

No. 17-024

In the Yuma Indian Nation Supreme Court

YUMA INDIAN NATION,

Plaintiff-Appellee

vs.

Thomas Smith & Carol SMITH

Defendants-Appellants

On Petition for a Writ of Certiorari to the Yuma Indian Nation Trial Court

BRIEF FOR THE PLAINTIFF-APPELLEE (YUMA INDIAN NATION)

Team 111

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Table of Contents

Table of Authorities.....	3
Questions Presented.....	5
Statement of the Case.....	5
Proceedings and Disposition in the Court Below.....	5
Statement of Facts.....	6
Summary of Argument.....	9
Argument.....	11
I. <i>Under either Montana exception the Yuma Indian Nation can exercise tribal jurisdiction over the Smiths. The YIN tribal court would not stay the case since tribal exhaustion is required before review by the Arizona federal district court can commence.</i>	11
II. <i>Sovereign immunity bars the Smith’s claims against YIN, EDC, Captain, and Bluejacket because neither YIN nor EDC clearly consented to waiver of sovereign immunity and Captain and Bluejacket solely acted as CEO and accountant on behalf of YIN.</i>	22
Conclusion.....	37

TABLE OF AUTHORITIES

Cases Related to Jurisdiction

<u>Atkinson Trading Co. Inc. v. Shirley</u> , 121 S. Ct. 1825 (2001).....	12-13
<u>Brendale v. Confederated Tribes and Bands of Yakima Indian Nation</u> , 109 S. Ct. 2994 (1989).....	16-17
<u>International Shoe Co. v. Washington</u> , 66 S. Ct. 154 (1945).....	19
<u>Montana v. United States</u> , 101 S. Ct. 1245 (1981).....	9, 11-18, 22
<u>National Farmers Union Ins. Companies v. Crow Tribe of Indians</u> , 105 S. Ct. 2447 (1985).....	9, 20-21
<u>Nevada v. Hicks</u> , 121 S. Ct. 2304 (2001).....	20
<u>New Mexico v. Mescalero Apache Tribe</u> , 103 S. Ct. 2378 (1983).....	14
<u>Plains Commerce Bank v. Long Family Land and Cattle Co.</u> , 128 S. Ct. 2709 (2008)....	15-17
<u>Smith v. Salish Kootenai College</u> , 434 F.3d 1127 (9th Cir. 2006).....	12-13, 18-19
<u>Stock West Corp. v. Taylor</u> , 964 F.3d 912 (9th Cir. 1992).....	15-17
<u>Strate v. A-1 Contractors</u> , 117 S. Ct. 1404 (1997).....	11

Cases Related to Sovereign Immunity

<u>Breakthrough Mgmt. Group, Inc. v. Chukchansi Econ. Dev. Authority</u> , 629 F.3d 1173 (10th Cir. 2010).....	10, 27-31
<u>C & L Enters.’, Inc., v. Citizen Band Potawatomi Indian Tribe of Oklahoma</u> , 121 S.Ct. 1589 (2001).....	10, 23-25, 31-33
<u>Cook v. AVI Casino Enters.’, Inc.</u> , 548 F.3d 718 (9th Cir. 2008).....	10, 26-27, 29, 31-34
<u>Hardin v. White Mountain Apache Tribe</u> , 779 F.2d 476 (9th Cir. 1985).....	34-35
<u>Kiowa Tribe of Oklahoma v. Mfg. Techs.’, Inc.</u> , 118 S.Ct. 1700 (1998).....	22, 25

<u>Linneen v. Gila River Indian Community</u> , 276 F.3d 489 (9th Cir. 2002).....	23-25, 31-34
<u>Michigan v. Bay Mills Indian Community</u> , 134 S.Ct. 2024 (2014)..	11, 23, 26, 31, 33, 35-36
<u>Oklahoma Tax Comm’n v. Citizen Band Potawatomi Indian Tribe of Oklahoma</u> , 111 S.Ct. 905 (1991).....	22-23, 25
<u>Pistor v. Garcia</u> , 791 F.3d 1104 (9th Cir. 2015).....	20, 34-36
<u>White v. Univ. of California</u> 765 F.3d 1010 (9th Cir. 2014).....	10, 26, 28-31, 34

QUESTIONS PRESENTED

- I. Does the Yuma Indian Nation (YIN) district court have adjudicatory jurisdiction over Thomas and Carol Smith when neither of them are members of the Yuma Indian Nation or in the alternative, must the YIN stay their proceedings while the Smiths seek a ruling in the Arizona federal district courts?
- II. Did the trial court err in dismissing all of the Smith's counterclaims against YIN and claims against the third party defendants due to sovereign immunity when the Thomas-YIN contract was ambiguous, the EDC was created under tribal commercial code, there were unmet YIN tribal code has requirements for waiver of sovereign immunity, and there is no evidence of Bluejacket and Captain acting outside their authorities as an accountant and CEO?

STATEMENT OF THE CASE

I. Proceedings and Disposition in the Court Below

Plaintiff and Appellee YIN filed suit against the Defendants and Appellants Smiths in tribal court for breach of contract, violation of fiduciary duties, and violation of their duties of confidentiality. YIN sought recovery of liquidated damages amounts set out in the contract.

The Smiths moved to dismiss the YIN suit based on lack of personal jurisdiction and lack of subject matter jurisdiction over them and this suit, and in the alternative, for the trial court to stay the suit while the Smith's pursue a ruling in AZ federal district court as to whether the tribal court has jurisdiction over them. The tribal court denied these motions.

The Smiths filed answers denying the YIN claims and counter claimed against the Nation for monies due under their contracts and for defamation for impugning their

professional skills. The Smiths impleaded the EDC and Captain and Bluejacket in their official and individual capacities. The Smiths made the same claims against the third party defendants as they did against YIN.

The trial court dismissed all the Smiths counterclaims against YIN and claims against the third party defendants due to sovereign immunity.

The Yuma Indian Nation Supreme Court granted the Smiths' interlocutory appeal requesting that the Court decide the issues of whether YIN courts have jurisdiction over them and whether tribal sovereign immunity bars all their claims. The Smiths also ask the Court to issue a writ of mandamus ordering the trial court to stay the suit.

II. Statement of Facts

In 2007 the Yuma Indian Nation ("YIN"), organized under 25 U.S.C. §477, signed a contract with Thomas Smith in Phoenix, AZ. This contract provided that disputes between the two parties would be litigated in a court of competent jurisdiction. The contract also required Thomas to keep tribal communications and economic development plans confidential.

After the YIN Economic Development Corporation ("EDC") was created in 2009, Thomas primarily communicated with Fred Captain, the EDC CEO, and Molly Bluejacket, the EDC accountant. Thomas prepared and submitted to Tribal Council written reports on a quarterly basis and presented reports in person to Council meetings on reservation.

The Tribal Council created the EDC via a corporate charter as a wholly owned subsidiary of the Nation and as an "arm-of the tribe." The EDC was funded with a one-time \$10 million loan from the Nation's general fund. The EDC was created to promote the prosperity of the Nation and its citizens. More specifically, the purpose of the EDC as stated

in corporate charter that created it is “to create and assist in the development of successful economic endeavors, of any legal type of business, on the reservation and in southwestern AZ.”

The tribal commercial code authorizes YIN, in accordance with inherent sovereign powers, to create and charter public and private corporations to operate business on and off the reservation. Tribal code section 11-1003 states that tribal sovereign immunity is conferred on all tribal corporations wholly owned by the tribe. Under tribal code section 11-1003 subdivision 3 a tribal corporation can consent to be sued if the consent is: (1) explicit; (2) in a written contract or commercial document that the corporation is a party to; and (3) approved by the board of directors of the corporation. Yuma Indian Nation Tribal Code § 11-1003 subdiv. 3. YIN’s tribal code section 11-081 states that the tribe does not waive its own immunity by the creation of a corporation. Yuma Indian Nation Tribal Code § 11-081. Section 11-161 of the tribal code also states that consent to suit by a corporation does not waive the sovereign immunity of the tribe. Yuma Indian Nation Tribal Code § 11-161.

The EDC is operated by its own board of directors consisting of five people who must be experienced in business endeavors. YIN Tribal Council selected the initial board of five directors to serve staggered terms with one director’s term expiring and being reelected or replaced each year. The corporate charter explained that sitting directors would by majority vote elect or reelect a person for the expiring seat. Three of the directors have to be tribal citizens and two have to be non-Indians or citizens of other tribes. YIN Tribal Council has authority to remove any director for cause or no cause at any time by a 75% vote.

The EDC is authorized to sue and be sued. No debts of the EDC could encumber, or implicate the assets of YIN. The EDC is required to keep detailed corporate and financial

records and submit them on a quarterly basis to the Tribal Council for review and approval. 50% off all EDC net profits are to be paid to the YIN general fund on an annual basis. Only \$2 million of the \$10 million loan has been paid back. The charter also requires the EDC to apply tribal preference in hiring employees and contracting with outside entities. The EDC has employed an average of 25 tribal citizens full-time every year since its creation in 2009.

The Tribal Council mandated in the charter that the EDC, its board, and all employees are protected by tribal sovereign immunity to the fullest extent of the law. The Council included this provision to protect the entity and the Nation from unconsented litigation and to assist in the success of the EDC's endeavors.

In 2010 with the Council's permission Thomas signed a contract identical to his contract with his sister Carol Smith. This contract requires both parties to comply with the YIN-Thomas contract.

Carol sends bills via email to Captain and the EDC mails her payments. Thomas forwards Carol's communications and advice to the Tribal Council and Bluejacket.

In 2016 the Tribal Council enacted a tribal ordinance making marijuana cultivation and use on the reservation legal for any and all purposes. Although marijuana is not legal for recreational use in Arizona, the EDC quietly began pursuing the development of a recreational marijuana business. Thomas then informed the Arizona Attorney General of the Nation's plans due to personal moral objections. The Attorney General then wrote YIN and EDC a cease and desist letter regarding the development of recreational marijuana operations.

SUMMARY OF ARGUMENT

The Smiths are subject to YIN tribal jurisdiction under both of the exceptions laid forth in Montana v. United States, 101 S. Ct. 1245, 565 (1981) (where the court held that a tribe generally cannot extend jurisdiction over non-member parties except under two circumstances). The first Montana exception subject non-members to tribal jurisdiction if they voluntarily subject themselves to a relationship with a tribe. Id. The Smiths voluntarily engaged in a contractual fiduciary relationship with the YIN and the claims filed against them from the EDC arise from the relationship between the two parties. Because there is a nexus between the claim against the Smiths and the relationship between them and the YIN, under the first Montana exception, the Smiths will be subject to tribal jurisdiction. The second Montana exception may subject a non-member to tribal jurisdiction if the conduct of the non-member threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. Id. at 566. Because the Smith's breach of contract without tribal adjudicatory relief available would render the tribe powerless in holding a non-member accountable to conduct that could endanger the economic security of the tribe, the Smiths would also be subject to tribal jurisdiction under the second Montana exception. The Smiths are also seeking to have any claims in the tribal court stayed while they seek remedy in Arizona district court. However, they will be unable to do so since under National Farmers Insurance Companies, the question of tribal jurisdiction must first be settled in tribal court and remedies must first be issued in tribal court before a federal district court can analyze questions of tribal adjudicatory jurisdiction or remedies arising from the claims in tribal court. National Farmers Union Ins. Companies v. Crow Tribe of Indians, 105 S. Ct. 2447 (1985) (where the court held that a federal district court cannot engage in a

question of tribal jurisdiction or relief from the claims in question until the tribal options have been exhausted). The Smiths will be subject to the YIN's tribal jurisdiction and the federal district court must stay the suit while the tribe makes its determination to jurisdiction and remedy.

All of the Smiths claims are barred by sovereign immunity. Under the standard for clear waiver of sovereign immunity laid out in C & L Enters., Inc., v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 121 S.Ct. 1589 (2001), YIN did not clearly consent to suit and retains its sovereign immunity against the Smiths claims. Additionally, the EDC shares YIN's sovereign immunity as an arm of the tribe since it is similar to the entities found to be instrumentalities of tribes in Cook v. AVI Casino Enters., Inc., 548 F.3d 718 (9th Cir. 2008), Breakthrough Mgmt. Group, Inc. v. Chukchansi Econ. Dev. Authority, 629 F.3d 1173 (10th Cir. 2010), and White v. Univ. of California, 765 F.3d 1010 (9th Cir. 2014). Finally, in being sued in both their individual and official capacities Bluejacket and Captain also enjoy YIN's sovereign immunity. As is seen in *Cook*, tribal officials are always protected by sovereign immunity, and thus Bluejacket and Captain as officials of an arm of YIN enjoy sovereign immunity. While defendants who are sued in their individual capacity do not automatically enjoy sovereign immunity, Pistor v. Garcia, 791 F.3d 1104 (9th Cir. 2015) made it clear that when a tribe is the real defendant in the case and adverse judgement against the individual would negatively impact the tribe, individuals should be shielded by the tribe's immunity. Therefore here, as there is nothing to suggest Bluejacket and Captain acted outside their official capacities for the tribe and judgement against them would prevent tribal economic development, Bluejacket and Captain should enjoy YIN's immunity. Affirming the trial court's decision is consistent with controlling precedent that upholds the

doctrine of tribal sovereign immunity and the recognition of tribe's inherent sovereign rights. Michigan v. Bay Mills Indian Community, 134 S.Ct. 2024, 2036, 2040-41 (2014).

ARGUMENT

I. *Under either Montana exception the Yuma Indian Nation can exercise tribal jurisdiction over the Smiths. The YIN tribal court would not stay the case since tribal exhaustion is required before review by the Arizona federal district court can commence.*

Tribal jurisdiction is determined through a patchwork process, not by a bright line rule. It is either derived from inherent powers of sovereignty or through congressional determination. Montana v. United States, 101 S. Ct. 1245, 554 (1981) Generally tribal jurisdiction is not extended to non-members of a tribe, however there are two exceptions: 1) A tribe may regulate, through taxation, licensing, or other means, the activities of non-members who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements or 2) a tribe may 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 565. The adjudicatory jurisdiction of tribes does not exceed their regulatory jurisdiction. Strate v. A-1 Contractors, 117 S. Ct. 1404 (1997) (where the court held that tribal adjudicatory jurisdiction does not exceed tribal regulatory jurisdiction).

A. First Montana Exception

The tribal court should establish that adjudicatory tribal jurisdiction exists over Thomas and Carol Smith based on the first Montana exception where 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, 101 S. Ct., 554 (1981) If there exists a relationship between a non-Indian party and an Indian party specified allowed under the first Montana exception, there must also be a nexus between the professional relationship and the cause of action. Id. A non-member who files suit in tribal court has entered into a consensual relationship under the first Montana exception. Smith v. Salish Kootenai College, 434 F.3d 1127 (9th Cir. 2006) (where the court held that a non-member who filed a counter claim in tribal court even after the original claim against him was settled was subject to tribal jurisdiction).

In Atkinson, the court held that there must be a nexus between the first *Montana* exception relationship and the cause of action. Atkinson Trading Co. Inc. v. Shirley, 121 S. Ct. 1825, 656 (2001). There was a trading post on the Navajo Nation owned by a non-Indian that, as a part of its business, had hotel rooms available. Id. at 648. The Navajo Nation imposed a tax on all hotel guests on the reservation and expected the hotel owner to pay the tax after collecting it himself. Id. The hotel owner challenged the tax and the Navajo Tax Commission upheld the tax as did the Navajo Supreme Court. Id. The hotel owner then brought suit in federal district court. Id. at 649. The Supreme Court of the United States held that the hotel occupancy tax was imposed on individuals renting rooms not on the hotel owners therefore there lacked a nexus. Id. at 659.

In Smith v. Salish Kootenai College, the court held that because a defendant, who was a non-member of the reservation, counterclaimed in tribal court and remained in the court system after the original claim against him was settled, tribal jurisdiction over him was valid. Smith, 434 F.3d, 1140 (9th Cir. 2006). Smith was not a member of the Confederated

Salish and Kootenai Tribes of the Flathead Reservation but was a student at the Salish and Kootenai College (SKC). Id. at 1129. Smith was driving a vehicle owned by SKC, when it crashed and killed one of the students. Id. Various claims and counterclaims were raised in tribal court and all were settled except for Smith's cross claim of SKC. Id. Smith continued with his suit in tribal court and when an unfavorable judgment was entered against him, he contested the jurisdiction of the tribal court. Id. The court ruled that Smith was subject to tribal jurisdiction under the first Montana exception because to deny jurisdiction would have a direct effect on the welfare and economic security of a tribe as it would prevent the tribe from regulating the behavior of its members through tort law. Id. at 1140. The court found that a non-member who files suit in tribal court has entered into a consensual relationship under the first Montana exception. Id.

Like the parties in Atkinson, there was a relationship between the tribe and the non-Indian party. However, unlike Atkinson, there is a nexus between the relationship and the cause of action between the Smiths and the YIN. After Thomas informed the Attorney General of Arizona of the YIN EDC's intention to cultivate and use marijuana, the tribe filed suit in tribal court claiming breach of contract, violation of fiduciary duties, and violation of duties of confidentiality. Each of these claims stems from the relationship established between Thomas and YIN and his breach of the agreement between the two of them. Because the claims directly stem from the consensual relationship between the parties, tribal jurisdiction against Thomas under the first Montana exception seems likely. Additionally, since Carol's contract requires her to comply with the terms between Thomas and YIN, any claim that can be validly brought against Thomas can also be brought against Carol as the terms of her contract included upholding Thomas'.

Similar to Smith, the non-tribal members, the Smiths, opted into the tribal court system when they had the opportunity to submit their monies due and defamation claims to the federal district court. The Smiths decided to use the tribal adjudicatory system. They availed themselves to tribal jurisdiction in the same way Smith did. Additionally, like in Smith, a finding of tribal jurisdiction over a non-member party is necessary to protect the welfare and economic security of the tribe. In Smith, the court recognized that to deny jurisdiction would collapse the tribe's ability to regulate the behavior of its members. In the current case, to deny jurisdiction may collapse the first Montana exception by preventing tribes from extending jurisdiction to parties that engage in contractual relationships with the tribe. If tribes cannot extend tribal jurisdiction to such straightforward and common contractual relationships like the one between the Smiths and the YIN, tribes will be barred from jurisdiction over similar contracts, collapsing Montana. Both Smith and the Smiths filed counterclaims in tribal court despite having the option to bring their claims in federal district court. This is treated as a consensual relationship between the Smiths and the YIN just as Smith's was.

Because there is a contractual relationship between the Smiths and YIN and the claims against the Smiths arise directly from that relationship, tribal jurisdiction should be extended to them. Particularly because to deny jurisdiction would affect the welfare of the tribe, the court should extend jurisdiction. Other courts also have factored the adjudicatory self-sufficiency and economic development of a tribe in making jurisdictional decisions, and this consideration would further strengthen the argument to subject the Smiths to the jurisdiction of the YIN trial courts. New Mexico v. Mescalero Apache Tribe, 103 S. Ct. 2378 (1983) (where the court factored into its decision the goal of tribal self-sufficiency and

economic development in deciding concurrent State jurisdiction of tribal regulations was invalid). Allowing tribal jurisdiction would encourage tribes to internally manage the relationships of entities that engage in contractual relationships, encouraging adjudicatory self-sufficiency.

B. Second Montana Exception

The tribal court could also find tribal jurisdiction valid under the second Montana exception where a tribe may 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. Montana, 101 S. Ct., 554 (1981).

In Stock West Corp. v Taylor, the court held that the tribal court of the Confederated Tribes of the Colville reservation had a colorable claim to tribal jurisdiction over a non-Indian attorney working for the tribe. Stock West Corp. v. Taylor, 964 F.3d 912, 920 (9th Cir. 1992) The attorney was hired by the tribe to assist them in the creation of a sawmill on the reservation. Id. at 914. After the attorney secured the financing for the sawmill and saw its creation through, the tribe found that the attorney had not met the contractual requirements set forth in the agreement to create the sawmill when he submitted a document that did not accurately represent the interests of the tribe. Id. at 915. The document was submitted off-reservation. Id. at 914. The court found that despite the attorney's argument that the actual cause of action occurred off tribal land, which would bar tribal jurisdiction, there was a colorable claim to jurisdiction. Id. at 920.

In Plains Commerce Bank v. Long Family Land and Cattle Company, Inc., the court found that in order for the second *Montana* exception to apply, the harm alleged must imperil

the subsistence of the tribal community. Plains Commerce Bank v. Long Family Land and Cattle Co., 128 S. Ct. 2709, 341 (2008). Plains Commerce Bank, a non-Indian bank sold a parcel of land to a non-Indian couple that was originally meant to be sold to an Indian couple. Id. at 322. The terms of the sale for the non-Indian party was more favorable than the terms that were originally given to the Indian party. Id. The court held that the second *Montana* exception was not applicable because the conduct in question may have injured the tribe, but it did not imperil the subsistence of the tribal community. Id. at 341.

In Brendale v. Confederated Tribes and Bands of Yakima Indians, the court held that under the second *Montana* exception, the tribe could exercise regulatory jurisdiction over a non-Indian who owned land in fee simple within the bounds of the reservation. Brendale v. Confederated Tribes and Bands of Yakima Indian Nation, 109 S. Ct. 2994, 444 (1989) On the reservation there were “open” and “closed” areas. Id. at 438. The open areas were open to the public and the closed areas were not. Id. Two non-Indian fee holders that lived within the bounds of the reservation applied for permits to develop their lands in ways not permitted by the tribe, but in ways the county approved of. Id. at 400. One of the landowners lived on the closed portion of the reservation and the other resided on the open portion. Id. The court held that under the second *Montana* exception the tribe could exercise jurisdiction because it affected a right inherent to the tribes – controlling the character of their reservation. Id. at 442.

Much like Stock West Corp., the Smiths had a contractual relationship with a tribe and were charged with assisting in economic development activities of the tribe and conducted that activity on and off the reservation. Like the attorney in Stock West Corp., the activity that caused the YIN to file a claim against Thomas happened off of the reservation

when Thomas informed the Attorney General of the marijuana cultivation. Because of the decision in Stock West Corp., the court will find that there is at least a colorable claim to tribal jurisdiction despite any arguments that the geographical origin of the claim.

Unlike the court in Plains Commerce Bank, the YIN Supreme Court will likely consider the potential harm that denying jurisdiction over the Smiths as substantial harm to the tribe. If tribal jurisdiction is not extended to the Smiths, a tribe's adjudicatory powers would be severely limited and the first Montana exception, upheld through many United States Supreme Court cases would collapse. If this collapse were to happen, tribes could not hold parties responsible for breaking contracts that would affect their communities, particularly in present cases where tribes are working with external parties to improve the economic conditions of the tribe.

Similarly to Brendale, where the court allowed the extension of tribal jurisdiction to a non-member using the second Montana exception, the YIN Supreme Court would likely do the same. The second exception allows for tribal jurisdiction to extend to non-members where their conduct threatens the political integrity, economic security or the health and welfare of the tribe. Similar to Brendale's finding that a fundamental right to the tribe is being infringed, the YIN Supreme Court will likely rule the same. In this case, as previously discussed, denying tribal jurisdiction would collapse the first Montana exception, and not allowing courts to adjudicate over breach of contract claims could have far reaching consequences as the political power of the tribes would be eroded without any accountability mechanism for non-members breaking contracts.

Because there is a colorable claim to jurisdiction under the second exception and the harm that would arise from the conduct of the Smiths without any adjudicatory tribal option

for recourse would erode the political integrity of the tribal judicial system, the Smiths could also be subject to tribal jurisdiction under the second Montana exception.

C. Personal Jurisdiction

When the tribal court determines that tribal adjudicatory jurisdiction is valid, it is likely the case that the determination satisfies personal jurisdiction. When civil adjudicatory tribal jurisdiction is extended over a non-Indian party, the tribe conducts a valid jurisdictional analysis in the same way federal courts use subject matter and personal jurisdiction analysis. Smith v. Salish Kootenai College, 434 F.3d 1127, 1137 (9th Cir. 2006)

In Smith v. Salish Kootenai College, the 9th Circuit Court of Appeals found that tribal jurisdiction was appropriate without conducting the typical federal personal jurisdiction analysis of minimum contacts. Id. When deciding whether or not adjudicatory tribal jurisdiction was appropriate to extend to a non-member, the court makes sure to distinguish between tribal jurisdiction and the subject matter and personal jurisdiction analyses conducted in federal courts. Id. The court goes on to compare a tribal court's determination whether they have jurisdiction over a non-Indian party is similar to the Due Process Clause analysis done for personal jurisdiction. Id. The court holds that because the analysis is sensitive to the needs of the tribe and mirrors many processes in personal and subject matter jurisdiction analysis, a tribe's determination of jurisdiction over a non-Indian party may not require the typical personal and subject matter jurisdiction analyses but is nonetheless valid. Id.

Similar to Smith, the YIN's tribal court system has to make a determination as to whether or not jurisdiction can extend to non-members in civil suits. As the Smith court mentioned, this determination takes into consideration many factors relevant to the tribe's

needs and often mirrors federal courts decisions when deciding personal and subject matter jurisdiction. While personal jurisdiction was not explicitly mapped out within the tribal jurisdiction framework in Smith, the court reasoned that due to the complexity of the tribal courts analysis in determining jurisdiction, this determination was legitimate in extending tribal jurisdiction to non-members of the tribe. Similarly to the court in Smith, the tribal courts will determine whether or not to extend jurisdiction to the Smiths based on a multitude of factors, many of which mirror the personal and subject matter jurisdiction analyses of other courts.

Under the Smith logic, the court will likely find that tribal adjudicatory jurisdiction is acceptable, however, even when conducting the standard minimum contacts test created in International Shoe, the Smiths would still be subject to personal jurisdiction of the tribe. International Shoe Co. v. Washington, 66 S. Ct. 154 (1945) (where the court held that a state could subject a defendant to the personal jurisdiction in the forum state where the defendant had minimum contacts to make personal jurisdiction reasonable). Because both Thomas and Carol have direct contractual relationships with the YIN and the claims filed against them arise from those relationships, it would be reasonable that they would be subject to personal jurisdiction if instead of contracting with a tribe, they were contracting with a state. Therefore even a classic personal jurisdiction analysis would show that the Smiths are subject to tribal jurisdiction of the YIN.

D. Exhaustion

Tribal courts will not be required to stay the suit while the Smiths seek a ruling in the Arizona federal district court. Exhaustion of tribal court remedies is required before a claim can be entertained in federal district court when there is an initial question of tribal

jurisdiction. National Farmers Union Ins. Companies v. Crow Tribe of Indians, 105 S. Ct. 2447, 856 (1985).

Exhaustion is not required if the assertion of tribal jurisdiction is motivated by a desire to harass or is conducted in bad faith, is patently violative of express judicial prohibitions, is futile because of a lack of an adequate opportunity to challenge the court's jurisdiction, or would serve no purpose other than to delay. Nevada v. Hicks, 121 S. Ct. 2304, 374 (2001).

In National Farmers Insurance Companies v. Crow Tribe of Indians, the court held that it would be premature for the federal courts to decide whether or not the tribal courts had jurisdiction over the parties before the tribe itself decided the issue. National Farmers Union Ins. Companies, 105 S. Ct., 856 (1985). The district court was not able to grant any relief until the petitioners had exhausted all possible remedies within the tribal court. Id. After a motorcycle struck a minor on state owned land within the Crow Indian Reservation, the minor's guardian sued the school district for damages in tribal court and obtained a default judgment. Id. at 847. The school district then filed a suit in federal district court claiming that the tribe did not have jurisdiction over the claim. Id. The court held that the tribe must make the initial determination of tribal jurisdiction and only after all tribal remedies are exhausted may the federal district court analyze the validity of jurisdiction or issue any remedy. Id. at 856.

In Nevada v. Hicks, the court held that tribal adjudicatory exhaustion was not required when requiring exhaustion would serve no purpose other than delay. Hicks, 121 S. Ct., 374 (2001). Tribal members of Fallon Paiute-Shoshone Tribe filed suit against state officials acting in their individual capacities when executing a search warrant on tribal lands while investigating an off-reservation crime. Id. at 356. The court held that because tribal

courts explicitly cannot exact adjudicatory jurisdiction over a U.S.C. § 1983 claim allowing exhaustion in tribal courts would serve no purpose other than delay and the claim could be brought in federal court. Id. at 374.

Much like the circumstances in National Farmers Insurance Co., the Smiths are involved in suits in both the tribal judicial system and the federal district court system of a state. Unlike the non-member party in National Farmers, the Smiths seek to stay the suit in tribal court until a decision is made in federal district court. The National Farmers court held that an initial finding of tribal jurisdiction must be made by a tribe and only after tribal remedies are exhausted, can a non-member's claim in federal district court be entertained. Because the current issue at hand is being decided by the YIN Supreme Court, any involvement in the case by the federal district court would have to wait until the YIN tribal court determines jurisdiction and remedies are exhausted through the tribal system. The Smiths are attempting to reverse the chronology of jurisdictional determination by asking the tribal court to stay the issue, however, federal district courts must stay the issue while tribes determine jurisdiction first.

The exceptions to tribal exhaustion that are present in Hicks are not applicable to the present case. The Hicks court consolidated all of the exceptions stated from other decisions and found that because a clear inability for tribal courts to exercise jurisdiction existed, allowing exhaustion would only unnecessarily delay a final verdict. Because the YIN's claim against the Smiths arises from a legitimate violation of a contract, there is a valid question as to whether or not the tribe can exert jurisdiction over the Smiths. This question does not fall squarely within any of the exhaustion exceptions set forth by the Hicks court

and the Smiths case would be required to be exhausted in tribal court before being examined in federal district court.

Because there is no substantial question as to whether there is a colorable claim to tribal jurisdiction, the claim raised in tribal court will have to be decided first by the tribal court itself before the issue is examined in federal district court. There is no exhaustion exception that would be applicable in this case, and the tribal courts would not stay the case, but rather determine for themselves the jurisdiction and any available remedies.

Because either Montana exception would subject the Smiths to tribal jurisdiction, and there is no applicable exhaustion exception, the case should be tried in YIN tribal courts and any claim in Arizona's federal district court should be stayed while the determinations as to remedy are decided.

II. Sovereign immunity bars the Smith's claims against YIN, EDC, Captain, and Bluejacket because neither YIN nor EDC clearly consented to waiver of sovereign immunity and Captain and Bluejacket solely acted as CEO and accountant on behalf of YIN.

A. YIN

YIN has sovereign immunity from the Smiths claims. As self-governing sovereign nations, Indian tribes exercise inherent sovereign authority and thus suits brought against them are barred unless the tribe clearly waives its immunity or Congress abrogates it, regardless of where the tribal activity occurred. Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 498 U.S. 505, 509 (1991); Kiowa Tribe of Oklahoma v. Mfg. Techs., Inc., 523 U.S. 751, 754 (1998) (finding where there is no tribal consent to waiver or Congressional abrogation sovereign immunity applies even though subject of the suit was a promissory note allegedly executed and delivered off tribal lands). To abrogate its

immunity a tribe's waiver must be clear. C & L Enters.', Inc. v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 532 U.S. 411, 418 (2001). A tribe does not waive its sovereign immunity from actions brought against it simply because those actions are pleaded in a counterclaim to an action filed by the tribe. Oklahoma Tax Comm'n, 498 U.S. at 509. "Sue and be sued" clauses waive immunity with respect to a tribe's corporate activities, but not with respect to governmental activities. Linneen v. Gila River Indian Community, 276 F.3d 489, 492 (9th Cir. 2002). The doctrine of tribal sovereign immunity is supported by historic precedent and the recognition of tribes as pre-colonial political communities with inherent sovereign rights. Michigan v. Bay Mills Indian Community, 134 S.Ct. 2024, 2036, 2040-41 (2014) (Sotomayor, J., concurring) (finding suit was barred by sovereign immunity where there is no waiver by tribe nor Congressional abrogation).

In Oklahoma Tax Comm'n, the court held that the Potawatomi tribe retained its sovereign immunity from counterclaims. Oklahoma Tax Comm'n, 498 U.S. at 509-10. The Potawatomis filed suit to enjoin tax assessment in District Court. Id. at 507. The state of Oklahoma counterclaimed asking the District Court to enforce a \$2.7 million claim against the tribe. Id. at 507-08. Because the tribe only wished to litigate this particular issue, it's legal actions did not equate to consent to waiver of its immunity. Id. at 509. Further, the court found that rather than abrogating sovereign immunity in this case, past Congressional acts such as the Indian Financing Act of 1974 and the Indian Self-Determination and Education Assistance Act showed approval of the tribal sovereign immunity doctrine by encouraging self-determination and development of tribes as sovereign nations. Id. at 510. Because Congress alone has the power to abrogate sovereign immunity, this approval

prompted the court to continue upholding the doctrine as settled law. Id. Thus the Potawatomi tribe retained its sovereign immunity. Id.

In Linneen, it was held that “sue and be sued” clauses apply only to a tribe’s corporate activities and not its governmental activities. Linneen, 276 F.3d at 492. There the plaintiffs sought monetary damages against the Gila River Indian Community, alleging Gila rangers unlawfully detained and threatened them during an encounter on Gila land. Id. at 490. While the Community’s corporate charter stated that the Community’s corporate powers included to sue and be sued in the courts of competent jurisdiction within the United States, the court found it applied only to tribal corporate activities. Id. at 492. Since the Gila rangers are a part of the Community’s government, and not a part of a Community’s business, the Community did not consent to waiver through its charter. Id. at 493.

Conversely in C & L Enters., the court held that tribal sovereign immunity did not bar the plaintiff’s claims. C & L Enters., 532 U.S. at 418. There the tribe proposed a standard form contract, and added details and terms that it did not originally contain. Id. at 414-15. The tribe also included an arbitration clause that referred to the American Arbitration Association Rules and subsequently the Oklahoma Uniform Arbitration Act. Id. at 415. Under these rules, the court having jurisdiction was Oklahoma state court. Id. at 419. Because through these rules, the court of jurisdiction for litigation arising from the contract is clear, there is clear consent to waive sovereign immunity. Id. at 418. Additionally, because the tribe controlled the terms of the contract, it was able to determine whether or not it wished to retain its sovereign immunity. Id. at 423. Thus, in creating a contract with specific terms and rules on how litigation should occur, the tribe indicated a willingness to expose

itself to suit. Id. at 417. Therefore the tribe was not immune from suit as it consented to the litigation. Id. at 418.

As YIN neither consented to litigation against it, nor did Congress abrogate it's immunity, the Smith's suits against YIN as an Indian tribe with sovereign immunity are barred. Similar to the subject of suit in Kiowa, the written agreement being signed off tribal land is irrelevant as to whether tribal sovereign immunity is applicable. Here, YIN only wishes to litigate specific issues, as the tribe did in Oklahoma Tax Comm'n, thus, there is no waiver of immunity through the tribe's legal actions. Further, YIN's tribal code section 11-081 states that the tribe does not waive its own immunity by the creation of a corporation. Yuma Indian Nation Tribal Code § 11-081. Section 11-161 of the tribal code also states that consent to suit by a corporation does not waive the sovereign immunity of the tribe. Yuma Indian Nation Tribal Code § 11-161. Thus, like in Linneen, YIN's corporate charter and inclusion of a "sue and be sued" power for EDC does not waive the tribe's immunity. The doctrine of tribal sovereign immunity applies to YIN, and the Smith's suits against it are barred.

YIN did not show any clear intent to waive its immunity by contract. The present case is distinguishable from C & L Enters., as there is no evidence of YIN creating the contract initially signed with the Smiths or controlling the terms of the contract as the tribe there did. Thus, since YIN did not have control over the contract, it is unclear whether YIN expressed consent to litigation as the tribe in C & L Enters. did. There are also no connections or references to arbitration rules or specific courts where a case would be litigated, and without further specification, where exactly such litigation could occur remains an open question. This level of uncertainty is unlike C & L Enters. where the court where

litigation would occur was apparent. As noted in Bay Mills, the requirement of clear waiver of sovereign immunity is consistent with not only a long line of precedent, but also in regarding tribes as political nations with the sovereign right to govern free from interference. As YIN did not clearly consent in its contract with the Smiths to the Smiths claims, these claims are barred by sovereign immunity.

Since YIN did not consent to suit and there is no Congressional abrogation of its immunity, the Smiths claims against it are barred.

B. EDC

YIN's sovereign immunity extends to EDC and thus the Smith's claims against EDC are barred. EDC is considered an arm of the tribe and thus enjoys YIN's sovereign immunity. In addition, EDC did not consent to waive its immunity nor did Congress abrogate it.

i. EDC as an Arm of the Tribe

Tribal corporations acting as an arm of the tribe are protected by the same sovereign immunity granted to a tribe itself. Cook v. AVI Casino Enters., 548 F.3d 718, 725 (9th Cir. 2008). In determining whether a corporation is less like a separate entity and more like an extension of the tribe entitled to sovereign immunity several factors are examined including: (1) how the corporation was created; (2) its purpose; (3) the amount of control the tribe has over the corporation; (4) the tribe's intent to share its sovereign immunity; and (5) the financial relationship between the tribe and the corporation. White v. Univ. of California, 765 F.3d 1010, 1025 (9th Cir. 2014) (finding repatriation committee entitled to sovereign immunity when created by tribal resolution, comprised solely of tribal members, funded by the tribe, promoted tribal self-determination, and repatriation process approved by tribes);

Breakthrough Mgmt. Grp., Inc. v. Chukchansi Gold Casino and Resort, 629 F.3d 1173, 1187 (10th Cir. 2010). Tribal sovereign immunity applies to tribe's commercial as well as governmental activities, though it can either be abrogated by Congress or waived by the corporation in regards to corporate activities. Cook, 548 F.3d at 725.

In Cook, the tribe's casino was found to be an arm of the tribe. Cook, 548 F.3d at 726. There the plaintiff sought damages for an accident that happened when he was hit by a drunk driver, an employee of Avi Casino Enterprises. Id. at 720. Avi Casino was a tribal corporation, and the employee allegedly became intoxicated at an Avi Casino function. Id. The plaintiff sued the Casino and several of its employees alleging negligence. Id. The Casino was wholly owned and controlled by the tribe. Id. at 721. Its shareholder functions were performed by the tribal council on behalf of and for the benefit of the tribe. Id. at 726. A majority of the Casino's board of directors needed to be tribal members and the casino's capital surplus not used for corporate development needed to be deposited in the tribe's general fund. Id. The Casino was created pursuant to a tribal ordinance. Id. Since the tribe seemed to control the Casino and benefitted from the Casino economically, the Casino was more like an arm of the tribe rather than its own separate entity, and the tribe's sovereign immunity applied to it. Id.

In Breakthrough, both the tribe's economic development authority and casino were found to be arms of the tribe. Breakthrough, 629 F.3d at 1195. The authority was created under tribal law and described as an instrumentality of the tribe as opposed to a corporation, and thus had a governmental character which reflected its subordinate status and close relationship to the tribe. Id. at 1191-92. Thus the first factor weighed in favor of the authority being an arm of the tribe. Id. at 1192. Additionally, the purpose of the authority

was to promote tribal economic development, self-sufficiency, self-determination, and the ability to provide services and benefits to tribal members. Id. at 1192-93. Therefore, the second factor weighed in favor of the authority being an arm of the tribe. Id. at 1192. In terms of the structure of the authority and the amount of tribal control over it, the authority board was the same as tribal council, though the CFO and general manager were not tribal members. Id. at 1193. Thus, the third factor weighed both for and against the authority being an arm of the tribe. Id. The intent of the tribe is reflected in the tribal ordinance for authority, which stated the authority is empowered to waive immunity from suit, but it does start out with immunity of the tribe. Id. at 1193-94. This clearly expressed belief that the entity was a entitled to immunity from suit, and thus the fourth factor weighed in favor of immunity for the authority. Id. at 1193. Finally, the financial relationship between the tribe and casino weighed in favor it being an arm of the tribe. Id. at 1194-95. The tribe depended heavily on the casino for revenue to fund its governmental functions and 100% of the casino revenue went to tribe. Id. Thus, the court reasoned that because the tribe relied financially on the casino, any reduction in the casino's revenue that could result from an adverse judgment against it would reduce the tribe's income. Id. at 1195. Thus, the fifth factor went towards finding sovereign immunity for the casino. Id. at 1194. The court found that the casino and the authority were so closely related to the tribe that their activities were the same as the tribe's and upon consideration of all these factors the authority and the casino were arms of the tribe entitled to sovereign immunity. Id. at 1195.

The EDC is an arm of YIN and is thus protected by sovereign immunity. Using the White and Breakthrough factors, the EDC is more of an extension of YIN than a separate corporation.

How EDC was created weighs in favor of extending YIN's sovereign immunity to it. Since the EDC was created by tribal code as the corporations and entities in Cook, White, and Breakthrough were, YIN appears to have created the EDC as an extension of itself. Creation of the EDC through tribal code expresses YIN's desire for EDC to comply with and be apart of the tribe itself, since the code is meant to successfully govern the tribe. Further, since the EDC was fully funded by tribe, is wholly owned by tribe, and is referred to as an arm of the tribe, YIN demonstrated intent for the EDC to be an instrumentality of the tribe, just as the tribe in Breakthrough intended for its entities. Therefore, the way the EDC was created weighs in favor of finding sovereign immunity for the EDC.

The EDC's purpose also weighs in favor of extending YIN's tribal sovereign immunity to it. The tribe's goal in creating the EDC was to promote tribal economic development. This purpose is related to improving the tribe, like the authority's purpose in Breakthrough, making the EDC more of a tool of the tribe rather than a separate corporation unrelated to the tribe and acting only in its own interests. Thus, the purpose of the EDC weighs in favor of it enjoying YIN's sovereign immunity.

YIN has enough control over the EDC for it to be seen as an arm of the tribe. Aside from being wholly owned by YIN, the tribal council selection of the initial board of five directors set a standard as to how the EDC is to be operated on behalf of the tribe. Additionally, three of the five directors must be tribal members, meaning like was necessary in Cook, a majority of the board must be tribal members in order to accurately represent the tribe's needs. This is also analogous to the authority in Breakthrough, as the two non-member directors are comparable to the CFO and general manager of the authority. Further, the tribe has the ability to remove directors for any reason, which allows the tribe to

indirectly control EDC's actions. If EDC begins to make decisions that negatively impact the tribe, the tribe can make changes by removing directors. The power to remove also serves as a way of letting EDC know that they need to act in accordance with the tribe's wishes. Finally, YIN tribal council has the ability to review and approve corporate and financial records, which has the same effect as the ability to remove directors by ensuring the tribe is in control of major actions. Like was seen in White, this additional layer of control conveys the idea that the EDC is a part of the YIN. Thus, with the amount of control that YIN exerts over the EDC, the EDC is not a separate corporation but rather an arm of the tribe.

The charter that created EDC reflects YIN's intent to share its sovereign immunity. Like the ordinance which created the authority in Breakthrough, the charter creating the EDC states that the EDC board and employees are protected by sovereign immunity to protect both the EDC and YIN. This clearly shows that YIN intended the EDC to be protected from litigation, and thus YIN's sovereign immunity should apply here to EDC.

Lastly, the financial relationship between YIN and EDC weighs in favor of YIN sharing its sovereign immunity with EDC. While EDC cannot borrow or lend on behalf of the tribe, the 50% of profits paid to YIN on an annual basis as well as EDC's duty to repay the \$10 million loan create a strong financial dependency between the parties. This means that like in Breakthrough, any adverse judgement on EDC would negatively impact the tribe's income. The tribe's economy would also be negatively impacted since EDC employs 25 tribal citizens each year, and is a major proponent of the tribal economy with its preferences for tribal employees and tribal business contracts. Therefore, the financial

relationship between EDC and YIN weighs in favor of extending sovereign immunity to EDC.

Overall, all factors weigh in favor of EDC being an arm of the tribe. EDC is similar to entities analyzed in White, Cook, and Breakthrough, since its close relationship to YIN makes it more like an entity to be utilized by YIN rather than a separate entity acting within its own interests. Thus, EDC enjoys YIN's sovereign immunity.

ii. Consent to Waiver of Immunity

EDC did not waive its sovereign immunity. As with a tribe, a corporation's immunity can be waived through clear consent. Cook, 548 F.3d at 726 n.6 (finding that a sue and be sued clause in a corporation's enabling ordinance could potentially waive sovereign immunity against a tort action); Linneen, 276 F.3d at 492 (finding sue and be sued clause in corporate charter doesn't apply to tribe's governmental activities and thus Civil Rights action is barred); C & L Enters., 532 U.S. at 418-23 (finding consent clear where contract proposed by tribe included arbitration clause specifying American Arbitration Rules and Oklahoma state court as court having jurisdiction). The doctrine of tribal sovereign immunity not being easily waived is supported by historic precedent and the continuous need to support tribal self-sufficiency in light of systemic barriers against tribal development. Bay Mills, 134 S.Ct. 2024, 2036, 2040-41 (Sotomayor, J., concurring) (finding suit barred by sovereign immunity where there is no waiver by tribe nor Congressional abrogation).

While YIN tribal code affirms that tribal corporations can consent to litigation, there are explicit requirements for effective consent, related to the clarity required in C & L Enters. for effective consent, that are unmet here. The section 11-1003 subdivision 3 requirements of the tribal code are important to consider here because as was seen in both

Linneen and Cook, the issue of whether a sue and be sued clause waives the immunity for an arm of the tribe is essentially undecided in this circuit. Additionally, as the ruling in C & L Enters. is a standard or example for what requisite clarity is, the tribal code requirements lay out what the tribe as a sovereign power would consider to be clear consent in such a situation. In this case, EDC did not consent to litigation and still retains its sovereign immunity.

Here, there was a contract including a clause regarding litigation of disputes that was signed by YIN and Thomas Smith, but not between EDC and Thomas Smith, so there was no waiver of EDC's immunity through that contract.

Further, the charter creating the EDC also authorized EDC to sue and be sued, yet this is not an explicit waiver of EDC's immunity. Rather this vague power to sue and be sued, read in conjunction with the tribal code, requires additional steps to constitute clear waiver. Under the specific facts and narrow holding of C & L Enters., such steps would include specifying which court and what law would be used in litigation as well as approval by the board of directors. Here it was not clear that the tribe had any say in consenting to litigation, as the tribe did in C & L Enters. by drafting and including detailed terms of the contract, and it is not clear that the EDC board approved such consent. Concluding that the sue and be sued power alone is not a clear waiver is supported both by the mere existence of the tribal code section and the ruling in C & L Enters.. The mere existence of the tribal code section proves that YIN understands what clear consent is, and has laid out explicit instructions for giving such consent. Similarly C & L Enters. should be viewed as a narrow holding, including a contract drafted by the tribe and a clause with references to specific courts and rules, demonstrating that consent is not easily waived. This assertion is also consistent with

Bay Mills, where historical precedent supports the doctrine of tribal sovereign immunity applied to arms of the tribe and tribes being acknowledged as political nations with the inherent sovereign right to govern free from interference. Therefore the sue and be sued power is not a clear waiver of EDC's sovereign immunity.

Unlike the facts in C & L Enters., the sue and be sued power here could be seen as ambiguous, due to there being no references to specific rules or courts and since under Linneen such a clause was only effective under certain circumstances. While Linneen states that a tribe's corporate activities are subject to the sue and be sued clause, here the EDC acts as a way for the tribe to engage in economic development and improve the welfare of its people, and thus as an arm of the tribe it is categorized as a part of the tribe rather than simply a corporation. Thus the sue and be sued power would not apply to EDC without more explicit terms.

Unlike Cook and Linneen regarding barred tort and civil rights actions, the facts of this case would not leave the Smiths with a grossly unjust outcome. If the Smiths had wanted to protect themselves from such an outcome, they could have negotiated a more effective contract that included a clear waiver of EDC's or YIN's immunity. This is unlike the tort cases where no negotiation was available, and thus clearer consent is not unreasonable.

Because EDC is an arm of YIN and did not consent to waiver of its sovereign immunity, the Smiths claims against EDC are barred.

C. Captain & Bluejacket

Captain and Bluejacket are immune from suit in both their official and individual capacities.

i. Official Capacity

Captain and Bluejacket are immune from suit in their official capacities. Tribal sovereign immunity extends to tribal officials when acting in their official capacity and within the scope of their authority. Linneen 276 F.3d at 492 (finding tribal sovereign immunity extends to tribal ranger when ranger is sued in official capacity and suit arises from alleged misconduct during ranger's official duties). In such cases, the sovereign entity is the real substantial party in interest and is entitled to invoke its sovereign immunity from suit even though individuals are nominal defendants. Cook, 548 F.3d at 727 (finding tribal sovereign immunity extends to casino employees when employees are sued in their official capacities). A plaintiff cannot circumvent tribal immunity by naming an officer of the Tribe as a defendant rather than the sovereign entity. Id.

Because the Smiths sued Bluejacket and Captain in their official capacities, and EDC is an arm of the tribe, YIN's sovereign immunity extends to them for claims against them in their official capacities.

ii. Individual Capacity

The Smith's suits against Bluejacket and Captain in their individual capacities are barred by YIN's sovereign immunity. Tribal immunity extends to individual tribal officials acting within the scope of their authority when the tribe is the real party in interest. Hardin v. White Mountain Apache Tribe, 779 F.2d 476, 479 (9th Cir. 1985) (finding sovereign immunity extends to tribal officials sued in their individual capacity when officials were acting within the scope of their delegated authority and holding them individually liable for voting would interfere with the tribe's internal governance); Pistor v. Garcia, 791 F.3d 1104, 1113 (9th Cir. 2015). Thus, plaintiff must seek remedies other than suit against a tribe even

if they would be less efficient. Bay Mills, 134 S. Ct. at 2031 (finding individuals are immune from suit when Michigan state sued tribe first then amended complaint to add individuals and thus tribe was real party in interest). However, an officer sued in his individual capacity cannot claim sovereign immunity so long as the relief sought is not from the government treasury but from the officer personally. Pistor, 791 F.3d at 1112. Nevertheless, suits against individual officers or employees of a tribe or officers or employees of an arm of the tribe are often actually masked official capacity suits attempting to circumvent tribal sovereign immunity. Id. at 1113. Thus, it is important to evaluate whether the judgement sought would expend itself on the tribe or if the effect of the judgment would be to restrain the tribe from acting, or to compel it to act. Id.

Pistor reconciles cases such as Hardin that broadly apply the doctrine of sovereign immunity. Pistor, 791 F.3d at 1113. There the plaintiffs sued the chief of police, the general manager of the casino, and the gaming office inspector in their individual capacities for damages under the Civil Rights Act. Id. at 1108. The plaintiffs alleged that the individuals took significant sums of money from them as well as personal property which were never returned. Id. at 1108-09. The plaintiffs did not sue the casino nor the tribe. Id. at 1113. Because the defendants did not show the damages would adversely affect the tribe, tribal sovereign immunity did not apply to them. Id. at 1114. Therefore, as the tribe was not the real defendant and the individuals did not appear to be acting within the scope of their authority, there was no extension of sovereign immunity to the individuals. Id.

Here, the facts do not effectively show that Bluejacket or Captain did anything outside the scope of their authority that would be unprotected from tribal sovereign immunity under Hardin. The only communication on record between the Smiths and Bluejacket and

Captain is that related to business transactions and record-keeping. The Smiths have not presented any information on why Bluejacket or Captain should be recovered from separately from the tribe. Instead, as CEO and accountant for EDC, all of BlueJacket and Captain's actions are done in accordance with the tribe's wishes to create a recreational marijuana industry. Thus, the facts are unlike Pistor, where there were alleged Civil Rights violations, and where tribe wasn't sued at all because they just wanted recovery from the individuals. Instead, this case is similar to Bay Mills where the tribe is sued first and individuals are added later to circumvent tribal sovereign immunity, and where individuals are only sued because they were acting on behalf of the tribe. Therefore, Bluejacket and Captain are protected by sovereign immunity even in their individual capacities.

A judgement against Bluejacket and Captain would result in a judgement against YIN. As Bluejacket and Captain are officials of EDC, it is likely that EDC would be responsible for any judgement against them. And although no debts of EDC could encumber YIN, the fact that YIN is awaiting its loan to be repaid means that this repayment would be prolonged even further. Additionally, judgement against Bluejacket and Captain would likely affect the ability for EDC to employ tribal citizens and contract with tribal business. Thus, under the recovery-based analysis of Pistor, it would appear that YIN would be prevented from benefitting from the sole purpose of EDC, to promote tribal economic development. Therefore, sovereign immunity should extend to Bluejacket and Captain since the tribe would be negatively affected by a judgement against them.

Because it is clear that YIN is the real party in interest, and there is a good chance recovery against Bluejacket and Captain would negatively impact YIN, Bluejacket and Captain are immune from suits against them in their individual capacities.

CONCLUSION

For the foregoing reasons, the plaintiffs ask this Court to affirm the Yuma Indian Nation tribal trial court's holding by not issuing the writ of mandamus for the Appellants and ruling the Yuma Indian Nation courts have jurisdiction over the Smiths and that the Smiths' claims are barred by YIN's sovereign immunity.

Respectfully submitted,

Team 111