIII and XX of the Cedarville Rancheria Policies (Personnel Manual). Those policies established disciplinary and grievance procedures for tribal employees and provided for Tribal Council control over disciplinary action involving the Tribal Administrator. There were no tort remedies over an employee. (App. 6-7a)

In February 2011, the Cedarville Rancheria enacted a Constitution and Bylaws, which provided for internal governance of members but did not expressly extend tribal jurisdiction to include nonmembers, nor provide a mechanism for asserting civil adjudicative authority over nonmember conduct. Pursuant to the Constitution and Bylaws, the tribe's Executive Committee (Chairperson, Vice Chairperson, and Secretary) and the tribe's Community Council (all qualified voters of the Rancheria who are 18 years of age or older), were responsible for, amongst other things, issuing and carrying out ordinances, resolutions, or other enactments, controlling membership, establishing housing and other authorities necessary to the welfare of the tribe; and vetoing any proposed transaction involving tribal lands or assets. The Tribal Chairperson was responsible for overseeing all tribal matters, "including concerns, conflicts and any other issues". (App. 9a)

In December 2013, approximately nine months after Ms. Knighton's employment ended, the Cedarville Rancheria established its Tribal Court and enacted a Judicial Code. The Tribal Court, which included a trial and appellate division, was created "for the purpose of protecting and promoting tribal sovereignty, strengthening tribal self-government, [and] providing for the judicial needs of the Cedarville Rancheria." (App. 9-10a) Tribal Court proceedings are governed by the Federal Rules of Civil Procedure and Rules of Evidence, and the Tribal Court can apply the laws of the Tribe or any other tribe, as well as state or federal law; issue orders and judgments; and award monetary damages and injunctive relief. There is no right to a jury trial and all proceedings are confidential.

The Cedarville Rancheria asserts that its Tribal Court has jurisdiction over the immediate case pursuant to Section 201 *et. seq.* of its Judicial Code. Section 201 provides that the Tribal Court has subject matter jurisdiction over “[a]ll persons outside the exterior boundaries of the Cedarville Rancheria Reservation ... within the jurisdiction of the Rancheria pursuant to federal or tribal law, including all persons whose activity on or off reservation threatens the Rancheria, government or its membership,” and to “[a]ll other persons whose actions involve or affect the Rancheria, or its members, through commercial dealings, contracts, leases or other arrangements.” The Code further provides that the Tribal Court’s judicial power extends to “[a]ll civil causes of action arising at common law including, without limitation, all contract claims (whether the contract at issue is written or oral or existing at law), all tort claims (regardless of the nature), all property claims (regardless of the nature), all insurance claims, and all claims based on commercial dealing with the Band, its agencies, sub-entities, and corporations chartered pursuant to its laws, and all nuisance claims.” (App. 9-10a)

On February 20, 2014, former Tribal Chairperson, Cherie Lash Rhoades, shot and killed four tribal members during a Tribal Court proceeding¹. (App. 42a) The shooter and the victims were all linked to the instant dispute. As Tribal Chairperson, Ms. Rhoades approved each of the matters and things giving rise to the Tribe’s complaint against Ms. Knighton. The case against Ms. Knighton was the fifth confidential tribal court case.

1. The killings occurred during a court session. The events made national news.

III. Procedural History

On October 2, 2014, the Cedarville Rancheria filed its Complaint in Tribal Court against Ms. Knighton and RISE. The lawsuit, captioned Cedarville Rancheria of Northern Paiute Indians v. Duanna Knighton, et al., CED-CI-2014-00002, was only the fifth case to be heard by the Tribal Court. (App. 78a) The complaint asserts eight claims against Ms. Knighton: (1) fraud and deceit; (2) recovery of unauthorized and excessive pension payments; (3) recovery of unauthorized investment losses; (4) breach of fiduciary duty; (5) aiding and abetting breach of fiduciary duty; (6) unjust enrichment; (7) common count-account stated; and (8) common count-money had and received. The Cedarville Rancheria alleges that Ms. Knighton fraudulently received higher compensation and benefits than she was entitled to, made poor investments on behalf of the tribe, and breached her fiduciary duty when she involved herself in the sale of a building from RISE to the tribe. (App. 11a)

On October 1, 2014, the Tribal Court *ex parte* issued a restraining order and injunction against Ms. Knighton, RISE, and Oppenheimer Funds, Inc., a financial fund manager, freezing funds belonging to Ms. Knighton. The Tribal Court, without any briefing nor argument, *sua sponte* declared that it had jurisdiction over Ms. Knighton and the claims asserted therein. On October 28, 2014, Ms. Knighton filed a motion challenging the Tribal Court's jurisdiction, which the Tribal Court denied on March 11, 2015. (App. 12a) On February 24, 2015, RISE filed a separate motion to dismiss.

On April 21, 2015, the parties agreed to stay the lawsuit as to Ms. Knighton due to RISE's pending motion. The parties further stipulated that Ms. Knighton had fully exhausted the Tribal Court procedures for challenging tribal jurisdiction such that she could proceed with a jurisdictional challenge in federal court. On April 29, 2015, the Tribal Court stayed the case for all purposes as to Ms. Knighton until it ruled on RISE's motion to dismiss. The Tribal Court also found that denial of Knighton's motion was not yet ripe for federal review because Ms. Knighton had not appealed the issue to the Tribal Court of Appeals. (App. 12a) On June 30, 2015, the Tribal Court granted RISE's motion to dismiss for lack of personal jurisdiction.

Knighton appealed the Tribal Court's ruling on her motion, on July 20, 2015, on the basis that the Tribal Court lacked jurisdiction and the complaint must be dismissed because RISE was an indispensable party whose joinder was no longer feasible. On March 7, 2016, the Tribal Court of Appeals affirmed the Tribal Court's order denying Ms. Knighton's motion but remanded the indispensable party issue to the Tribal Court to consider first. (App. 12a) Ms. Knighton filed a motion to dismiss for failure to include RISE as an indispensable party. On June 29, 2016, the Tribal Court denied the motion in its entirety, which Ms. Knighton appealed to the Tribal Court of Appeals. On September 26, 2016, the Tribal Court stayed the entire tribal case and vacated the appeal pursuant to a stipulation between the parties. The parties further stipulated that Ms. Knighton had exhausted her Tribal Court remedies with respect to the lack of jurisdiction and the indispensable party issues.

On October 12, 2016, Knighton filed a federal court complaint for declaratory and injunctive relief against the Cedarville Rancheria, Tribal Court, and Tribal Judge Lenzi on the basis that the tribe lacks jurisdiction over her and that the tribe's lawsuit against her cannot proceed due to the tribe's failure to join RISE as an indispensable party. (App. 12a) On December 16, 2016, the Respondents² filed a motion to dismiss alleging, amongst other things, that the Tribal Court had jurisdiction over Ms. Knighton under *Montana*. On February 15, 2017, the District Court granted Respondents' motion to dismiss based on its finding that under *Water Wheel Camp Rec. Area, Inc. v. Larance*, 642 F.3d 802 (9th Cir. 2011), the tribe's inherent authority to exclude nonmembers from tribal land gave it both regulatory and adjudicative authority over Ms. Knighton. (App. 13a)

Ms. Knighton appealed the District Court's order and judgment to the Ninth Circuit. The Ninth Circuit issued its original opinion on March 13, 2019, affirming the judgment of the District Court. Ms. Knighton filed a petition for rehearing. On April 24, 2019, the Ninth Circuit issued its order granting the petition for rehearing and issued a superseding opinion filed concurrently with that order, continuing to affirm the judgment of the District Court. (App. 1-32a)

2. The Cedarville Rancheria, the Tribal Court, and the Tribal Court Judge are all represented by the same counsel, attorney Jack Duran. Mr. Duran also represented the Cedarville Rancheria in its complaint against Ms. Knighton in Tribal Court.

REASONS FOR GRANTING THE PETITIONER

As a citizen of the United States, Ms. Knighton should be afforded the protections of Due Process of law. There is absolutely no way Ms. Knighton could have consented to tribal court jurisdiction during her employment, as there was no judicial code nor a tribal court for the Cedarville Rancheria. Holding otherwise eviscerates the reasonable expectations of a defendant.

Moreover, this Court has never *carte blanche* held that a tribal court may exert civil jurisdiction over nonmembers. The issue was presented to the Court in *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008); however, the Court resolved that matter on other grounds and left the uncertainty. That uncertainty was raised in *Dollar General Corporation v. Miss. Band of Choctaw Indians*, 136 S.Ct. 2159 (2016) but an equally divided court precluded a decision. Thus, the issue remains unresolved. This issue is of great importance to citizens of the United States whom are being haled into a foreign tribal court, as well as to the Native American community so that it can properly define its legislative and adjudicative authority.

Moreover, as the decision in this matter demonstrates, the Ninth Circuit has created an all expansive civil tribal court jurisdiction scheme whereby basically any contact with a tribe or within tribal land will confer unlimited civil jurisdiction upon a tribal court. The gravity of the Ninth Circuits opinion herein is exponential, eviscerating Due Process of nonmember citizens. A nonmember should not be required to defend themselves in a secret tribunal, without a jury, with potentially unknown and obscure

tribal laws, and risk millions in damages. There must be conscious foreseeability of tribal court jurisdiction.

I. This Case Squarely Presents The Issue Left Open in Hicks and the Question The Court Granted Certiorari To Decide, But Did Not, In Plains Commerce Bank And Dollar General.

This case presents the Court with another opportunity to finally resolve the question granted certiorari in *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316 (2008) and in *Dollar General Corporation v. Miss. Band of Choctaw Indians*, 136 S.Ct. 2159 (2016). As stated above, the importance of resolving this question cannot be understated for both non-Indians and for Native American communities.

In *Plains Commerce Bank*, tribal members tried to sue a nonmember bank in tribal court alleging various torts. The Eighth Circuit concluded that the bank entered into a consensual relationship with the tribal members, thus falling within the *Montana* first exception. This Court explained that the “existence of a consensual relationship is not alone sufficient to support tribal jurisdiction.” *Plains Commerce* at 316. Tribal authority must take the form of taxation, licensing, or “other means” with respect to nonmembers. The scope of “other means” was the issue brought before this Court. Unfortunately, the Court did not answer the question and it resolved the case on other grounds. The Court, therefore, left unanswered whether tribes may regulate nonmembers through tort lawsuits brought within tribal court.

In *Dollar General*, the issue of tribal court jurisdiction involving torts alleged by tribal members against a nonmember arose again. Justice Scalia passed away after oral argument, resulting in an equally divided court; the question presented was unanswered still. This case presents the Court with another opportunity to finally resolve the questions left unanswered in *Plains Commerce* and *Dollar General*.

Further, this case presents the opportunity for this court to set a national standard as to tribal court jurisdiction, whereas, the Ninth Circuit's decision herein has created basically an all-expansive tribal court jurisdiction model for tort matters between a tribe and a nonmember which is at odds with several other circuits and this Court. The decision below completely foregoes Due Process and the fundamental fairness measures of having advance notice of tribal court processes, laws, and remedies. The United States government is not permitted to legislate and then *ex post facto* impose those regulations upon its citizens. Why should the Cedarville Rancheria be permitted to *ex post facto* create a judicial code and impose a tribal court process upon a nonmember whom could not have conceivably consented in any fashion to any such jurisdiction? The Cedarville Rancheria should not be permitted to do so.

The breadth of application of the Ninth Circuit's decision is dramatic and affects every non-Indian in this country. It subjects nonmembers to jurisdiction involving unwritten laws and customs to be exclusively determined and applied by the tribe. It subjects nonmembers to defend themselves in a secretive forum. It subjects nonmembers to defend themselves before a tribal court without a jury.

In this case, the tribal court judge was selected and paid by the twelve adult members of the Cedarville Rancheria whom have brought this action. Further, the tribal court and its judge is represented by the same counsel whom also represents the Cedarville Rancheria in its tort complaint against Ms. Knighton.

It should also be remembered that the Cedarville Rancheria is not left without a forum to pursue its claims. It may pursue its claims in either California state court or federal court. These are jurisdictions in which Ms. Knighton has consented; these are jurisdiction that offer the fundamental rights of open courts and trial by jury; these jurisdictions comport with fundamental fairness encompassed by Due Process.

II. Absent Congressional Authorization, Tribal Courts Have No Jurisdiction to Adjudicate Tort Claims Against Nonmembers, And Any Adjudicative Authority Cannot Exceed Its Legislative Authority.

The Ninth Circuit's decision in this case is wrong. Tribal courts lack jurisdiction to adjudicate private tort claims against nonmembers. Their adjudicative authority cannot exceed their legislative authority. In all three Supreme Court cases addressing tribal adjudicative jurisdiction over nonmembers (*Strate*, *Hicks* and *Plains Commerce Bank*), a tribe's adjudicative jurisdiction may not exceed its regulatory jurisdiction. *Water Wheel*, 642 F.3d at 814.

As the petition for writ of certiorari in *Dollar General* squarely pointed out, "This Court has rightly questioned whether tribal courts should ever be deemed

to have jurisdiction over nonmembers without Congress's authorization...." *Dollar General* Petition for Writ Of Certiorari at pages 18-20. The general rule is clear, tribal courts do not have jurisdiction over nonmembers. The *Montana* exceptions are "limited ones and cannot be construed in a manner that would swallow the rule or severely shrink it." *Plains Commerce Bank*, 554 U.S. at 330. This Court has "emphasized repeatedly in this context, when it comes to tribal regulatory authority, it is not 'in for a penny, in for a Pound.'" *Plains Commerce Bank*, 554 U.S. at 338 (quoting *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 656 (2001)). The *Montana* exceptions must be construed to avoid "the risk of subjecting nonmembers to tribal regulatory authority without commensurate consent." *Plains Commerce Bank*, 554 U.S. at 337.

Here there was absolutely no tribal court regulation nor authority during Ms. Knighton's employment because there was no judicial code, nor was there a tribal court. There was no way for Ms. Knighton to have discerned or agreed to any tribal tort laws and remedies because they did not exist.

Under the second *Montana* exception, a tribe retains no civil authority over the conduct of nonmembers unless "that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Plains Commerce Bank*, 554 U.S. at 320, citing *Montana*, 450 U.S. at 566. Despite its broad phrasing, the second *Montana* exception has been narrowly construed by the courts.

Read in isolation, the Montana rule's second

exception can be misperceived. Key to its proper application, however, is the Court's preface: Indian tribes retain their inherent power [to punish tribal offenders,] to determine tribal membership, to regulate domestic relations among members, and to prescribe rules of inheritance for members. . . . But [a tribe's inherent power does not reach] beyond what is necessary to protect tribal self-government or to control internal relations. *Strate*, 520 U.S. at 459, citing *Montana*, 450 U.S. at 564 (internal quotation marks omitted).

Jurisdictional analysis requires an examination of the specific conduct a tribe's legal claims seek to regulate. "Each claim must be analyzed individually in terms of the Montana principles to determine whether the tribal court has subject matter jurisdiction over it." *Attorney's Process & Investigation Servs. v. Sac & Fox Tribe*, 609 F.3d at 930. For the second exception to apply, the conduct alleged "must do more than injure the tribe, it must imperil the subsistence of the tribal community." *Plains Commerce Bank*, 554 U.S. at 341 (internal quotation marks omitted). At least one court has found that employment disputes do not fall under the second *Montana* exception. In *Atkinson Trading Co. v. Manygoats*, No. CIV 02-1556-PCT-SMM, 2004 U.S. Dist. LEXIS 31789,*31 (D. Ariz. Mar. 16, 2004), the court held that "while employment matters concerning tribal members are certainly related to the economic security and welfare of the tribe, they do not have a substantial impact on the tribe as a whole." The dispute the Cedarville Rancheria has with Ms. Knighton was an employment dispute. The matters complained of all arise out of her employment with the tribe. Accordingly, neither

prong of *Montana* is applicable in this case.

III. The Ninth Circuit Has Created Conflicting Precedent That Basically Provides For Limitless Tribal Court Jurisdiction

Under Ninth Circuit precedent, two frameworks exist for determining whether a tribe has jurisdiction over a lawsuit involving a nonmember defendant: (1) The two exceptions articulated in *Montana v. United States*, 450 U.S. 544 (1981), and (2) the right of a tribe to exclude non-tribal members from tribal land. *Window Rock Unified Sch. Dist. v. Reeves*, 861 F.3d 894 (9th Cir. 2017)

The Ninth Circuit's recent decisions in *Water Wheel*, 642 F.3d 802, *Grand Canyon Skywalk Dev., LLC v. 'SA' Nyu Wa Inc*, 715 F.3d 1196 (2013), and *Window Rock Unified Sch. Dist. v. Reeves*, 861 F.3d 894, 917 (9th Cir. 2017) signify a break from application of the limited *Montana* framework. As noted by the dissent in *Window Rock*, the Ninth Circuit is the only federal circuit court that has narrowly interpreted *Hicks* "to mean that the Montana framework need not be applied to questions of tribal jurisdiction over nonmembers in the absence of competing state interests," an interpretation which the *Window Rock* dissent argues is further narrowed in that case. *Window Rock Unified Sch. Dist. v. Reeves*, 861 F.3d 894, 917 (9th Cir. 2017). No case law, from any circuit, supports such a narrow application of *Hicks*.

The Eighth and Tenth Circuits have broadly interpreted *Hicks*, repeatedly holding that the *Montana* analysis applies to the question of tribal court jurisdiction over a nonmember defendant irrespective of whether the

claim arose on tribal land. In *MacArthur v. San Juan Cty.*, 497 F.3d 1057 (10th Cir. 2007), the Tenth Circuit found that *Hicks* “put to rest” the notion that whether *Montana* applies depends on whether the conduct at issue occurred on tribal land. Similarly, post-*Hicks*, the Eighth Circuit has moved toward analyzing tribal jurisdiction based on the membership status of the litigants, with location becoming one of several factors in determining whether *Montana*’s “harm to tribe” exception applies. See *Nord v. Kelly*, 520 F.3d 848 (8th Cir. 2008); *Attorney’s Process and Investigation Servs. v. Sac & Fox Tribe*, 609 F.3d 927 (8th Cir. 2010). See also Jacob R. Masters, *Off the Beaten Path? The Ninth Circuit’s Approach to Tribal Courts’ Civil Jurisdiction over Nonmember Defendants*, 38 *Am. Indian L. Rev.* 187, 204-207 (2013).

In *Stifel v. Lac DU Fambeau Band of Lake Superior Chippewa Indians*, 807 F.3d 184 (7th Cir. 2015), the Seventh Circuit rejected the Ninth Circuit’s approach of limiting *Montana* to cases involving non-Indian land and disagreed that land ownership should be considered a threshold or determinative factor. The court held that the Supreme Court’s holding in *Plains Commerce Bank* “leaves no doubt that *Montana* applies regardless of whether the actions take place on fee or non-fee land.” *Stifel* at 207.

In the present case, the Ninth Circuit expanded tribal court jurisdiction even further. The Ninth Circuit now holds that tribal court civil jurisdiction is conferred “over nonmembers on tribal land...from its inherent sovereign power to protect self-government and control internal relations.” App A, page 5. The Ninth Circuit further stated, “According, we now hold that under the

circumstances presented here, the tribe has authority to regulate the nonmember employee's conduct at issue pursuant to its inherent power to exclude nonmembers from tribal lands." (pg 5.) Even though the underlying case against Ms. Knighton has no connection, whatsoever, to excluding individuals from tribal lands, that "authority" somehow now confers unrestricted adjudicative authority to any and all torts. This holding is in conflict with other circuits and with the opinions of this Court.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

PATRICK L. DEEDON
Counsel for Record
MAIRE & DEEDON
2851 Park Marina Drive, Suite 300
Redding, CA 96001
(530) 246-6050
pdeedon@maire-law.com

July 23, 2019

Counsel for Petitioner

APPENDIX

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**APPENDIX A — ORDER AND OPINION OF THE
UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT, FILED APRIL 24, 2019**

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 17-15515
D.C. No. 2:16-cv-02438-WHO

DUANNA KNIGHTON,

Plaintiff-Appellant,

v.

CEDARVILLE RANCHERIA OF NORTHERN
PAIUTE INDIANS; CEDARVILLE RANCHERIA
TRIBAL COURT; PATRICIA R. LENZI, IN
HER CAPACITY AS CHIEF JUDGE OF THE
CEDARVILLE RANCHERIA TRIBAL COURT,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of California
William Horsley Orrick, District Judge, Presiding

November 16, 2018, Argued and Submitted,
San Francisco, California

April 24, 2019, Filed

ORDER AND OPINION

Appendix A

Before: A. Wallace Tashima and Milan D. Smith, Jr.,
Circuit Judges, and Lawrence L. Piersol,*
District Judge.

Opinion by Judge Piersol

SUMMARY**

Tribal Jurisdiction

The panel filed (1) an order granting a petition for panel rehearing and withdrawing its opinion filed March 13, 2019; and (2) a superseding opinion affirming the district court's dismissal of an action challenging a tribe's subject matter jurisdiction over tort claims brought by the tribe against a nonmember employee.

The tort claims arose from conduct committed by the nonmember on tribal lands during the scope of her employment. At issue was whether the tribal court had jurisdiction to adjudicate tribal claims against its nonmember employee, where the tribe's personnel policies and procedures manual regulated the nonmember's conduct at issue and provided that the tribal council would address violations by the nonmember during the course of her employment, and the tribal court and tribal judicial code were established and enacted after the nonmember left her employment with the tribe.

* The Honorable Lawrence L. Piersol, United States District Judge for the District of South Dakota, sitting by designation.

** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

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The panel held that a tribe's regulatory power over nonmembers on tribal land derives both from the tribe's inherent sovereign power to exclude nonmembers from tribal land and from the tribe's inherent sovereign power to protect self-government and control internal relations.

The panel held that the tribe had authority to regulate the nonmember employee's conduct at issue pursuant to its sovereign exclusionary power. Alternatively, the tribe had regulatory authority under both *Montana* exceptions, which allow a tribe (1) to regulate the activities of nonmembers who enter consensual relationships with the tribe or its members and (2) to exercise civil authority over the conduct of nonmembers on fee lands within its reservation when that conduct threatens or directly affects the political integrity, the economic security, or the health or welfare of the tribe. The panel concluded that the tribe's personnel manual regulated the employee's conduct, and the fact that the tribe later sought to adjudicate its claims in tribal court did not undermine the tribal court's jurisdiction. Given the existence of regulatory authority, the sovereign interests at stake, and the congressional interest in promoting self-government, the tribal court had jurisdiction over the tribe's tort claims.

OPINION

PIERSOL, Senior District Judge:

This case concerns the sources and scope of an Indian tribe's jurisdiction over tort claims brought by the tribe against a nonmember employed by the tribe. The tort claims arose from conduct committed by the nonmember on tribal lands during the scope of her employment.

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The question presented is whether the tribal court has jurisdiction to adjudicate tribal claims against its nonmember employee, where the tribe's personnel policies and procedures manual regulated the nonmember's conduct at issue and provided that the tribal council would address violations by the nonmember during the course of her employment, and the tribal court and tribal judicial code were established and enacted after the nonmember left her employment with the tribe.

We previously held that a tribe's inherent sovereign power to exclude nonmembers from tribal land is an independent source of regulatory power over nonmember conduct on tribal land. *See Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 814 (9th Cir. 2011) (per curiam) (stating that where the nonmember activity occurred on tribal land, and when there are no competing state interests at play, "the tribe's status as landowner is enough to support regulatory jurisdiction without considering *Montana [v. United States]*, 450 U.S. 544, 101 S. Ct. 1245, 67 L. Ed. 2d 493 (1981)"). Today we also observe that a tribe's regulatory power over nonmembers on tribal land does not solely derive from an Indian tribe's exclusionary power, but also derives separately from its inherent sovereign power to protect self-government and control internal relations. *See Montana*, 450 U.S. at 564 (stating that Indian tribes retain their inherent sovereign power to protect tribal self-government and to control internal relations); *see also Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 144-45, 102 S. Ct. 894, 71 L. Ed. 2d 21 (1982) (holding that the tribe's authority to tax nonmember mining and drilling on tribal land derived

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from its inherent power to govern and pay for the costs of self-government and stating that such regulations were also within the tribe's inherent power to condition the continued presence of nonmembers on tribal land).

Accordingly, we now hold that under the circumstances presented here, the tribe has authority to regulate the nonmember employee's conduct at issue pursuant to its inherent power to exclude nonmembers from tribal lands. We also hold, in the alternative, that the tribe has regulatory authority over the nonmember employee's conduct under both *Montana* exceptions. Given the existence of regulatory authority, the sovereign interests at stake, and the congressional interest in promoting tribal self-government, we conclude that the tribal court has jurisdiction over the tribe's claims in this case.

FACTUAL AND PROCEDURAL BACKGROUND**I. Factual Background**

The facts as presented and analyzed here are based on the allegations included in the original complaint filed in tribal court, and not upon the conclusions of a fact finder.

A. The Cedarville Rancheria Tribe

The Cedarville Rancheria of Northern Paiute Indians ("the Tribe") is a federally recognized Indian tribe that has approximately twelve voting members and operates a 17-acre Rancheria in Cedarville, California ("the Rancheria"). The Rancheria is held in trust for the Tribe

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by the United States government. During the latter part of events at issue in this case, the Tribe's administrative offices were relocated from the Rancheria to land held in fee¹ by the Tribe in Alturas, California.

The Tribe's governing body is the Community Council, which is composed of all qualified voters of the Rancheria who are 18 years of age or older. Every three years, the Community Council elects three of its members to serve on the Executive Committee—the Tribal Chairperson, Vice Chairperson, and Secretary. The Executive Committee enforces the Community Council's ordinances and other enactments and represents the Tribe in negotiations with tribal, federal, state, and local governments.

B. Knighton's Employment with the Tribe

Duanna Knighton ("Knighton") was employed by the Tribe from July 1996 until she resigned in March 2013. Knighton is not a member of the Tribe and had never resided on or owned land within the Rancheria. At the time of her resignation, Knighton's position was that of Tribal Administrator. As Tribal Administrator, she oversaw the day-to-day management of the Rancheria, its personnel, and many aspects of its finances.

During Knighton's employment, the Tribe regulated its employees pursuant to the Cedarville Rancheria Personnel Policies and Procedures Manual ("the Personnel

1. Pending with the Bureau of Indian Affairs is a petition by the Tribe to place the property on which the Tribe's administrative offices are now located in trust with the United States government.

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Manual”). The Personnel Manual regulated employee conduct including, but not limited to: misfeasance and malfeasance in the performance of duty, incompetency in the performance of job duties, theft, carelessness or negligence with the monies or property of the Rancheria, inducement of an employee to act in violation of Rancheria regulations, and violation of personnel rules. Disciplinary actions for an employee’s breach of rules and standards of conduct in the course of employment specified in the Personnel Manual included a verbal warning, written reprimand, suspension without pay, demotion, and involuntary termination.

The Personnel Manual provided that where the Tribal Administrator was the subject of disciplinary action, the Community Council directly oversaw the disciplinary process.

C. Knighton’s Employment with RISE

From 2009 until at least 2016, in addition to her position as Tribal Administrator, Knighton was also serving as an employee or officer of Resources for Student Education (“RISE”), a California nonprofit, that provides education services and programs to Indian children. RISE is not a tribally created or licensed business entity, and it receives the majority of its funding from state and federal grants and private donations.

D. The Tribe’s Purchase of RISE Property

In mid-2009, Knighton, acting in her capacity as Tribal Administrator, negotiated the Tribe’s purchase

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from RISE of a building in Alturas, California, where the Tribe's administrative offices are now located. During this time, Knighton was also an employee or agent of RISE.

Knighton initially recommended that the Tribe purchase the building for \$350,000, allegedly representing that such a price was below market value even though she had not received a professional appraisal of the property. The Tribe later discovered that the \$350,000 purchase price recommended by Knighton was \$200,000 above market value. Knighton also represented to the Tribe that it could pay off its building loan within five years after the purchase and that RISE would pay rent to the Tribe for its occupancy until the note on the building was paid off.

The Tribe asserts that at no time during the purchase negotiations did Knighton disclose she had a conflict of interest representing both RISE and the Tribe in the sale, that RISE was close to insolvency, or that she had an agreement with RISE to split the proceeds of the building sale. The parties settled on a purchase price of \$300,000. Within twelve months of the sale, RISE moved its business operations out of the building.

E. Knighton's Resignation

Before Knighton resigned in March 2013 as Tribal Administrator, she allegedly cashed out \$29,925 in vacation and sick pay in violation of the Tribe's policies and procedures. The Tribe issued a check in the amount of \$29,925, payable to RISE on Knighton's behalf. The Tribal Vice Chairman approved Knighton's request to

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cash out based on her representation that her request had been approved by the Tribal Chairperson, when in fact, the Tribal Chairperson had denied Knighton's request.

When Knighton resigned in March 2013, she took with her all files, including files belonging to the Tribe, room furnishings, and a computer, representing to the Tribe that the property removed belonged to RISE.

In late 2013, the Tribe wrote a letter to RISE demanding the return of the \$29,925 and any and all tribal property, including the computer. Both RISE and Knighton refused through their counsel to return the funds or any of the property.

F. Creation of Constitution, Tribal Judicial Code, and Tribal Court

In February 2011, while Knighton was still employed by the Tribe, the Tribe's voting membership adopted the Constitution and Bylaws of the Cedarville Rancheria, which was approved by the Regional Director of the Bureau of Indian Affairs. Article II of the Tribe's Constitution provides that the "jurisdiction of [the Tribe] shall extend to the land now within the confines of the [] Rancheria and to such other lands as may thereafter be added thereto."

In December 2013, nine months after Knighton's resignation, the Tribe enacted the Cedarville Rancheria Judicial Code ("the Tribal Judicial Code") and established the Cedarville Rancheria Tribal Court, which consists of

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a tribal court (“the Tribal Court”) and a tribal court of appeals (“the Tribal Court of Appeals”). All judges must be lawyers experienced in the practice of tribal and federal Indian law and licensed to practice in the highest court of any state. Judges cannot be the Tribal Administrator, Assistant Clerks, or members of the Executive Committee. The Tribal Judicial Code provides that the Tribal Court and Tribal Court of Appeals have jurisdiction over all civil causes of action that arise within the boundaries of the Rancheria. Pursuant to the Tribal Judicial Code, the Tribal Court has the power to issue orders and judgments and to award limited money damages.

G. The Tribe’s Audit Findings

In early 2014, after Knighton resigned, the Tribe conducted a forensic accounting of the Tribe’s financial position. The Tribe alleges that the forensic accounting came about after the former Tribal Chairperson shot and killed four tribal members at an Executive Committee meeting on February 20, 2014. The slain Tribal Chairman was a vocal critic of Knighton’s performance. He was among those killed by his sister. During this accounting, the Tribe reviewed its annual audit reports dating back to 2005 and found that the reports detailed several material weakness findings by the auditor. The auditor’s findings noted major deficiencies in the accounting of the Tribe’s finances, which Knighton oversaw, and noted that the Tribe had not adopted a policy regarding the investment of tribal funds. The Tribe also discovered that in 2008, an annual audit of the Tribe’s finances showed that \$3.07 million of the Tribe’s money had been invested by

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Knighton in high-risk investments, which had declined in value by more than \$1.2 million by the end of 2008. The Tribe also discovered that tribal funds belonging to the Tribe's children had been co-mingled with funds invested on behalf of adults, resulting in improper taxation.

The Tribe asserts that the annual audit reports, and the material weakness findings and investment losses detailed therein, had not been provided by Knighton to the Tribe and were only discovered by the Tribe after Knighton's resignation.

II. Procedural Background

The Tribe filed a complaint in the Tribal Court against Knighton, RISE, and Oppenheimer Funds, Inc.² The complaint included claims for fraud and deceit, recovery of unauthorized and excessive pension payments, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and unjust enrichment, common count-account stated, and common count-money had and received. In support of its claims, the Tribe alleged that Knighton improperly manipulated the Tribe's policies and procedures to provide her salary and fringe benefits, including a pension in excess of what would normally be paid to a Tribal Administrator for a like-sized tribe. The Tribe also alleged that Knighton invested its money in high-risk investments without the appropriate authority, and attempted to enter financial agreements without

2. RISE and Oppenheimer Funds, Inc. are no longer parties in this lawsuit.

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appropriate authorization or waivers of tribal sovereign immunity.

Knighton responded by filing a motion to dismiss, claiming, in relevant part, that the Tribal Court lacked subject matter jurisdiction under *Montana v. United States*.

The Tribal Court denied Knighton's motion to dismiss, finding that it had jurisdiction over the Tribe's claims against Knighton under both *Montana* exceptions because Knighton entered into a consensual relationship with the Tribe, by virtue of her employment with the Tribe, and because Knighton's conduct threatened or had a direct effect on the political integrity, economic security, and health and welfare of the Tribe. The Tribal Court's decision was affirmed by the Tribal Court of Appeals, but the case was remanded to the Tribal Court to determine whether RISE was an indispensable party to the suit, following a finding that the issue had not been raised in the Tribal Court.

On remand, pursuant to a stipulation between the parties, the Tribal Court stayed the case to allow Knighton to contest in federal district court the Tribal Court's jurisdiction over the Tribe's asserted claims. As a result of the stay, there is no Tribal Court exhaustion issue in this case.

Knighton filed a lawsuit in federal district court seeking, among other things, a declaratory judgment that the Tribal Court lacks subject matter jurisdiction over

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the Tribe's claims against Knighton under both *Montana* exceptions, and a permanent injunction against further proceedings in the Tribal Court. The defendants moved to dismiss Knighton's complaint on the basis that the Tribal Court's jurisdiction over the Tribe's claims was proper under both *Montana* exceptions.

The district court ruled that the Tribal Court has subject matter jurisdiction over the Tribe's claims, and granted defendants' motion to dismiss. The district court declined to apply *Montana* in its jurisdictional analysis based on its finding that Knighton's alleged conduct occurred either on tribal land within the Rancheria's borders or was closely related to tribal land. The district court stated that under *Water Wheel*, the *Montana* framework did not apply to jurisdictional issues involving nonmember conduct on tribal land. The district court concluded that the Tribe had authority to regulate Knighton's conduct because "Knighton's employment activities directly affected the Tribe's inherent powers to protect the welfare of its members and preserve the integrity of its government" and because "her conduct threatened the Tribe's very economic survival," and held that the Tribal Court had jurisdiction to adjudicate the Tribe's claims.

Knighton appealed.

JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction under 28 U.S.C. § 1291. The question of tribal court jurisdiction is a question of federal

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law, which we review *de novo*, with factual findings reviewed for clear error. *Smith v. Salish Kootenai Coll.*, 434 F.3d 1127, 1130 (9th Cir. 2006) (en banc).

ANALYSIS

“To exercise its inherent civil authority over a defendant, a tribal court must have both subject matter jurisdiction—consisting of regulatory and adjudicative jurisdiction—and personal jurisdiction.” *Water Wheel*, 642 F.3d at 809. At issue in this case is whether the Tribal Court has subject matter jurisdiction over the Tribe’s claims against Knighton.

I. Regulatory Jurisdiction**A. Legal Precedent and This Case**

“The sovereignty that the Indian tribes retain is of a unique and limited character. It exists only at the sufferance of Congress and is subject to complete defeasance. But until Congress acts, the tribes retain their existing sovereign powers.” *United States v. Wheeler*, 435 U.S. 313, 323, 98 S. Ct. 1079, 55 L. Ed. 2d 303 (1978). “Indian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status.” *Id.* In *National Farmers Union Insurance Cos. v. Crow Tribe of Indians*, the Court recognized that “[t]he tribes also retain some of the inherent powers of the self-governing political communities that were formed long before Europeans first settled in North America.” 471 U.S. 845,

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851, 105 S. Ct. 2447, 85 L. Ed. 2d 818 (1985) (citing *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142, 100 S. Ct. 2578, 65 L. Ed. 2d 665 (1980); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 55-56, 98 S. Ct. 1670, 56 L. Ed. 2d 106 (1978)). The Court went on to say that under 28 U.S.C. § 1331, a federal court may determine “whether a tribal court has exceeded the lawful limits of its jurisdiction.” *Id.* at 853. Thus, the outer boundaries of tribal court jurisdiction are a matter of federal common law.

We have noted that the Court has long recognized that as part of their residual sovereignty, tribes retain the inherent power to exclude nonmembers from tribal lands. *See Water Wheel*, 642 F.3d at 808; *see also New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 333, 103 S. Ct. 2378, 76 L. Ed. 2d 611 (1983) (“A tribe’s power to exclude nonmembers entirely or to condition their presence on [tribal land] is [] well established.”). “From a tribe’s inherent sovereign powers flow lesser powers, including the power to regulate [nonmembers] on tribal land.” *Water Wheel*, 642 F.3d at 808-09 (citing *South Dakota v. Bourland*, 508 U.S. 679, 689, 113 S. Ct. 2309, 124 L. Ed. 2d 606 (1993)).

The Court has made clear, however, “that once tribal land is converted into fee simple [land], the tribe loses plenary jurisdiction over it As a general rule, then ‘the tribe has no authority itself, by way of tribal ordinance or actions in the tribal courts, to regulate the use of fee land.’” *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 328-29, 128 S. Ct. 2709, 171 L. Ed. 2d 457 (2008) (quoting *Brendale v.*

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Confederated Tribes & Bands of Yakima Indian Nation, 492 U.S. 408, 430, 109 S. Ct. 2994, 106 L. Ed. 2d 343 (1989) (plurality opinion)). In *Montana v. United States*, the Court recognized two exceptions to this general rule. First, “[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.” *Montana*, 450 U.S. at 565. Second, a tribe may exercise civil authority over the conduct of nonmembers on fee lands within its reservation when “that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” *Id.* at 566.

“Since deciding *Montana*, the Supreme Court has applied those exceptions almost exclusively to questions of jurisdiction arising on [non-tribal] land.” *Water Wheel*, 642 F.3d at 809. The exception is *Nevada v. Hicks*, 533 U.S. 353, 121 S. Ct. 2304, 150 L. Ed. 2d 398 (2001). *Water Wheel*, 642 F.3d at 809. In *Hicks*, the Court addressed a tribal court’s jurisdiction over claims against state officers arising from the execution of a search warrant on tribal land for alleged violations of state poaching laws—specifically, the killing of bighorn sheep off the reservation. 533 U.S. at 356-57. Both the state court and then the tribal court issued search warrants. *Id.* at 356. The Court stated that although ownership status of the land “may sometimes be a dispositive factor” in determining a tribe’s authority to regulate nonmember activity on tribal land, the tribe’s power to exclude nonmembers from tribal land was “not alone enough to

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support” the tribe’s regulatory jurisdiction over the state officers’ activities when the state had a competing interest in executing a warrant for an off-reservation crime. *Id.* at 360. The Court applied *Montana* and concluded that “tribal authority to regulate state officers in executing process related to the violation, off reservation, of state laws is not essential to tribal self-government or internal relations” while “[t]he State’s interest in execution of process is considerable.” *Id.* at 364.

Although some jurisdictions have interpreted *Hicks* as eliminating the right-to-exclude framework as an independent source of regulatory power over nonmember conduct on tribal land, we have declined to do so. In *Water Wheel*, we observed that *Hicks* “expressly limited its holding to ‘the question of tribal-court jurisdiction over state officers enforcing state law.’” *Water Wheel*, 642 F.3d at 813 (quoting *Hicks*, 533 U.S. at 358 n.2). Indeed, the *Hicks* Court specifically “[l]eft open the question of tribal-court jurisdiction over nonmember defendants in general.” *Hicks*, 533 U.S. at 358 n.2. In *Water Wheel*, we held that a “tribe’s status as landowner is enough to support regulatory jurisdiction” except “when the specific concerns at issue [in *Hicks*] exist.” 642 F.3d at 813. “Doing otherwise would impermissibly broaden *Montana*’s scope beyond what any precedent requires and restrain tribal sovereign authority despite Congress’s clearly stated federal interest in promoting tribal self-government.” *Id.* at 813.

In *Hicks*, the defendants were state officers enforcing a state-court-issued search warrant, so there was a

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significant state interest at stake. By contrast, the present case involves a private, consensual employment relationship between Knighton and the Tribe, which occurred primarily on tribal land. There are no significant competing state interests, as in *Hicks*. Accordingly, our *Water Wheel* precedent compels the conclusion that the Tribe possesses regulatory jurisdiction over its claims against Knighton.

Since *Hicks*'s limited holding, the Court in *Plains Commerce Bank* held that a tribal court did not have jurisdiction to adjudicate a discrimination claim concerning a non-Indian defendant's sale of fee land. *Plains Commerce Bank*, 554 U.S. at 323, 340-41. The land in question was sold as part of the 1908 Allotment Act and was owned by a non-Indian party for at least 50 years. *Id.* at 331, 341. The Court found that the discrimination law that the plaintiffs were attempting to enforce operated as a restraint on alienation and had the effect of regulating the substantive terms on which the non-Indian bank was able to offer its fee land for sale. *Id.* at 331. The Court stated that while "*Montana* and its progeny permit tribal regulation of nonmember *conduct* inside the reservation that implicates the tribe's sovereign interests," that case "does not permit Indian tribes to regulate the sale of non-Indian fee land," as neither of the *Montana* exceptions applies. *Id.* at 332. By contrast, in the present case the nonmember defendant *while on tribal land* allegedly used her position as Tribal Administrator to violate the terms of her employment in a wide variety of ways that were significantly detrimental to the management and financial security of the Tribe.

*Appendix A***B. Appellant's Arguments**

Knighton argues that treating ownership status of the land as a dispositive factor in upholding a tribe's power to regulate nonmember conduct on tribal land (unless, as in *Hicks*, there are significant state interests present) is contrary to our prior rulings in *McDonald v. Means*, 309 F.3d 530 (9th Cir. 2002), and *Smith v. Salish Kootenai College*. We disagree. In *McDonald*, we specifically recognized that a tribe's jurisdiction over civil claims against nonmembers arising on tribal land is limited under *Hicks* only in cases where significant state interests are present. *See* 309 F.3d at 540. And in *Window Rock Unified School District v. Reeves*, 861 F.3d 894, 902 n.9 (9th Cir. 2017), we concluded that *Smith* did not limit a tribe's jurisdiction over civil claims against nonmembers bearing a direct connection to tribal land. We concluded that *Smith* was distinguishable because it involved a nonmember plaintiff, as opposed to a nonmember defendant, who had entered into a consensual relationship with the tribe by filing his action in tribal court. *Id.*

Knighton's argument that a tribe's regulatory power over nonmember conduct on tribal land is limited to conduct that directly interferes with a tribe's inherent powers to exclude and manage its own lands is also unavailing. In *Window Rock*, we concluded that the tribal court's jurisdiction over employment-related claims that did not involve access to tribal land was plausible; accordingly, we held that the nonmember defendants were required to exhaust their tribal court remedies before proceeding in federal court. *Id.* at 896, 906. Moreover,

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limiting a tribe’s regulatory power over nonmember conduct to that which directly interferes with a tribe’s inherent powers to exclude and manage its own lands, as Knighton suggests, would restrict tribal sovereignty absent explicit authorization from Congress—an approach we specifically rejected in *Water Wheel*. See 642 F.3d at 812 (stating that the tribe’s right to exclude nonmembers from tribal land includes the power to regulate them “unless Congress has said otherwise, or unless the Supreme Court has recognized that such power conflicts with federal interests promoting tribal self government”).

Knighton also argues that under the facts of this case, *Water Wheel*’s right-to-exclude framework is inapplicable because some of her alleged misconduct occurred *off* tribal land, after the tribal administrative offices were relocated to fee land owned by the Tribe. Although the Tribe’s complaint does not allege precisely where the conduct at issue occurred, most of the claims alleged against Knighton involve conduct that took place on tribal land, before the Tribe’s administrative offices were moved in mid-2009 to the RISE building in Alturas, California. Moreover, the facts of this case are unique in that any claims that may have arisen outside tribal land are based on alleged misconduct and misrepresentations made by Knighton on tribal land. See *Smith*, 434 F.3d at 1135 (stating that jurisdictional inquiry is not limited to deciding precisely when and where the claim arose, but whether it bears some direct connection to tribal lands). For example, the \$29,925 overpayment for unused vacation and sick leave that the Tribe seeks to recover stems from misrepresentations that Knighton allegedly made throughout the course of her employment, before

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the Tribe's administrative offices relocated. In addition, the relocation of the Tribe's administrative offices from tribal land to the RISE building on tribal fee land was allegedly due to misrepresentations by Knighton.

Knighton further argues that even if the Tribe had the power to regulate her conduct on tribal land during the course of her employment under *Water Wheel's* right-to-exclude framework, the Tribe's authority is limited to the regulations that were in place during her employment—which is to say, those provided for in the Personnel Manual. Knighton contends that the Tribe is attempting to impose new regulations on her through tort law after she left her employment with the Tribe.

A tribe's power to exclude nonmembers from tribal lands permits a tribe to condition a nonmember's entry or continued presence on tribal land, *see Merrion*, 455 U.S. at 144-45, but this inherent power does not permit the Tribe to impose new regulations upon Knighton's conduct retroactively when she is no longer present on tribal land. However, we agree with the district court that Knighton's alleged conduct violated the Tribe's regulations that were in place at the time of her employment. The Personnel Manual regulated employee conduct including, but not limited to, misfeasance or malfeasance in the performance of duty, incompetency in the performance of job duties, theft, carelessness or negligence with the monies or property of the Rancheria, inducement of an employee to act in violation of Rancheria regulations, and violation of personnel rules—all conduct that forms the basis of the Tribe's claims against Knighton.

*Appendix A***C. Sources of Authority**

In *Water Wheel*, we concluded that a tribe’s inherent sovereign power to exclude nonmembers from tribal land provides an independent basis upon which a tribe may regulate the conduct of nonmembers on tribal land. But, a tribe’s power to exclude is not the only source of its regulatory authority over nonmembers on tribal land. *See Brendale*, 492 U.S. at 425 (“An Indian tribe’s [] power to exclude nonmembers of the tribe from its lands is not the only source of Indian regulatory authority.”). “[T]ribes have inherent sovereignty independent of that authority arising from their power to exclude.” *Id.* (citing *Merrion*, 455 U.S. at 141); *see also Babbitt Ford, Inc. v. Navajo Indian Tribe*, 710 F.2d 587, 592 (9th Cir. 1983) (“The power to exercise tribal civil authority over [nonmembers] derives not only from the tribe’s inherent powers necessary to self-government and territorial management, but also from the power to exclude nonmembers from tribal land.” (citing *Merrion*, 455 U.S. at 141-44)).

In addition to the power to exclude, we have the *Montana* Court’s acknowledgment that Indian tribes retain their inherent sovereign power to protect tribal self-government and to control internal relations. 450 U.S. at 564. “[I]n accordance with that right tribes ‘may regulate nonmember behavior that implicates [these sovereign interests].’” *Attorney’s Process & Investigation Servs., Inc. v. Sac & Fox Tribe of Miss. in Iowa*, 609 F.3d 927, 936 (8th Cir. 2010) (quoting *Plains Commerce Bank*, 554 U.S. at 335).

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Subsequent to *Montana*, in *Merrion*, the Court affirmed that Indian tribes have inherent sovereign power to regulate nonmember conduct on tribal land independent of that authority arising from their power to exclude. *Merrion*, 455 U.S. at 144. The Court in *Merrion* concluded that a tribe’s power to tax nonmember mining and drilling on tribal land derived from its inherent “power to govern and to pay for the costs of self-government,” and concluded that such regulatory authority was also within the tribe’s inherent power to condition the continued presence of nonmembers on tribal land. *Id.* at 144-45. These varied sources of tribal regulatory power over nonmember conduct on the reservation were affirmed by the Court in *Plains Commerce Bank*. 554 U.S. at 337 (“[T]he regulation must stem from the tribe’s inherent sovereign authority to set conditions on entry, preserve tribal self-government, or control internal relations.”).

While the district court believed that our caselaw prohibited the application of the *Montana* framework to tribal jurisdictional issues involving nonmember conduct on tribal land, it also recognized that a tribe’s regulatory power over nonmembers on tribal land does not solely derive from its power to set conditions on entry or continued presence. Accordingly, it concluded that the Tribe had regulatory jurisdiction over Knighton’s conduct because “Knighton’s employment activities directly affected the Tribe’s inherent powers to protect the welfare of its members and preserve the integrity of its government,” and because “her conduct threatened the Tribe’s very economic survival.”

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We now clarify *Water Wheel* and our subsequent cases involving tribal jurisdictional issues on tribal land do not exclude *Montana* as a source of tribal regulatory authority over nonmember conduct on tribal land. Rather, our caselaw states that an Indian tribe has power to regulate nonmember conduct on tribal land incident to its sovereign power to exclude nonmembers from tribal land, regardless of whether either of the *Montana* exceptions is satisfied. *See Water Wheel*, 642 F.3d at 814 (“[T]he tribe’s status as landowner is enough to support regulatory jurisdiction *without considering Montana*.” (emphasis added)); *Grand Canyon Skywalk Dev., LLC v. ‘SA’ Nyu Wa Inc.*, 715 F.3d 1196, 1204 (9th Cir. 2013) (“[A] tribe’s inherent authority over tribal land may provide for regulatory authority over [nonmembers] on that land *without the need to consider Montana*.” (emphasis added)); *Window Rock*, 861 F.3d at 902 (“[I]n civil cases involving nonmember conduct on tribal land, we have held that tribal courts have jurisdiction unless a treaty or federal statute provides otherwise—*regardless of whether the Montana exceptions would be satisfied*.” (emphasis added)). Certainly, as our caselaw has discussed at length, without evidence of a contrary intent by Congress, a tribe’s power to regulate nonmember conduct on tribal land flows from its inherent power to exclude and is circumscribed only to the limited extent that the circumstances in *Hicks*—significant state interests—are present. *See Water Wheel*, 642 F.3d at 813; *Grand Canyon*, 715 F.3d at 1205; *Window Rock*, 861 F.3d at 902. However, the Court has made clear that a tribe also has sovereign authority to regulate nonmember conduct on tribal lands independent of its authority to exclude if that conduct intrudes on a tribe’s inherent sovereign power to preserve self-government or control internal

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relations. The *Montana* exceptions are “rooted” in the tribes’ inherent power to regulate nonmember behavior that implicates these sovereign interests. *Attorney’s Process*, 609 F.3d at 936 (citing *Plains Commerce Bank*, 554 U.S. at 335).

Accordingly, although we conclude that the Tribe had authority to regulate Knighton’s conduct on tribal land pursuant to its sovereign exclusionary powers, a separate question remains as to whether the Tribe also had regulatory authority over Knighton’s conduct pursuant to *Montana*.

i. First *Montana* Exception

Montana’s consensual relationship exception recognizes that tribes have jurisdiction to regulate consensual relations “through taxation, licensing, or other means.” 450 U.S. at 565. Courts have recognized that tort law, under which the Tribe’s claims against Knighton arise, constitutes a form of regulation. *See Attorney’s Process*, 609 F.3d at 938 (stating that if a tribe retains the power under *Montana* to regulate nonmember conduct, it does not make any difference whether it does so through precisely tailored regulations or through tort claims). However, *Montana*’s consensual relationship exception requires that “the regulation imposed by the Indian tribe have a nexus to the consensual relationship itself.” *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 656, 121 S. Ct. 1825, 149 L. Ed. 2d 889 (2001). “A nonmember’s consensual relationship in one area thus does not trigger tribal civil authority in another.” *Id.*

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Examining the facts of this case, we conclude that the Tribe has regulatory authority over Knighton’s conduct in this case under *Montana*’s consensual relationship exception. The conduct that the Tribe seeks to regulate through tort law arises directly out of the consensual employment relationship between the Tribe and Knighton. Moreover, given the circumstances, Knighton should have reasonably anticipated that her conduct might “trigger” tribal authority. *Water Wheel*, 642 F.3d at 818 (quoting *Plains Commerce Bank*, 554 U.S. at 338). Knighton is no stranger to the Tribe’s governance and laws. She had been an employee of the Tribe for approximately sixteen years and, as Tribal Administrator, was responsible for the overall supervision and management of tribal operations and carrying out tribal projects consistent with the Tribal Constitution. The Tribal Constitution, adopted approximately two years before Knighton resigned as Tribal Administrator, specifically provided that the “jurisdiction of [the Tribe] shall extend to land now within the confines of the [Rancheria] and to such other lands as may thereafter be added thereto.” We conclude that given these circumstances, Knighton should reasonably have anticipated that her conduct on tribal land would fall within the Tribe’s regulatory jurisdiction.

ii. Second *Montana* Exception

In determining whether Knighton’s conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe—the second *Montana* exception, 450 U.S. at 566—we find instructive the Eighth Circuit’s decision in *Attorney’s*

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Process. In that case, API, a nonmember corporation, was hired by a tribal government leader who refused to step down from leadership after he lost in a special tribal election. 609 F.3d at 932. Under their contract, API agreed to perform services relating to “the investigation of a takeover by dissidents at the Tribe’s facility located on the Tribe’s reservation lands.” *Id.* As the newly elected tribal council occupied the casino and tribal government offices, approximately thirty API agents forced their way into both buildings, which were located on tribal land. *Id.* The agents were armed with batons, at least one carried a firearm, and they seized confidential information from both facilities related to the tribe’s gaming operations and finances. *Id.* In addition to the wrongfully seized confidential information, the agents caused approximately \$7,000 in property damage and committed various intentional torts against tribal members. *Id.* The tribe filed suit in tribal court for trespass to tribal land and chattels, misappropriation of trade secrets, and other claims. *Id.*

API argued that tort claims do not in the ordinary course threaten the political integrity, economic security, or the health or welfare of the tribe and thus the tribal court had no jurisdiction over the tribe’s claims under *Montana*’s second exception. *Id.* at 937. Relying on *Plains Commerce Bank*, the court in *Attorney’s Process* stated that courts “should not simply consider the abstract elements of the tribal claim at issue, but must focus on the specific nonmember conduct alleged, taking a functional view of the regulatory effect of the claim on the nonmember.” *Id.* at 938. The court concluded that

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API's raid on the casino and government offices, leading to the claims for trespass to land, trespass to chattels, and misappropriation of tribal trade secrets, "menace[d] the 'political integrity, the economic security, [and] the health [and] welfare' of the Tribe to such a degree that it 'imperil[ed] the subsistence' of the tribal community" and that the tribe therefore retained the inherent power under the second *Montana* exception to regulate that conduct. *Id.* at 939 (alterations in original) (quoting *Plains Commerce Bank*, 554 U.S. at 341).

While Knighton's conduct constitutes a different type of violation, it was of long duration and had a great impact upon the Tribe, and so we conclude that the alleged harm to the Tribe caused by her conduct "'imperil[ed] the subsistence' of the tribal community." *Evans v. Shoshone-Bannock Land Use Policy Comm'n*, 736 F.3d 1298, 1306 (9th Cir. 2013) (quoting *Plains Commerce Bank*, 554 U.S. at 341). Among the tribe's many claims are allegations that Knighton invested the Tribe's money without appropriate authority, concealed investment documents and audit reports from the Tribe, and attempted to enter financial agreements without the appropriate authorization or waiver of tribal sovereign immunity. The Tribe also alleges that Knighton made unreasonably risky investments that led to investment losses in excess of \$1.2 million, excess transaction fees, and state and federal tax exposure, and that she breached her fiduciary duty and deceived the Tribe, causing it to pay \$300,000, \$150,000 above market value, for the RISE building purchase. Finally, the Tribe alleges that when she resigned her employment with the Tribe, Knighton took all files, including files belonging to

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the Tribe, room furnishings, and a computer, representing to the Tribe that the property removed belonged to RISE. We conclude that this conduct threatened the Tribe's very subsistence and that the Tribe therefore retains the inherent power under the second *Montana* exception to regulate this conduct.

II. Adjudicatory Jurisdiction

Knighton also contends that the Tribe is seeking to exercise greater adjudicative authority over her than it was capable of at the time of her employment. She argues that the adjudicatory authority of the Tribe is limited to the disciplinary procedures provided for in the Personnel Manual. At the time of her employment, the disciplinary actions detailed in the Personnel Manual for an employee's breach of rules and standards of conduct in the course of employment included a verbal warning, written reprimand, suspension without pay, demotion, and involuntary termination. The Personnel Manual provided that when the Tribal Administrator was the subject of disciplinary action, the Community Council directly oversaw the disciplinary and grievance procedures.

We hold that the Tribe has the power to regulate Knighton's conduct incident to its sovereign powers to exclude nonmembers from tribal land, and also, in the alternative, under both *Montana* exceptions. "[W]here tribes possess authority to regulate the activities of nonmembers, [c]ivil jurisdiction over [disputes arising out of] such activities presumptively lies in the tribal courts." *Strate v. A-1 Contractors*, 520 U.S. 438, 453, 117 S. Ct.

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1404, 137 L. Ed. 2d 661 (1997) (second and third alterations in original) (quoting *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 18, 107 S. Ct. 971, 94 L. Ed. 2d 10 (1987)). However, a tribe's adjudicative authority over nonmembers may not exceed its regulatory authority. *Id.*

We conclude that under the facts of this case, the Tribe's adjudicatory authority does not exceed the regulatory authority it had over Knighton's conduct during her employment under *Water Wheel's* right-to-exclude framework. As discussed above, the Personnel Manual regulated the conduct that forms the basis of the Tribe's claims against Knighton and conferred jurisdiction over her conduct as Tribal Administrator on the Community Council. The fact that the Tribe now seeks to adjudicate these claims in the Tribal Court does not undermine its jurisdiction over the Tribe's claims.

Likewise, examining the Tribe's adjudicative authority over Knighton's conduct under *Montana*, we return to the illuminating Eighth Circuit opinion in *Attorney's Process*. Similar to this case, in *Attorney's Process*, the tribal court system was established after the tort claims against API arose. 609 F.3d at 933. API argued that the tribe lacked jurisdiction over its claims because there were no written regulations in place at the time which prohibited the tortious conduct that API was alleged to have committed. *Id.* at 938. The court stated that "[i]f the Tribe retains the power under *Montana* to regulate such conduct, we fail to see how it makes any difference whether it does so through precisely tailored regulations or through tort claims such as those at issue [in the case]." *Id.* The court

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concluded that because API's intervention onto tribal land threatened the "political integrity, the economic security, [and] the health [and] welfare' of the Tribe," the tribe had the authority to regulate and adjudicate such conduct under *Montana*, as well as incident to its sovereign right to exclude nonmembers from tribal land. *Id.* at 940 (alterations in original) (quoting *Montana*, 450 U.S. at 566).

As the court in *Attorney's Process* recognized, our task is to outline the boundaries of the inherent sovereign power retained by the Indian tribes. "Those boundaries are established by federal law, a source of law external to the tribes." *Id.* at 938 (citing *Nat'l Farmers Union*, 471 U.S. at 852). In contrast, "positive tribal law," the court stated, "is internal to the tribes." *Id.* "It is a manifestation of tribal power, and as such it does not contribute to the external limitations which concern us here. Once it is determined that certain conduct is within the scope of a tribe's power as a matter of federal law, our inquiry is at an end." *Id.*

In the present case, the Tribe's authority to regulate Knighton's conduct derived not only from its sovereign power to exclude nonmembers from tribal lands, but also from its inherent sovereign power to regulate consensual relations with nonmembers "through taxation, licensing, or other means," and to protect the "political integrity, the economic security, [and] the health [and] welfare" of the Tribe. *Montana*, 450 U.S. at 565-66.

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Once the authority to regulate nonmember conduct exists, whether from *Water Wheel* or from *Montana*, then the observation from the court in *Attorney's Process* persuades us that it makes no difference whether the Tribe adjudicates Knighton's conduct through the Personnel Manual or through tort law.

CONCLUSION

There is no general rule as to the extent of a tribe's adjudicative jurisdiction over non-Indians on tribal land, but "it is clear that the general rule announced in *Strate*, and confirmed in *Hicks* and *Plains Commerce Bank*, that adjudicative jurisdiction is confined by the bounds of a tribe's regulatory jurisdiction" applies. *Water Wheel*, 642 F.3d at 814. Given the existence of regulatory authority, the sovereign interests at stake, and the congressional interest in promoting tribal self-government, we conclude that the Tribal Court has jurisdiction over the Tribe's claims in this case.

AFFIRMED.

**APPENDIX B — ORDER OF THE UNITED
STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF CALIFORNIA, FILED
FEBRUARY 15, 2017**

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Case No. 16-cv-02438-WHO

DUANNA KNIGHTON.,

Plaintiff,

v.

CEDARVILLE RANCHERIA OF NORTHERN
PAIUTE INDIANS, *et al.*,

Defendants.

February 15, 2017, Decided
February 15, 2017, Filed

ORDER GRANTING MOTION TO DISMISS

Re: Dkt. No. 10

INTRODUCTION

Plaintiff Duanna Knighton, the former Tribal Administrator for defendant Cedarville Rancheria of Northern Paiute Indians (“the Tribe”), seeks declaratory

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and injunctive relief against the Tribe, Cedarville Rancheria Tribal Court (“Tribal Court”), and Tribal Court Judge Patricia R. Lenzi (“Tribal Judge Lenzi”) (collectively “defendants”) to avoid Tribal Court jurisdiction over claims that she defrauded the Tribe and breached her fiduciary duties to it. Defendants move to dismiss Knighton’s complaint because the Tribal Court has jurisdiction. I agree that it has both regulatory and adjudicative authority over its former employee under the facts alleged; accordingly, it has subject matter jurisdiction. Defendants’ motion is GRANTED WITH PREJUDICE.

BACKGROUND**I. FACTUAL BACKGROUND¹****A. The Cedarville Rancheria Tribe**

Cedarville Rancheria of Northern Paiute Indians (“the Tribe”) is a federally recognized Indian tribe located in Medoc County, California. *Id.* ¶ 2; Duran Decl. ¶ 3 (Dkt.

1. The following facts are alleged in Knighton’s complaint and attached exhibits (Dkt. No. 1), defendants’ motion to dismiss (Dkt. No. 10), Knighton’s opposition (Dkt. No. 14), and defendants’ reply (Dkt. No. 15). Knighton attached the following exhibits to her complaint: (1) Cedarville Rancheria Judicial Code, *see* Compl. ¶ 15; Ex. 1 (Dkt. No. 1-2 at 1); (2) Cedarville Rancheria Policies, *see* Compl. ¶ 18; Ex. 2 (Dkt. No. 1-2 at 19); (3) Cedarville Rancheria Constitution and Bylaws, *see* Compl. ¶ 24; Ex. 3 (Dkt. No. 1-2 at 42); (4) Tribal Court Complaint, *see* Compl. ¶ 27; Ex. 4 (Dkt. No. 1-3 at 1); (5) Tribal Court Order regarding TRO and Injunction, *see* Compl. ¶ 31; Ex. 5 (Dkt. No. 1-3 at 19); (6) Tribal Court Order Denying Knighton’s

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No. 10-2). It has approximately 12 voting members² and operates a 17-acre Rancheria in Cedarville, California. Compl. ¶ 2; Tribal Court Compl. ¶1 (Dkt. No. 1-3 at 2). The Rancheria land is held in trust for the Tribe by the United States government; it contains tribal housing, a recreation center, travel center, convenience store, and gas station. Duran Decl. ¶ 3. The Tribe's headquarters building is located approximately 30 miles west of the Rancheria in Alturas, California, on land owned in fee by the Tribe.³ Compl. ¶ 2; Duran Decl. ¶ 4.

Motion to Dismiss, *see* Compl. ¶ 32; Ex. 6 (Dkt. No. 1-3 at 23); (7) Stipulation Regarding Temporary Stay, *see* Compl. ¶ 33; Ex. 7 (Dkt. No. 1-3 at 32); (8) Tribal Court Order Granting Temporary Stay, *see* Compl. ¶ 34; Ex. 8 (Dkt. No. 1-3 at 39); (9) Tribal Court Order Granting RISE's Motion to Dismiss, *see* Compl. ¶ 35; Ex. 9 (Dkt. No. 1-3 at 41); (10) Tribal Court of Appeals Order Regarding Knighton's Motion to Dismiss, *see* Compl. ¶ 36; Ex. 10 (Dkt. No. 1-3 at 51); (11) Tribal Court Order Denying Knighton's Motion to Dismiss Under Rule 19, *see* Compl. ¶ 37, Ex. 11 (Dkt. No. 1-3 at 58); (12) Stay and Stipulation Vacating the Appeal, *see* Compl. ¶ 38, Ex. 12 (Dkt. No. 1-3 at 64); (13) Cedarville Rancheria's Complaint in an unrelated action, *see* Compl. ¶ 60; Ex. 13 (Dkt. No. 1-3 at 68). Citations to exhibits attached to Knighton's complaint are to page numbers corresponding to the ECF docket number.

2. This figure was extracted from the Tribe's complaint against Knighton, filed in October 2014. Tribal Court Compl. ¶ 1 (Dkt. No. 1-3 at 2).

3. The Tribe is currently "in the process of seeking fee-to-trust status of the land on which the Tribal headquarters sit." Tribal Court Order Denying Knighton's Motion to Dismiss Under Rule 19 ¶ 7 (Dkt. No. 1-3 at 61). The Tribal Court Order, dated June 29, 2016, indicates that "[t]his process will conclude within the next 20 months, at most, and may conclude within 14 months of the date of this hearing." *Id.*

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In February 2011, the Tribe's voting membership adopted by election the Constitution and Bylaws of the Cedarville Rancheria, which was approved in March 2011 by the Regional Director of the United States Department of the Interior, Bureau of Indian Affairs. Compl. ¶ 24; *see* Cedarville Rancheria Constitution and Bylaws (Dkt. No. 1-2 at 43). Article II of the Tribe's constitution provides that the "jurisdiction of [the Tribe] shall extend to the land now within the confines of the Cedarville Rancheria and to such other lands as may hereafter be added thereto." Cedarville Rancheria Constitution and Bylaws (Dkt. No. 1-2 at 45).

The Tribe's governing body is the Community Council composed of all qualified voters of the Rancheria who are 18 years of age or older. *Id.* (Dkt. No. 1-2 at 46). Every three years the Community Council elects three of its members to serve on the Executive Committee—the Tribal Chairperson, Vice Chairperson, and Secretary. *Id.* (Dkt. No. 1-2 at 46-47). The Executive Committee is empowered to enforce the Community Council's ordinances, resolutions, and other enactments, and represents the Tribe in all negotiations with tribal, federal, state, and local governments. *Id.* The Tribal Chairperson functions as the "chief executive officer" of the Tribe, oversees all Rancheria matters including signing checks on behalf of the Tribe for tribal expenses, and is the "authorized point-of-contact, along with the Tribal Secretary or Tribal Administrator, to sign Tribal documentation, including grant applications, MOUs [memoranda of understanding], supply orders, trip requests, etc." *Id.* (Dkt. No. 1-2 at 50).

*Appendix B***B. Plaintiff Duanna Knighton’s Employment with the Tribe**

Duanna Knighton is a non-Indian California resident who was employed by the Tribe from July 1996 until she resigned in March 2013. Compl. ¶¶ 1, 9. She is not a member of the Tribe and has never resided on nor owned tribal land. *Id.* ¶¶ 10-11. The Tribe hired her in 1996 as a part-time office assistant. Tribal Compl. ¶ 10 (Dkt. No. 1-3 at 4). In 1999, she became a salaried tribal employee eligible for employment benefits, and she was later promoted to Tribal Administrator—the position she held at the time of her resignation. Compl. ¶ 9; Tribal Compl. ¶¶ 13-15 (Dkt. No. 1-3 at 4). As Tribal Administrator, Knighton was “responsible for over-all supervision and management of the Cedarville Rancheria,” and oversaw the Tribe’s “payroll, taxes, and expenses, financial statements/reports for audit, expenditures, and ledgers under direct supervision of the Chairperson.” Compl. ¶ 18; Cedarville Rancheria Constitution and Bylaws (Dkt. No. 1-2 at 26).

From 2009 until at least October 2016, Knighton was also employed by Resources for Indian Student Education (“RISE”), a California nonprofit that provides education services and programs to Indian children.⁴ Compl. ¶ 14; Tribal Court Order Granting RISE Mot. to Dismiss (Dkt. No. 1-3 at 43). RISE is not a tribally-created or licensed business entity; it receives the majority of its funding from

4. Presumably, Knighton is no longer employed by RISE, as the parties’ January 17, 2017 joint case management statement refers to RISE as Knighton’s “former employer.” Case Management Statement (Dkt. No. 12 at 3).

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state and federal grants and private donations. Tribal Court Compl. ¶ 3 (Dkt. No. 1-3 at 3), Tribal Court Order Granting RISE Mot. to Dismiss (Dkt. No. 1-3 at 43).

During Knighton’s employment, the Tribe regulated its employees pursuant to the Cedarville Rancheria Personnel Policies and Procedures Manual (“Personnel Manual”). It set forth disciplinary and grievance procedures for tribal employees prior to the creation of the Tribal Court, which will be discussed later. Compl. ¶¶ 18-23. Under the Personnel Manual—which Knighton helped develop when she was Tribal Administrator—all tribal employees subjected to disciplinary action were entitled to file a grievance with the Tribal Administrator and could appeal certain disciplinary actions after exhausting available administrative remedies. *Id.* ¶¶ 20-23; Personnel Manual (Dkt. Nos. 1-2 at 26, 39). Where the Tribal Administrator was the subject of disciplinary action, the Tribal Council, composed of the Tribe’s adult voting membership, directly oversaw the disciplinary and grievance procedures. Personnel Manual (Dkt. No. 1-2 at 40). Appeal hearings were subject to the control of the Tribal Council, and were “presided over as other council meetings and the general format [would] be followed unless the council decide[d] [t]o vary the procedure.” *Id.* (Dkt. No. 1-2 at 40-41). The Tribal Council’s decision following an appeal hearing was final. *Id.*

*Appendix B***C. The Tribe’s Purchase of the RISE Property**

In mid-2009,⁵ Knighton recommended that the Tribe purchase from RISE an administrative building located in Alturas, California, for a “below market rate” of \$350,000. *Id.* ¶¶ 29-30; Tribal Court Compl. ¶ 18 (Dkt. No. 1-3 at 5-6). Acting in her capacity as Tribal Administrator, Knighton negotiated the purchase on behalf of the Tribe. Tribal Court Compl. ¶ 49 (Dkt. No. 1-3 at 12). She represented that the loan could be paid off within 5 years, that RISE would remain a tenant in the building and that the Tribe could use that rental income to pay off the mortgage. *Id.* ¶¶ 49-50 (Dkt. No. 1-3 at 12). In June 2009, the Tribe—relying on Knighton’s representations—submitted a counter-offer of \$300,000, which RISE accepted.⁶ *Id.* The property currently serves as the tribal headquarters, and the title to the building and land is owned in fee by the Tribe.⁷ Tribal Court Order Granting RISE Mot. to Dismiss (Dkt. No. 1-3 at 44).

Within 12 months of the sale, RISE moved its business operations out of the building, contrary to Knighton’s representation that it would remain a rent-paying tenant.

5. During this time, former Tribal Chairperson Cherie Lash Rhoades supervised Knighton’s activities as Tribal Administrator. Compl. ¶ 26. *See infra* section I.F.

6. The Tribal Court noted that there is no document in existence that sets forth the terms of the sale between RISE and the Tribe for the building. Tribal Court Order Granting RISE’s Mot. to Dismiss (Dkt. No. 1-3 at 44).

7. *See supra* note 3.

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Tribal Court Compl. ¶¶ 18, 49 (Dkt. No. 1-3 at 6, 12). At the time of the purchase, Knighton failed to disclose to the Tribe that: (1) she was an officer or agent of RISE; (2) RISE was close to insolvency; (3) she and RISE would split the proceeds of the sale after paying off the building loan; and (4) the building's actual market value was \$150,000, not \$300,000. Tribal Court Compl. ¶¶ 49-55 (Dkt. No. 1-3 at 12). The Tribe did not learn about her conflict of interest and other omissions regarding the purchase of the RISE building until after she resigned in March 2013. Tribal Court Compl. ¶ 19 (Dkt. No. 1-3 at 6).

D. Knighton's Resignation

In March 2013, Knighton resigned from her position as Tribal Administrator. Compl. ¶ 9; Tribal Court Compl. ¶ 19 (Dkt. No. 1-3 at 6). Immediately before she resigned, Knighton cashed-out \$29,925⁸ in vacation and sick pay⁹ in violation of the Tribe's policies and procedures. Tribal Court Compl. ¶ 20 (Dkt. No. 1-3 at 6). The Tribal Vice Chairperson signed off on Knighton's request to cash out based on her representation that Tribal Chairperson Cherie Lash Rhoades had approved it. *Id.* The Tribe issued a check in the amount of \$29,925, payable to RISE on Knighton's behalf. *Id.* In late 2013, upon learning that

8. The Tribe's complaint lists the amount as \$29,995, *see* Tribal Court Compl. ¶ 22, but the attached exhibit states \$29,925, *see* Tribal Court Compl., Ex. A.

9. Exhibit A attached to the Tribe's complaint says this was for sick pay, not vacation pay, but the complaint alleges vacation pay. Tribal Court Compl. ¶ 20.

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Knighton had inflated her vacation and sick pay, the Tribe sent a letter to her and RISE demanding the return of the \$29,925 improperly paid to her—both RISE and Knighton declined through their counsel to return the funds. *Id.* ¶ 22.

E. Creation of Tribal Judicial Code and Tribal Court

In December 2013, nine months after Knighton’s resignation, the Tribe enacted the Cedarville Rancheria Judicial Code and established the Cedarville Rancheria Tribal Court (“Tribal Court”). Compl. ¶¶ 15-16. The Tribal Court, including a trial and appellate division, was created “for the purpose of protecting and promoting tribal sovereignty, strengthening tribal self-government, [and] providing for the judicial needs of the Cedarville Rancheria.” Cedarville Rancheria Judicial Code (Dkt. No. 1-2 at 2). Tribal Court proceedings are governed by the Federal Rules of Civil Procedure and Rules of Evidence, and the court can apply tribal, federal, and state laws, issue orders and judgments, and award monetary damages and injunctive relief. Compl. ¶ 25; Cedarville Rancheria Judicial Code (Dkt. No. 1-2 at 15).

Pursuant to Section 201 of the Tribe’s Judicial Code, the Tribal Court has subject matter jurisdiction over “[a]ll persons outside the exterior boundaries of the Cedarville Rancheria Reservation ... within the jurisdiction of the Rancheria pursuant to federal or tribal law, including all persons whose activity on or off reservation threatens the Rancheria, government or its membership,” and to

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“[a]ll other persons whose actions involve or affect the Rancheria, or its members, through commercial dealings, contracts, leases or other arrangements.” Cedarville Rancheria Judicial Code (Dkt. No. 1-2 at 3-4). The Code further provides that the Tribal Court’s judicial power extends to “[a]ll civil causes of action arising at common law including, without limitation, all contract claims (whether the contract at issue is written or oral or existing at law), all tort claims (regardless of the nature), all property claims (regardless of the nature), all insurance claims, and all claims based on commercial dealing with the Band, its agencies, sub-entities, and corporations chartered pursuant to its laws, and all nuisance claims.” Cedarville Rancheria Judicial Code (Dkt. No. 1-2 at 4).

F. Cedarville Shooting

On February 20, 2014, during the first hearing in the first case before the Tribal Court, former Tribal Chairperson Cherie Lash Rhoades (Knighton’s former boss) opened fire and killed four Tribe members. Compl. ¶ 26; Tribal Court Compl. ¶ 23 (Dkt. No. 1-3 at 7). Rhoades and the victims were all linked to the underlying dispute between Knighton and the Tribe. Compl. ¶ 26. Among those murdered were the Tribal Administrator and Rhoades’ brother, who was Tribal Chairman and an outspoken critic of Knighton’s handling of the Tribe’s finances. Tribal Court Compl. ¶ 23 (Dkt. No. 1-3 at 7).

In the aftermath of this tragic shooting, the Tribe conducted a forensic accounting of its finances. Tribal Court Compl. ¶ 24 (Dkt. No. 1-3 at 7). The investigation

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revealed that during Knighton's tribal employment, she made various unauthorized high-risk investment decisions on behalf of the Tribe, which resulted in the loss of \$1.2 million in tribal investments between 2007 and 2008. Tribal Court Compl. ¶¶ 16-17 (Dkt. No. 1-3 at 5). The Tribe was unaware of its high risk investment portfolio and \$1.2 million in investment losses because Knighton concealed the annual audit reports and investment documents from the Tribe during her employment. Tribal Court Compl. ¶¶ 17, 24, 39-41 (Dkt. No. 1-3 at 5, 7, 9-10). The Tribe also discovered that Knighton opened a tribally funded trust without authorization, fraudulently inflated her salary and benefits, and manipulated the Tribe's policies to provide herself fringe benefits, including a pension and excess sick and vacation days. Tribal Court Compl. ¶ 26-31 (Dkt. No. 1-3 at 7-8). After discovering Knighton's mismanagement of tribal finances and unauthorized investments, the Tribe filed suit against her in Tribal Court.

II. PROCEDURAL BACKGROUND

A. The Underlying Tribal Court Action

On September 25, 2014,¹⁰ the Tribe lodged a complaint in Tribal Court against Knighton, RISE, and Oppenheimer Funds, Inc.¹¹ Compl. ¶¶ 27, 29-30; *see* Tribal Court Compl.

10. The complaint is dated September 25, 2014, but stamped as filed on October 2, 2014.

11. Oppenheimer Funds, Inc. is a New York based financial fund manager that held funds at issue in this matter, on deposit from the Tribe for the benefit of Knighton. Tribal Court Compl. ¶ 4 (Dkt. No. 1-3 at 3).

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(Dkt. No. 1-3 at 1-18).¹² The Tribe's complaint asserts eight claims against Knighton: (1) fraud and deceit; (2) recovery of unauthorized and excessive pension payments; (3) recovery of unauthorized investment losses; (4) breach of fiduciary duty; (5) aiding and abetting breach of fiduciary duty; (6) unjust enrichment; (7) common count-account stated; and (8) common count-money had and received. *Id.* Claims five through eight are brought against Knighton and RISE. Compl. ¶ 30.

On October 1, 2014, the Tribal Court issued a temporary restraining order against Knighton, RISE, and Oppenheimer, freezing all funds on deposit with Oppenheimer held in Knighton's name. *Id.* ¶ 31; Compl. Ex. 5, Tribal Court Order Re TRO (Dkt. No. 1-3 at 20).

On October 28, 2014, Knighton filed a Rule 12(b)(6) motion to dismiss the complaint, and the Tribal Court heard argument on January 8, 2015. Compl. ¶ 32. The Tribal Court, Chief Judge Lenzi presiding, ruled that it had authority to adjudicate the case and denied Knighton's motion to dismiss on March 11, 2015. *Id.* ¶ 32; Compl. Ex. 6, Tribal Court Order Denying Knighton's Mot. to Dismiss (Dkt. No. 1-3 at 24). On February 24, 2015, RISE filed a separate Rule 12(b)(2) motion challenging the Tribal Court's jurisdiction. Compl. Ex. 9, Order Granting Mot. to Dismiss as to RISE (Dkt. No. 1-3 at 42). On April 21,

12. The underlying tribal court action is titled *Cedarville Rancheria of Northern Paiute Indians v. Duanna Knighton, et al.*, Case No. CED-CI-2014-00002. Compl. Ex. 4, Tribal Court Compl. (Dkt. No. 1-3 at 1).

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2015, the parties¹³ stipulated to stay the action against Knighton pending a ruling on RISE’s motion to dismiss. Compl. ¶¶ 33-34. The Tribal Court granted the stay on April 23, 2015, and noted that its jurisdictional ruling was not ripe for federal review but was ripe for review in the Cedarville Rancheria Court of Appeals (“Tribal Court of Appeals”). *Id.* ¶ 34; Order Granting Temporary Stay ¶¶ 1-2 (Dkt. No. 1-3 at 40). On June 30, 2015, the Tribal Court granted RISE’s motion to dismiss for lack of personal jurisdiction. Compl. ¶ 35; Order Granting Mot. to Dismiss as to RISE (Dkt. No. 1-3 at 42).

Knighton filed a notice of appeal on July 20, 2015, asserting that the Tribal Court lacks jurisdiction over her, and that the tribal complaint must be dismissed because RISE is an indispensable party whose joinder is not feasible. Compl. ¶ 36. On March 7, 2016, the Tribal Court of Appeals affirmed the Tribal Court’s denial of Knighton’s motion to dismiss but remanded the issue of whether RISE was an indispensable party—raised for the first time on appeal—to the Tribal Court to develop the factual record and make the necessary findings. *Id.*; Tribal Court of Appeals Order Regarding Knighton’s Motion to Dismiss (Dkt. No. 1-3 at 52). Knighton subsequently filed a motion to dismiss under Rule 12(b)(7) for failure to join indispensable party RISE under Rule 19. Compl. ¶ 37. The Tribal Court heard argument on June 13, 2016, and denied the motion in its entirety on June 29, 2016. *Id.*; Tribal Court Order Denying Knighton’s Motion to Dismiss

13. The Tribal Court dismissed Oppenheimer from the action sometime before April 21, 2015. Stipulation Regarding Temporary Stay (Dkt. No. 1-3 at 33).

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Under Rule 19 (Dkt. No. 1-3 at 59). Knighton appealed the decision to the Tribal Court of Appeals. Compl. ¶ 38. On September 26, 2016, pursuant to a stipulation between the parties, the Tribal Court vacated the appeal and stayed the case to allow Knighton to challenge the Tribal Court's jurisdiction over her in federal court. Compl. ¶ 38.

B. The Present Action

On October 12, 2016, Knighton filed this action against the Tribe, Tribal Court, and Tribal Judge Lenzi.¹⁴ Knighton seeks (1) a declaratory judgment that the Tribal Court lacks jurisdiction over her, (2) a declaration that RISE is an indispensable party to the tribal action and therefore she must be dismissed from the suit, and (3) a permanent injunction against further proceedings in Tribal Court. Compl. ¶¶ 67-69.

On December 16, 2016, defendants moved to dismiss Knighton's complaint pursuant to Rule 12(b)(1) and (6), on the following grounds: (1) the complaint fails to establish federal subject matter jurisdiction; (2) the Tribal Court has jurisdiction over Knighton under *Montana v. United States*, 450 U.S. 544, 101 S. Ct. 1245, 67 L. Ed. 2d 493 (1981); (3) sovereign immunity shields defendants from suit; (4) Knighton's complaint fails to state a claim upon which relief can be granted; (5) defendants are not necessary parties to federal review of Tribal Court jurisdiction; and (6) this case will never be ripe for federal review. Mot. (Dkt. No. 10).

14. Defendant Patricia R. Lenzi is chief judge of the Tribal Court, and she is included in Knighton's suit in her official capacity only. Compl. ¶¶ 4, 6.

*Appendix B***DISCUSSION**

“[A] federal court may determine under § 1331 whether a tribal court has exceeded the lawful limits of its jurisdiction” over a nonmember. *Nat’l Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845, 852-53, 105 S. Ct. 2447, 85 L. Ed. 2d 818 (1985). “Non-Indians may bring a federal common law cause of action under 28 U.S.C. § 1331 to challenge tribal court jurisdiction.” *Boozar v. Wilder*, 381 F.3d 931, 934 (9th Cir. 2004). However, as a matter of comity, a plaintiff must first exhaust tribal court remedies before seeking relief in federal court.¹⁵ *Atwood v. Fort Peck Tribal Court Assiniboine*, 513 F.3d 943, 948 (9th Cir. 2008). “At a minimum, exhaustion of tribal remedies means that tribal appellate courts must have the opportunity to review the determinations of the lower tribal courts.” *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 17, 107 S. Ct. 971, 94 L. Ed. 2d 10 (1987). Because Knighton is non-Indian and it is undisputed that she has exhausted her tribal remedies with respect to the question

15. The Supreme Court recognizes four exceptions to the exhaustion rule: “(1) when an assertion of tribal court jurisdiction is motivated by a desire to harass or is conducted in bad faith; (2) when the tribal court action is patently violative of express jurisdictional prohibitions; (3) when exhaustion would be futile because of the lack of an adequate opportunity to challenge the tribal court’s jurisdiction; and (4) when it is plain that tribal court jurisdiction is lacking, so that the exhaustion requirement would serve no purpose other than delay.” *Elliott v. White Mountain Apache Tribal Court*, 566 F.3d 842, 847 (9th Cir. 2009) (internal quotation marks, citations, and modifications omitted). Because the parties agree that Knighton has exhausted tribal remedies with respect to her jurisdictional challenge, I do not consider whether these exceptions apply.

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of tribal jurisdiction over her, subject matter jurisdiction exists pursuant to § 1331.¹⁶

I. TRIBAL JURISDICTION

“Tribes maintain considerable authority over the conduct of both tribal members and nonmembers on Indian land, or land held in trust for a tribe by the United States.” *McDonald v. Means*, 309 F.3d 530, 536 (9th Cir. 2002). “To exercise its inherent civil authority over a [nonmember] defendant, a tribal court must have both subject matter jurisdiction—consisting of regulatory and adjudicative jurisdiction—and personal jurisdiction.” *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 809 (9th Cir. 2011). A tribe’s regulatory authority concerns its power to regulate nonmember conduct while adjudicative authority relates to the tribal court’s jurisdictional power to adjudicate certain disputes. *See Strate v. A-1 Contractors*, 520 U.S. 438, 442, 117 S. Ct. 1404, 137 L. Ed. 2d 661 (1997). The Supreme Court has made clear, however, that a tribe’s adjudicative authority over nonmembers is confined by the bounds of its regulatory authority. *Id.*

A. Subject Matter Jurisdiction

Montana v. United States is “the pathmarking case concerning tribal civil authority over nonmembers.”

16. In reviewing the Tribal Court’s ruling on jurisdiction “the district court’s review is akin to appellate review of the tribal court record.” *Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 817 n.9 (9th Cir. 2011) (citation omitted).

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Strate, 520 U.S. at 445. The *Montana* Court announced “the general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe[.]” while simultaneously recognizing that “Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands.” *Montana v. United States*, 450 U.S. 544, 565, 101 S. Ct. 1245, 67 L. Ed. 2d 493 (1981). The Court identified two circumstances, known as the *Montana* exceptions, in which the exercise of jurisdiction over a non-Indian might be appropriate. *Id.* First, “[a] tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements.” *Id.* And second, “[a] tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.” *Id.* at 566.

In the Ninth Circuit, *Montana*’s exceptions “do[] not apply to jurisdictional questions” over nonmembers for claims arising on tribal land within a reservation, except “where a state has a competing interest in executing a warrant for an off-reservation crime.” *Water Wheel*, 642 F.3d at 813 (citing *Nevada v. Hicks*, 533 U.S. 353, 121 S. Ct. 2304, 150 L. Ed. 2d 398 (2001)).¹⁷ In *Water Wheel*, the

17. In *Nevada v. Hicks*, the Court held that a state’s considerable interest in executing criminal warrants for off-reservation crimes outweighed the tribe’s authority to regulate the on-reservation

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activities of state officers, and thus *Montana* applied. 533 U.S. 353, 121 S. Ct. 2304, 150 L. Ed. 2d 398 (2001). The *Water Wheel* court acknowledged *Hicks*, but determined it “is best understood as the narrow decision it explicitly claims to be[,]” concluding, for jurisdictional questions arising on Indian land, *Montana* “appl[ies] only when the specific concerns at issue in [*Hicks*] exist.” *Water Wheel*, 642 F.3d at 813. The *Water Wheel* court arrived at this conclusion, even though *Hicks* found that *Montana*’s reasoning “clearly impl[ies] that the general rule of *Montana* applies to both Indian and non-Indian land.” *Hicks*, 533 U.S. at 360. In this vein, other circuits have recognized *Water Wheel*’s seeming divergence from Supreme Court precedent. See, e.g., *Stifel, Nicolaus & Co. v. Lac du Flambeau Band of Lake Superior Chippewa Indians*, 807 F.3d 184, 214 (7th Cir. 2015) (“We do not believe that [*Water Wheel*]’s conclusions can be reconciled with the language that the Court employed in *Hicks* and *Plains Commerce Bank*.”). Another district court in this circuit recognized this deviation, and invoked the Supremacy Clause to apply *Montana* on Indian land, notwithstanding *Water Wheel*’s instruction to the contrary. *Rolling Frito—Lay Sales LP v. Stover*, 2012 U.S. Dist. LEXIS 9555, 2012 WL 252938, at *3 (D. Ariz. 2012) (“To the extent that the *per curiam* opinion in *Water Wheel* departs from Supreme Court jurisprudence in the area of Federal Indian Law, we are constrained by the Supremacy Clause, Art. VI, and Article III (‘one supreme Court’) to follow the Supreme Court. See *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, 460 U.S. 533, 535, 103 S.Ct. 1343, 75 L.Ed.2d 260 (1983). We thus apply *Montana* to this case.”) Another court avoided the analysis altogether. See *Salt River Project Agr. Imp. & Power Dist. v. Lee*, 2013 U.S. Dist. LEXIS 10952, 2013 WL 321884, at *12 (D. Ariz. 2013) (deciding that issue of whether *Montana* applies is irrelevant because the result would be the same whether foregoing application of *Montana* or applying it and finding an exception applies—the tribe would have the sovereign authority to regulate employment). While my conclusion is the same as the court in *Salt River*, I address this issue because it was important to the parties’ arguments and the Tribal Court’s determination.

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Ninth Circuit explained that applying *Montana* to cases arising on reservation trust land “would impermissibly broaden *Montana*’s scope beyond what any precedent requires and restrain tribal sovereign authority despite Congress’s clearly stated federal interest in promoting tribal self-government.” *Id.* The threshold question then, is whether it is even necessary to apply *Montana*’s exceptions to this case.

1. Applicability of *Montana*

Both parties focused exclusively on *Montana*, while neither party addressed *Water Wheel*’s explicit direction not to apply *Montana* to jurisdictional questions over nonmembers for claims arising on Indian land. Neither party argues that Knighton’s activities occurred on non-Indian fee land within the reservation, which would justify *Montana*’s application. Rather, the parties acknowledge that the conduct at issue occurred on trust land within the reservation and at the tribal headquarters building,¹⁸

18. The headquarters is located outside of the reservation, where the Tribe lacks the authority to regulate a non-Indian. *Water Wheel*, 642 F.3d at 815. While the underlying complaint does not allege precisely where the conduct at issue occurred, Knighton must concede that all pre-2009 conduct occurred on the reservation. This pre-2009 conduct underlies many of the claims in the Tribal Court Complaint, including unjustified salary increases, unwarranted fringe benefits, unauthorized investment losses, and various misrepresentations and omissions. *See* Tribal Court Compl. (Dkt. No. 1-3). Even post-2009 conduct that *may* have taken place off of the reservation is undoubtedly related to tribal land. *See Smith v. Salish Kootenai Coll.*, 434 F.3d 1127, 1132 (9th Cir. 2006) (“[W]hether tribal courts may exercise jurisdiction over a nonmember defendant may

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which is currently undergoing a process of fee-to-trust conversion. Tribal Court Order Denying Knighton's Motion to Dismiss Under Rule 19 ¶ 7 (Dkt. No. 1-3 at 61). Accordingly, under Ninth Circuit precedent, *Montana* does not apply at all. *Water Wheel*, 642 F.3d at 812 (collecting cases confirming that *Montana* does not apply to a Tribe's jurisdiction over non-Indians on Indian land).

The Tribal Court and Tribal Court of Appeals, however, proceeded to apply *Montana* and determined that subject matter jurisdiction exists under both *Montana* exceptions, as Knighton had a longstanding consensual employment relationship with the Tribe and her activities in question directly harmed the Tribe's economic security. Tribal Court of Appeals Order Re Knighton's Mot. to Dismiss (Dkt. No. 1-3 at 55). In reaching this conclusion, the Tribal Court of Appeals relied on the lower court's factual findings that "[s]ome of [] Knighton's duties and actions at issue in this case were carried out on the [Tribe's] trust lands," and "some were carried out at the fee-owned tribal headquarters building of the tribe in the town of Alturas, CA, and not on trust lands of the tribe." *Id.* The Tribal Court also noted that "some of [Knighton's] duties carried out at Tribal Headquarters in Alturas involved actions and effects on the Tribal trust lands in Cedarville." *Id.*

In regards to RISE, the Tribal Court described the ownership status of the lands at issue and presented a detailed analysis of why the Tribe does not have jurisdiction under *Montana*:

turn on how the claims are related to tribal lands.") Accordingly, I find the location of the Tribal headquarters building immaterial to an analysis of subject matter jurisdiction.

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It is undisputed that the Cedarville Rancheria Tribal Building is not on land held in trust for the benefit of the Tribe. Therefore it is not “Indian country” over which the Tribe can exercise civil jurisdiction under [§] 28 USC 1331. Since Congress has not ratified the Cedarville Rancheria’s Constitution, the Tribal Administrative Building and the land on which it sits is not only *not* in Indian country, the building is also not “*fee lands within its reservation*” under *Bugenig* or *Montana*. The initial assumption under *Montana* is that a tribe may exercise jurisdiction over a non-Indian on fee lands within the tribe’s reservation — the lands in question must be located within a reservation’s boundaries. Therefore, the federal standard set forth in *Montana* for exercising jurisdiction over a non-Indian has not been met because under federal legal analysis, the [RISE] building and the land it sits on do not meet any federal definition of reservation lands. The two prongs of the *Montana* test cannot even be reached for application until the [Tribal] Court has found that the land in question where the alleged contract [for sale of the RISE building] was “fee land within the reservation.” There is no evidence submitted with the complaint pleading, nor is it alleged in the complaint, that the contract was entered into by the parties [i.e., the Tribe, Knighton and RISE] within the reservation, or on fee lands within the reservation. Under federal law, the

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Cedarville Rancheria Tribal Administration building is fee land outside the reservation at present, and is now owned by the Tribe.

Tribal Court Order Granting RISE's Mot. to Dismiss (Dkt. No. 1-3 at 48). The Tribal Court went on to note that, with respect to RISE, the Tribe's complaint "fails to allege the condition precedent of the location of [RISE's tortious] activity within the boundaries of the reservation, and the timing of the same activity being concurrent with R.I.S.E.'s alleged tortious conduct." *Id.* (Dkt. No. 1-3 at 49). It subsequently confirmed the fee status of the tribal headquarters land in June 2016, noting that the Tribe "is in the process of seeking fee-to-trust status of the land on which the Tribal headquarters sit." Tribal Court Order Denying Knighton's Mot. to Dismiss Under Rule 19 (Dkt. No. 1-3 at 61).

This record demonstrates that Knighton's activities in question did not occur on non-Indian fee lands within the Tribe's reservation, and thus under *Water Wheel*, the *Montana* exceptions do not apply.¹⁹ *See Water Wheel*, 642 F.3d at 810. Rather, I must return to the basic jurisdictional analysis and assess whether the Tribe has

19. Although the Ninth Circuit has made clear that *Montana* does not govern the circumstances in this case, *see Water Wheel*, 642 F.3d 802, if *Montana* did apply, I agree with the Tribal Court that the Tribe would have subject matter jurisdiction under both exceptions. *See, e.g., Salt River Project Agr. Imp. & Power Dist. v. Lee*, 2013 U.S. Dist. LEXIS 10952, 2013 WL 321884, at *12-15 (D. Ariz. Jan. 28, 2013)(finding Tribe had jurisdiction over nonmember defendant on Tribal land).

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authority to regulate Knighton’s activities during her tribal employment—all of which occurred on land owned by the Tribe, whether on the reservation or at the fee-owned Tribal Headquarters building.

2. Tribal Regulatory Authority

A tribe’s regulatory authority over nonmembers must derive “from the tribe’s inherent sovereign authority to set conditions on entry, preserve self-government, or control internal relations.” *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 128 S. Ct. 2709, 171 L. Ed. 2d 457 (2008). A “tribe is able fully to vindicate its sovereign interests in protecting its members and preserving tribal self-government by regulating nonmember activity on the land, within the limits set forth in [Supreme Court] cases.” *Id.* at 336 (emphasis omitted); see *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 144, 102 S. Ct. 894, 71 L. Ed. 2d 21 (1982) (finding that the power to exclude nonmembers from reservation trust lands “necessarily includes the lesser power to place conditions on entry, on continued presence, or on reservation conduct.”). To the extent a nonmember’s activities “may intrude on the internal relations of the tribe or threaten tribal self-rule,” such activities may be regulated. *Plains Commerce*, 554 U.S. at 335.

Knighton explicitly acknowledges in her complaint that the Tribe has regulatory authority over its employees and their conduct: “At the time of Knighton’s employment, the Tribe regulated its employees” and “[Knighton] is subject to the regulatory procedures that existed

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at the time of her employment.” Compl. ¶¶ 18-19, 51. These admissions alone establish the Tribe’s regulatory authority over Knighton’s employment.

Furthermore, as Tribal Administrator, Knighton directly immersed herself in, and had considerable oversight of, nearly all aspects of the Tribe’s day-to-day government. She was “responsible for over-all supervision and management of the Cedarville Rancheria, including contract negotiations, wages, and compliance; and supervision of employees according to the salaried job description.” *Id.* ¶ 18; Cedarville Rancheria Policies (Dkt. No. 1-2 at 26). Her other job duties included “[p]lanning, development, management, and supervision of all projects contracted by Cedarville Rancheria;” meeting with government agencies and other tribal offices on behalf of the Tribe; “[r]eporting to the Tribal Council (Board) and all funding agencies on a timely and regular basis”; and managing “payroll, taxes, and expenses, financial statements/reports for audit, expenditures, and ledgers under direct supervision of the Chairperson.” *Id.* She also had significant discretion in hiring, disciplining, and terminating tribal employees, both members and nonmembers. *Id.* Knighton’s employment activities directly affected the Tribe’s inherent powers to protect the welfare of its members and preserve the integrity of its government.

The Tribe’s sovereign interest in ensuring its economic survival further supports its regulatory jurisdiction here. During her tenure as Tribal Administrator, Knighton was extensively involved in the Tribe’s finances and was

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responsible for the Tribe's "payroll, taxes, and expenses, financial statements/reports for audit, expenditures, and ledgers under direct supervision of the Chairperson." *Id.* The Tribe alleges that Knighton's actions as Tribal Administrator had a devastating effect on the Tribe's economic wellbeing. Considering the small size of the Tribe's membership, her conduct threatened the Tribe's very economic survival.

The Tribe's regulatory jurisdiction over Knighton's on-reservation activities as Tribal Administrator is unassailable. Not only does Knighton concede that the Tribe has authority to regulate her employment, but her alleged activities on the Rancheria directly interfered with the Tribe's sovereign powers to control internal relations and protect the welfare of its members.

3. Tribal Adjudicative Authority

"Where tribes possess authority to regulate the activities of nonmembers, civil jurisdiction over disputes arising out of such activities presumptively lies in the tribal courts." *Strate*, 520 U.S. at 453 (citation and brackets omitted). However, a tribe's adjudicative authority over nonmembers may not exceed its regulatory authority. *Id.* at 438. In *Water Wheel*, after concluding that the tribe had regulatory jurisdiction over nonmembers for trespass on reservation trust land, the Ninth Circuit determined that adjudicative authority also existed. 642 F.3d at 816. Factors that supported a finding of adjudicative jurisdiction included "the important sovereign interests at stake [i.e., inherent power to

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exclude nonmembers and manage reservations lands], the existence of regulatory jurisdiction, and long-standing Indian law principles recognizing tribal sovereignty.” *Id.* The circumstances here present an even more compelling basis for adjudicative jurisdiction than those in *Water Wheel*—Knighton was a longtime employee of the Tribe who was entrusted with the responsibility of overseeing all aspects of tribal operations.

Knighton’s due process argument, that “because the Tribal Court did not exist at the time of her employment, [the] Tribe is exceeding its authority to regulate her employment through ex post facto application of its tribal judicial system,” is unconvincing. Opp’n at 8 (Dkt. No. 14). The Tribe is not attempting to “create new regulations and impose them on Knighton ex post facto” as she alleges; Knighton’s alleged conduct violated the Tribe’s regulations that were in place—and that she wrote—during her employment with the Tribe. *Id.* at 9; see Compl. ¶¶ 20-22. The Tribe is simply seeking to adjudicate its claims against her in its chosen forum—the Tribal Court. Knighton’s assertion that “any dispute between [her] and the Tribe is subject to the regulatory procedures that existed at the time of employment, *to wit.*: the disciplinary and grievance procedures enumerated in ... the Tribe’s Personnel Policy and Procedure Manual” is similarly unpersuasive. Compl. ¶ 51. Defendants correctly note that the “Tribe’s Administrative Policies and Procedures confer jurisdiction not only to the Tribe, but more importantly, to the Tribal Council [which is comprised of the Tribe’s adult voting membership] in cases where the Tribal Administrator is the focus of discipline.” Mot. at 8

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(Dkt. No. 10). Even if the Tribal Court did not presently exist, then the Tribal Council would have jurisdiction over the claims at issue.²⁰ Cedarville Rancheria Policies (Dkt. No. 1-2 at 40). Moreover, the Tribe’s constitution, adopted in 2011, provides that the “jurisdiction of [the Tribe] shall extend to the land now within the confines of the Cedarville Rancheria and to such other lands as may hereafter be added thereto.” Cedarville Rancheria Constitution and Bylaws (Dkt. No. 1-2 at 45).

Because the Tribe has both regulatory and adjudicative jurisdiction over Knighton, the Tribal Court has subject matter jurisdiction over the underlying action.

II. FAILURE TO JOIN INDISPENSABLE PARTY

Defendants argue that “[w]hether non-party R.I.S.E. is an indispensable party has no bearing on Defendants’ motion to dismiss,” because “the threshold question” is whether the Tribal Court has jurisdiction over the underlying action. Reply at 8 (Dkt. No. 15). I agree. And Knighton seemingly concedes that the two issues are unrelated: “ the arguments in [defendants’] Motion to Dismiss are limited to the former issue of subject-matter

20. An appeal hearing would be “subject to the control of the [Tribal] Council,” which had the power to “vary the procedure” of an appeal hearing, and the Tribal Council’s decision following an appeal hearing would be final. Dkt. No. 1-2 at 40-41. The Personnel Manual also provides that “[t]he specific type and degree of disciplinary action will be determined by the nature of the offense,” which leaves the door open for additional disciplinary actions to be utilized. Dkt. No. 1-2 at 33.

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jurisdiction and do not address the latter issue of joinder of RISE... ." Opp'n at 13. But my precise task must be limited to the question of the Tribal Court's jurisdiction. Knighton has submitted no authority establishing that the Tribal Court's lack of jurisdiction over *RISE* divests it of jurisdiction over the *action*. Because the Tribal Court has jurisdiction over the underlying action pending against Knighton, I do not address Knighton's indispensable party argument.

As a separate and independent reason for denying Knighton's indispensable party argument, she has failed to exhaust her tribal remedies. Although the Tribal Court certified as ripe for federal review "the question of jurisdiction over Defendant Knighton, as this question has already been appealed to the Cedarville Rancheria Court of Appeals," it expressly noted that "tribal processes as to only [the jurisdiction] issue, *and no other issues*, have been exhausted by the parties." Dkt. No. 1-3 at 62. *See Nat'l Farmers Union*, 471 U.S. at 856 ("[T]he orderly administration of justice in the federal court will be served by allowing a full record to be developed in the Tribal Court before either the merits or any question concerning appropriate relief is addressed.").

CONCLUSION

Given the Tribal Court's jurisdiction over the underlying action, defendants' motion to dismiss is **GRANTED WITH PREJUDICE**.

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IT IS SO ORDERED.

Dated: February 15, 2017

/s/ William H. Orrick
William H. Orrick
United States District Judge

**APPENDIX C — OPINION OF THE COURT OF
APPEALS FOR THE CEDARVILLE RANCHERIA,
FILED MARCH 7, 2016**

IN THE COURT OF APPEALS
FOR THE CEDARVILLE RANCHERIA

T.C. Case No. CED-C1-2014-0002

CEDARVILLE RANCHERIA OF
NORTHERN PAIUTE INDIANS,

Plaintiff-Appellee,

v.

DUANNA KNIGHTON; RESOURCES FOR
INDIAN STUDENT EDUCATION, INC. (R.I.S.E.);
OPPENHEIMER FUNDS, INC.,
AND DOES 1-10, INCLUSIVE

Defendants-Appellants.

OPINION

Plaintiff-Appellee Cedarville Rancheria of Northern Paiute Indians (“Tribe”) filed an action for damages against the above-named Defendants-Appellants. The Tribal Court dismissed Defendants-Appellants R.I.S.E. and Oppenheimer Funds, Inc. from the action. Defendant-Appellant Duanna Knighton (“Knighton”) filed a Motion to Dismiss asserting that the Tribal Court lacked jurisdiction. The Tribal Court denied the Motion to Dismiss and this appeal followed.

Appendix C

We affirm the Tribal Court's holding that (1) it has jurisdiction over Knighton, (2) the creation of the Tribal Court nine months after Knighton's employment with the Tribe does not deprive the Tribal Court of jurisdiction and (3) safety concerns do not require dismissal of this action. We remand the matter to the Tribal Court to determine whether R.I.S.E. is an indispensable party).

FACTS AND PROCEDURAL HISTORY

On October 2, 2014 the Tribe filed this action against Knighton, a non-Indian, and the other named Defendants. Defendants Oppenheimer Funds, Inc. and R.I.S.E. were dismissed from the lawsuit because of lack of jurisdiction. Knighton's Motion to Dismiss for lack of jurisdiction was denied.

Knighton worked for the Tribe for 18 years. The Complaint alleges that Knighton mismanaged the Tribe's finances and illegally enriched herself with inflated salary and benefits. The tortious actions alleged in the Complaint are alleged to have occurred while Knighton was an employee of the Tribe or during contractual transaction with the Tribe. While an employee of the Tribe, Knighton's duties were carried out on the trust lands of the Tribe and on the fee-owned headquarters of the Tribe in Alturas, California.

Knighton's Motion to Dismiss was denied, the Tribal Court holding as follows:

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“Therefore, having concluded that the Cedarville Rancheria has jurisdiction over the person of Duanna Knighton, over the subject matter of a civil tort allegedly committed against the Tribe, and over the location of the tortious conduct: the reservation land and tribal headquarters off the reservation, the Tribe has jurisdiction over the Defendant Knighton and over the subject matter of the dispute, as well as over the location wherein the Torts are alleged to have occurred.”¹

On appeal, Knighton asserts that the Trial Court does not have personal jurisdiction over Knighton because (1) she is not a member of the Tribe and does not own any property with the Tribal Community and (2) the Tribal Court does not have subject matter jurisdiction because it was not created until nine (9) months after Knighton’s employment with the Tribe ended. Knighton further asserts that there exists severe safety issues by remaining in the Tribal Court system. Lastly, Knighton asserts that R.I.S.E. is an indispensable party that has been dismissed from the action.

DISCUSSION

We review factual findings of the trial court to determine whether such findings are based on substantial evidence

1. ROA 128. The Tribal Court also addressed the safety concerns raised by Knighton, indicating that there is no evidence that she faces any threat of physical violence by any member of the Tribe.

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in the record pursuant to Rule 49 of Title II, Rules of Procedure, Cedarville Rancheria Judicial Code. However, we review questions of law and constitutional claims *de novo*.

The Constitution and Bylaws of the Cedarville Rancheria (approved by the Regional Director of the Department of the Interior, Bureau of Indian Affairs on March 11, 2011) provides that the “jurisdiction of the organization shall extend to the lands now within the confines of the Cedarville Rancheria and to such other lands and to such other lands as may hereafter be added thereto.” (Article 11).

The Cedarville Rancheria’s Judicial Code (“Code”) provides that the jurisdiction of the Tribal Court shall extend to all areas within the Cedarville Rancheria’s territory (Judicial Code, Part 11, Section 201.A.). Section 201.C, subsection 2 of the Code provides, in pertinent part that the Tribal Court has subject matter jurisdiction of:

“All civil causes of action arising at common law, including, without limitation, all contracts claims (whether the contract is written or oral or existing at law), all tort claims (regardless of the nature), all property claims (regardless of the nature), all insurance claims, and all claims based on commercial dealing with the Band, its agencies, sub-entities and corporations chartered pursuant to its laws, and all nuisance claims.”

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Montana v. United States, 450 U.S. 544, at 564-565 (1981) holds that there are two exceptions to a Tribe's lack of jurisdiction over a non-Indian. First, a Tribe may exercise personal jurisdiction over a non-Indian when such non-Indian enters into a consensual relationship with the Tribe through commercial dealing, contact, leases or other arrangements. A Tribe may also exercise jurisdiction over a non-Indian where the conduct of the non-Indian on fee lands threatens or has some direct effect on the political integrity, economic security or health or welfare of the Tribe. In this proceeding, the Tribal Court correctly concluded that Knighton entered into a consensual relationship with the Tribe by being employed by the Tribe and further after employment entered into one or more contracts with the Tribe. This consensual relationship was substantial and continuous for at least eighteen (18) years. Further, some of the action of Knighton occurred on Reservation lands and are alleged to have harmed the economic security of the Tribe. Thus, the two exceptions to the lack of jurisdiction over a non-Indian set forth on *Montana* have been satisfied.

We therefore conclude that pursuant to the Tribe's Constitution and Bylaws and Judicial Code and the holding in *Montana* the Cedarville Rancheria has personal jurisdiction over Knighton the subject matter jurisdiction over the allegations set forth in the Civil Complaint.

Next, Knighton argues that the Tribe does not have jurisdiction because the Tribal Court did not exist until nine (9) months after Knighton left employment with the Tribe. Having concluded that the Cedarville Rancheria

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has personal jurisdiction over Knighton and subject matter jurisdiction over the action, we note the Tribal Court is merely the forum that the Tribe has established to resolve this dispute. A tribe is free to utilize whatever forum to resolve disputes that the tribe sees fit. It may utilize the tribal council, a general council or a tribal court. We therefore hold that Knighton's termination of employment prior to the establishment of the Tribal Court does not prohibit the Tribal Court from hearing this case.

Knighton also asserts that the Tribal Court should not exercise jurisdiction due to the danger to all parties as a result of a previous incident in Tribal Court where four individuals were murdered. The Tribal Court rejected this argument holding as follows:

“Due to the Tribe's low numbers of membership, virtually all members of this Tribe are related to both the victim of the violence and the perpetrator. No violence has occurred, nor has any been threatened to this Court's knowledge, since this incident perpetrated by one lone member of the Tribe.

There has been no evidence presented that Defendant Knighton faces any threat of physical violence by the remaining members of the Tribe.

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Finally, this Court holds virtually all hearings telephonically, however *local law enforcement has been present when requested by the parties or the Court* or when safety concerns arise.”²
(Emphasis in original)

The Tribal Court made a factual determination that there is no evidence that Knighton faces any threat of physical injury by any Tribal members. Moreover, there have been other Court sessions with no incidents. We conclude that there is substantial evidence to support the Tribal Court’s ruling on the safety issue and we will therefore affirm this decision pursuant to Rule 49 of Title II, Rules of Procedure, Cedarville Rancheria Judicial Code.

Lastly, we examine Knighton’s argument that the matter must be dismissed since R.I.S.E. has been dismissed from its action and R.I.S.E. is an indispensable party pursuant to the three-step process set forth in *EEOC v. Peabody W. Coal Co.*, 610 F.3d 1070, 1078 (9th Cir. 2010). The Tribe asserts the R.I.S.E. is not a necessary party. The Tribe also asserts that this issue was not addressed at the trial court and should therefore be dismissed.

In *Wright v. First Nat’l Bank of Altus, Oklahoma*, 483 F.2d 73 (10th Cir. 1973) the Court held that a determination as to whether a party is “necessary” such that joinder is compulsory requires factual findings. In this case, the matter was not raised until appeal and therefore, the trial court had no opportunity to make the required findings.

2. ROA 129

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The trial court is the appropriate forum to develop the factual record and make the necessary findings. We, will therefore remand this issue to the trial court.

CONCLUSION

For the reasons set forth above, we Affirm the Trial Court findings that the Cedarville Rancheria has personal jurisdiction over Knighton and subject matter jurisdiction over alleged tortious actions of Knighton and that the Tribal Court is the appropriate forum to hear this matter. We Remand the issue of whether R.I.S.E. is a necessary party to the Tribal Court to make the required factual findings.

Dated this 15th day of February 2016

/s/
Bill Kockenmeister
Appellate Judge

/s/
Charlene Jackson
Appellate Judge

/s/
Amanda Wilbure
Appellate Judge

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**APPENDIX D — ORDER OF THE CEDARVILLE
RANCHERIA OF THE NORTHERN PAIUTE
INDIANS, TRIBAL COURT, FILED
MARCH 11, 2015**

CEDARVILLE RANCHERIA
OF NORTHERN PAIUTE INDIANS

TRIBAL COURT

Case No.: CED-CI-2014-00002

CEDARVILLE RANCHERIA
OF NORTHERN PAIUTE INDIANS,

Plaintiff,

v.

DUANNA KNIGHTON; RESOURCES FOR
INDIAN STUDENT EDUCATION, INC. (R.I.S.E.);
OPPENHEIMER FUNDS, INC; AND DOES 1-10,
INCLUSIVE,

Defendants.

**ORDER AFTER HEARING: MOTION TO
DISMISS FRCP 12(b)(2)**

Date: TBD

Time: TBD

HON. JUDGE PATRICIA LENZI

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On January 8, 2015, a telephonic hearing was held on Defendant DUANNA KNIGHTON's Motion To Dismiss pursuant to FRCP 12(b)(2) in the above-captioned matter. Present were: Jack Duran, Attorney for the Plaintiffs Cedarville Rancheria Tribe; Patrick Deedon, Attorney for Defendant Duanna Knighton. The Honorable Patricia Rae Lenzi presided over the hearing.

Having read and considered all authorities filed by each party, and having heard the arguments of each party, the Court finds that the Tribal Court has jurisdiction over the parties and the subject matter, as well as the location which gives rise to the instant dispute. For the reasons set forth below, the Tribal Court denies the Motion to Dismiss.

APPLICABLE LAW

Cedarville Rancheria's Tribal Constitution states, at Art II:

The jurisdiction of this organization shall extend to the land now within the confines of the Cedarville Rancheria and to such other lands as may hereafter be added thereto.

Cedarville Rancheria BYLAWS, Art. VIII, Sec. 1(b), states that the community council¹ of the Cedarville

1. The Community Council of the Cedarville Rancheria is the full adult voting membership. CR Const. Art. IV, Section I. The Executive Committee is elected from the Community Council, and has limited duties and authority. CR Const. Art IV, Section 2; BYLAWS of the CR, Art. I, Sec. 1-3; CR BYLAWS Art. VIII.

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Rancheria may “... veto any proposed sale, disposition, lease or encumbrance of tribal lands, interest in lands or other tribal assets of the community.” Art VIII Section 2 limits the authority of the Executive Committee in its language:

The executive committee shall have the following powers, but shall not commit the Cedarville Rancheria to any contract, lease or other transaction unless it is authorized by duly enacted ordinance or resolution of the community council[- the power to] ... Carry out all ordinances, resolutions or other enactments of the community council

The Constitution and Bylaws of the Cedarville Rancheria were adopted by election of its membership on February 24, 2011. They were submitted to the Regional Director of the Bureau of Indian Affairs on March 4, 2011. The Regional Director of the United States Department of the Interior, Bureau of Indian Affairs, approved the Constitution and Bylaws of the Cedarville Rancheria on March 18, 2011.

Cedarville Rancheria’ s Judicial Code identifies the territorial jurisdiction of the Tribal Court at Part II, Section 201.A.:

The jurisdiction of the Tribal Court and the effective area of this Code shall extend to disputes arising within or concerning all territory within the Cedarville Rancheria boundaries, including, but not limited to, trust lands, fee patent lands, allotments, assignments,

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roads, waters, bridges and existing and future lands outside the boundaries owned or controlled by the Rancheria for its benefit, the benefit of its members and the benefit of other Indian persons.

The Tribe's Judicial Code identifies the Subject Matter jurisdiction of the Tribal Court at Section 201.B. Pertinent subsections are 3 and 4. :

The jurisdiction of the Tribal Court shall extend to:

...

- 3. All persons outside the exterior boundaries of the Cedarville Rancheria Reservation, as defined herein, within the jurisdiction of the Rancheria pursuant to federal or tribal law, including all persons whose activity on or off reservation threatens the Rancheria, government or its membership.*
- 4. All other persons whose actions involve or affect the Rancheria, or its members, through commercial dealings, contracts, leases or other arrangements. For purposes of this Code, person shall mean all natural persons, corporations, joint ventures, partnerships, trust, trust funds, public or private organizations or any business entity of whatever kind.*

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The Tribe limits its court's jurisdiction over actions under Section 201.C:

The judicial power of the Tribal Court shall extend to:

- 1. All matters and actions within the power and authority of the Cedarville Rancheria including controversies arising out of the Constitution and By-Laws of the Cedarville Rancheria, statutes, ordinances, resolutions and codes enacted by the Cedarville Rancheria; and such other matters arising under enactments of the Cedarville Rancheria or the customs and traditions of the Cedarville Rancheria.*

- 2. All civil causes of action arising at common law including, without limitation, all contract claims (whether the contract at issue is written or oral or existing at law), all tort claims (regardless of the nature), all property claims (regardless of the nature), all insurance claims, and all claims based on commercial dealing with the Band, its agencies, sub-entities, and corporations chartered pursuant to its laws, and all nuisance claims. The court shall have original jurisdiction whether the common law cause of action is one which has been defined as Band common law, or is one which exists at common law in another jurisdiction and which is brought before*

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the Tribal Court based upon reference to the law of that other jurisdiction. For the purposes of this Code, "common law" shall mean the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from the usages and customs, or from the judgments and decrees of courts recognizing and affirming such usages and customs, and as is generally distinguished from statutory law.

- 3. Other actions arising under the laws of the Rancheria as provided in those laws.*
- 4. Limitation of Actions.*

No complaint shall be filed in a civil action unless the events shall have occurred within a six (6) year period prior to the date of filing the complaint; provided, that this general statute of limitations shall not apply to suits filed to recover public money or public property intentionally or erroneously misspent, misappropriated or misused in any way; and further provided that this general statute of limitations shall not apply to any debt owed the Rancheria or any of its agencies, arms or instrumentalities, whether organized or not under tribal law.

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The Tribe adopted the Federal Rules of Civil Procedure (FRCP) for its court. Cedarville Rancheria Judicial Code Section 702.

FRCP Rule 12(b)(2) is the rule under which this Motion is before the Court.

The ability for a tribe to exercise jurisdiction over a non-member is set forth in *Montana v. United States*, (1981) 450 U.S. 544, at 564-565 (citations omitted):

“A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of nonIndians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.”

The facts alleged in the Complaint are assumed to be proven for purposes of determining jurisdiction over the Defendant in this Motion.

The case cited by Plaintiffs during oral argument on this Motion, namely *Bugenig v. Hoopa Valley Tribe*, (9th Cir. 2001) 266 F.3d 1201, is instructive, but not directly applicable. That case involved a tribe whose

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constitution, approved by the Secretary of the Interior in 1972 was later “ratified and confirmed” by an act of Congress in 1988: the Hoopa-Yurok Settlement Act 25 USC. 1300i-1300i-11. In contrast, Cedarville Rancheria’s constitution has not been “ratified and confirmed” by an act of Congress, only by approval of the Secretary of the interior in 2011. The language in the Hoopa Tribe’s constitution and the Cedarville Rancheria’s constitution are virtually identical,² however, when describing lands beyond the borders of the reservation as it existed at the time the constitutions were enacted and approved by the Secretary of the Interior. The *Bugenig v. Hoopa Valley Tribe* case also involves disputes arising from use of fee patented lands located wholly within the boundaries of a reservation, that were part of the reservation when it was first established in 1887. The headquarters of the Cedarville Rancheria are not located within its reservation boundaries. Still, when read in context with the Indian Reorganization Act, 25 U.S.C. §§ 465 and 467, lands can be *added* to a reservation, or later acquired. Section 467 “appears to be designed to foresee that contingency, extending tribal jurisdiction over any new lands so acquired.” *Bugenig v. Hoopa Valley Tribe*, (9th Cir. 2001) 266 F.3d 1201, at 70. Therefore, the Cedarville Rancheria’s Jurisdiction extends to its headquarters under its own laws.

2. Cedarville Rancheria’s constitution references jurisdiction over its reservation lands “*and to such other lands as may hereafter be added thereto.*” The Hoopa Valley Tribe’s constitution references jurisdiction over its reservation lands “*and to such other lands as may hereafter be acquired by or for the Hoopa Valley Indians.*”

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FINDINGS OF FACT

1. The Court takes judicial notice that is case is the 5th case filed before this Court.
2. Defendant Duanna Knighton is nonIndian.
3. The Court assumes, for the sake of determining jurisdiction in this Motion, that the following facts are true:
 - a. Defendant Duanna Knighton was employed by the Cedarville Rancheria (“Tribe”) during most, if not all of, the time that the alleged tortious conduct occurred.
 - b. Some of Defendant Duanna Knighton’s duties and actions at issue in this case were carried out on the Cedarville Rancheria’s trust lands.
 - c. Some of Defendant Duanna Knighton’s duties and actions at issue in this case were carried out at the fee-owned tribal headquarters building of the Tribe in the town of Alturas, CA, and not on trust lands of the Tribe. However, some of the duties carried out at Tribal Headquarters in Alturas involved actions and effects on the Tribal trust lands in Cedarville.
 - d. The actions alleged to have occurred in the Complaint that give rise to the allegations in

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the Complaint are alleged to have occurred either while Defendant Duanna Knighton was an employee of the Tribe, or during one or more contractual transactions with the Tribe.

- e. The actions alleged to have occurred in the Complaint affected the economic security of the Tribe.

CONCLUSIONS OF LAW

Montana jurisdiction: Duanna Knighton is a non-Indian who entered into a consensual relationship with the Tribe by being employed by the Tribe, and entering into one or more contracts with the Tribe, and/or on behalf of the Tribe. These actions fall within the *Montana* exception #1, namely *consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements*. In addition, as alleged in the Complaint, the actions of Defendant Knighton, some of which occurred on the Tribe's reservation lands, if found to be true, were *conduct [that] threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe*. Therefore the actions fall within the *Montana* exception #2.

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*Appendix D***FORUM FOR DISPUTE RESOLUTION –
TRIBAL COURT OR TRIBAL
COMMUNITY COUNCIL**

The Cedarville Rancheria Tribe has civil jurisdiction over the Defendant Duanna Knighton, in this matter. The Tribe’s Judicial Code and Constitution, in conjunction with federal law, give the Cedarville Rancheria subject matter jurisdiction over this dispute.

As is clear from the language in *Montana*, the ability for a tribe to exercise civil jurisdiction is not the equivalent of requiring a tribe to have a long-established tribal court to hear civil disputes. Tribes may use the forum that the particular tribe determines it wishes to use: in some cases the forum may be a tribal council, in others a general council of all tribal members, in still others it may be a committee of some sort, and in others a court that operates similarly to state and federal courts.

Which specific forum a Tribe chooses in which to exercise its jurisdiction over persons or subject matters is a separate question.³ The Tribe in this instance has, under its Judicial Code, established a Tribal Court to hear its disputes. Prior to the existence of the Court, the Tribal Government had only its own community council – the entire adult voting membership of the Tribe – to

3. See *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 8 L. Ed. 25 (1831) Where the Court held that a tribe is a “distinct political society that was separated from others, capable of managing its own affairs, and governing itself.”

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hear disputes. In the absence of a tribal court to hear disputes, the Tribe does not lose its civil jurisdiction. The Tribe retains civil jurisdiction. The remaining forum for this particular Tribe becomes the Community Council – the entire adult voting membership of the Cedarville Rancheria Tribe.

The exercise of the Cedarville Rancheria of Northern Paiute Indians' jurisdiction over persons and lands is set forth in its own Constitution and Judicial Code, as well as within applicable federal law.

Therefore, having concluded that the Cedarville Rancheria has jurisdiction over the person of Duanna Knighton, over the subject matter of a civil tort allegedly committed against the Tribe, and over the location of the tortious conduct: the reservation lands and tribal headquarters off of the reservation, the Tribe has jurisdiction over the Defendant Knighton and over the subject matter of the dispute, as well as over the location wherein the torts are alleged to have occurred.

The Tribal Court for the Cedarville Rancheria is the forum where this Tribe has elected to have its disputes of this sort to be heard.

SAFETY CONCERNS

The Court takes judicial notice of the prior cases heard in this court in order to clarify the number of cases that have been heard by this Court, and to address the concerns of Defendant Knighton for the safety of persons

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appearing before this Court. There have been a total of 5 cases filed and heard before this Court as of the date of this case's filing. This instant case is the 5th case filed. The Court confirms that the first case heard by this Court was wholly unrelated to this matter, and was a case wherein a violent act occurred, disrupting the initial hearing. The initial case before this Court has concluded since the initial hearing. The perpetrator of the violence has been charged and remains in custody in another jurisdiction.

Due to the Tribe's low numbers of membership, virtually all members of this Tribe are related to both the victims of the violence and the perpetrator. No violence has occurred, nor has any been threatened to this Court's knowledge, since the incident perpetrated by one lone member of the Tribe.

There has been no evidence presented that Defendant Knighton faces any threat of physical violence by the remaining members of the Tribe.

Finally, this Court also holds virtually all hearings telephonically, however local law enforcement 15 has been present when requested by the parties or the Court and when safety concerns arise.

COURT CLERK ASSIGNMENT

The Court has previously ordered that this matter be assigned, for all purposes, to an assistant Court Clerk. Ms. Nikki Munholand, who is a witness in this matter, is no longer assigned to this matter as Court Clerk.

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ORDER

For the reasons stated above, the Motion to Dismiss is DENIED.

The parties are ordered to select 3 dates for a subsequent first appearance pursuant to FRCP 16(a) one of which will be selected by the Court for said hearing. The dates shall be identified, in writing, signed by both parties, and submitted to the Court Clerk no later than March 31, 2015, close of business. The purpose of the next hearing is to assist the parties in establishing a schedule for a FRCP 26 report, and to set deadlines for various aspects of this case.

IT IS SO ORDERED

DATED this 11th day of March, 2015

/s/
Honorable Patricia R. Lenzi, Chief Judge
Cedarville Rancheria Tribal Court Judge