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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RESOURCES FOR INDIAN STUDENT
EDUCATION, INC (R.I.S.E.),

No. 2:14-cv-02543 JAM CMK

Plaintiff,

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.

**ORDER GRANTING DEFENDANT
CEDARVILLE RANCHERIA OF NORTHERN
PAIUTE INDIANS' MOTION TO
DISMISS, GRANTING DEFENDANT
CEDARVILLE RANCHERIA TRIBAL
COURT AND DEFENDANT PATRICIA
LENZI'S MOTION TO DISMISS,
DENYING DEFENDANT CEDARVILLE
RANCHERIA OF NORTHERN PAIUTE
INDIANS' MOTION FOR SANCTIONS,
AND DENYING PLAINTIFF RESOURCES
FOR INDIAN STUDENT EDUCATION'S
MOTION FOR A PRELIMINARY
INJUNCTION**

This matter is before the Court on Defendant Cedarville Rancheria of Northern Paiute Indians' ("Defendant Tribe") Motion to Dismiss (Doc. #14) Plaintiff Resources for Indian Student Education, Inc.'s ("Plaintiff" or "RISE") Complaint (Doc. #1). Defendants Cedarville Rancheria Tribal Court and Judge Patricia Lenzi ("Tribal Court Defendants") bring a motion to dismiss (Doc. #17) on similar grounds. Also before the Court is Defendant Tribe's motion for Rule 11 sanctions (Doc. #15) and Plaintiff's

1 motion for a preliminary injunction (Doc. #4). For the following
2 reasons, both Defendant Tribe and Tribal Court Defendants'
3 motions to dismiss are granted without prejudice, Defendant
4 Tribe's motion for sanctions is denied, and Plaintiff's motion
5 for a preliminary injunction is denied for lack of jurisdiction.¹

6

7 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

8 At some point prior to December 2013, Duanna Knighton
9 resigned from her job with Defendant Tribe. Compl. ¶ 14. At the
10 time that she was employed with Defendant Tribe, Knighton was
11 also employed with Plaintiff RISE. Compl. ¶ 12. At the time of
12 her resignation, Knighton and Defendant Tribe agreed that "she
13 was owed the sum of \$29,925, which represented accrued but unused
14 665 hours of sick leave." Compl. ¶ 14. Plaintiff alleges that
15 "it was understood that the sum would be paid to RISE to maintain
16 health insurance" for Knighton. Compl. ¶ 14. On December 18,
17 2013, Plaintiff received a letter from Defendant Tribe demanding
18 reimbursement of the \$29,925 paid to RISE on behalf of Knighton.
19 Compl. ¶ 14.

20 On October 2, 2014, Defendant Tribe filed a complaint in
21 Cedarville Rancheria Tribal Court ("Tribal Court") against RISE
22 and Knighton. Compl. ¶ 11. The Tribal Court complaint ("Tribal
23 Court Action") alleges multiple causes of action against
24 Knighton, for "poor investments" that she made while employed
25 with Defendant Tribe. Compl. ¶ 12. Defendant Tribe also filed
26

27 ¹ This motion was determined to be suitable for decision without
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for January 28, 2015.

1 an ex parte application for a temporary restraining order against
2 RISE and Knighton in the Tribal Court Action. Compl. ¶ 16.
3 Plaintiff alleges that this application was granted without
4 providing RISE "with prior notice of the [a]pplication or a
5 chance to be heard." Compl. ¶16. Plaintiff further alleges that
6 "the Tribal Court unilaterally ruled that it has subject matter
7 jurisdiction over the action[.]" Compl. ¶ 17. Plaintiff does
8 not allege that it has affirmatively pursued a challenge to the
9 Tribal Court's jurisdiction in the Tribal Court.

10 On October 30, 2014, Plaintiff filed a complaint (Doc. #1)
11 in this Court for declarative and injunctive relief against
12 Defendant Tribe and Tribal Court Defendants. Plaintiff also
13 filed a motion for a temporary restraining order on November 19,
14 2014 (Doc. #4), which was denied for failure to provide notice to
15 Defendants (Doc. #5). On November 26, 2014, Plaintiff re-filed
16 the motion for a temporary restraining order (Doc. #8). The
17 motion was again denied on the grounds that Plaintiff had failed
18 to show the need for an expedited ruling (Doc. #9). Plaintiff's
19 motion for a temporary restraining order was then converted into
20 a motion for a preliminary injunction.

21

22 II. OPINION

23 A. Judicial Notice

24 Tribal Court Defendants request that the Court take judicial
25 notice of several documents (Doc. #20). First, they request
26 judicial notice of Plaintiff's complaint, Plaintiff's motion for
27 a temporary restraining order/preliminary injunction, the Court's
28 November 26, 2014 Order, and the parties' December 12, 2014

1 stipulation for an extension of time to file a responsive
2 pleading. These documents are already part of the record in this
3 case, and the request is denied as unnecessary.

4 Tribal Court Defendants also request that the Court take
5 judicial notice of "the Declaration of Jack Duran, and all
6 attached exhibits submitted in support of [Defendant Tribe's]
7 motion for sanctions." Doc. #20 at 2. Exhibit 1, Exhibit 2,
8 Exhibit 3, and Exhibit 7 to the Duran Declaration (Doc. #28) are
9 filings from the Tribal Court Matter. As these court filings are
10 matters of public record, they are appropriate for judicial
11 notice. See, e.g., Sherman v. Stryker Corp., 2009 WL 2241664 at
12 *2 (C.D. Cal. 2009) (citing Lee v. City of Los Angeles, 250 F.3d
13 668, 688 (9th Cir. 2001) and Fed. R. Evid. 201). However, the
14 Court merely takes judicial notice of the existence of these
15 filings, not of the facts included therein.

16 Exhibit A, Exhibit B, and Exhibit 4 of the Duran Declaration
17 appear to be email communications between Defendant Tribe's
18 counsel and Plaintiff's counsel. These email communications are
19 not appropriate for judicial notice and the request is denied
20 with respect to these three exhibits.

21 Exhibit 5 is an excerpt of the Federal Register noting that
22 Cedarville Rancheria is an "Indian Tribal Entity . . . Eligible
23 to Receive Benefits from the United States Bureau of Indian
24 Affairs." This fact is a matter of public record and not subject
25 to reasonable dispute, therefore the request for judicial notice
26 is granted.

27 Exhibit 6 appears to be a slip opinion from a 2012 Ninth
28 Circuit case, Grand Canyon Skywalk Development, LLC v. Sa Nyu Wa,

1 Inc.. This case is easily accessible on Westlaw and should have
2 simply been referred to in the briefs with a legal citation.
3 The request for judicial notice is denied.

4 Finally, Tribal Court Defendants request that the Court take
5 judicial notice of the Cedarville Rancheria Judicial Code, which
6 is attached to Plaintiff's complaint. Documents that are
7 "attached to the complaint and incorporated within its
8 allegations" are part of the pleadings, and are properly before
9 the Court on a motion to dismiss. Shade v. Wells Fargo Bank,
10 2009 WL 1704715, at *1 (E.D. Cal. June 17, 2009). The Court need
11 not take judicial notice of a document attached to Plaintiff's
12 complaint, therefore this request is denied as unnecessary.

13 B. Discussion

14 1. Motions to Dismiss

15 Defendant Tribe and Tribal Court Defendants both argue that
16 Plaintiff's complaint must be dismissed in its entirety because
17 Plaintiff failed to exhaust its remedies by challenging
18 jurisdiction in the Tribal Court. Tribe MTD at 5; Tribal Court
19 MTD at 6. Plaintiff appears to concede that it has not exhausted
20 its remedies in the Tribal Court, but argues that the exhaustion
21 requirement does not apply because (a) "the assertion of tribal
22 court jurisdiction is 'motivated by a desire to harass or is
23 conducted in bad faith;'" (b) the tribal court action is 'patently
24 violative of express jurisdictional prohibitions;'" (c)
25 'exhaustion would be futile because of the lack of an adequate
26 opportunity to challenge the tribal court's jurisdiction;'" and
27 (d) it is 'plain' that jurisdiction is lacking, so that the
28 exhaustion requirement 'would serve no purpose other than

1 delay.'" Opp. to Tribe MTD at 9; Opp. to Tribal Court MTD at 10
2 (both citing Elliott v. White Mountain Apache Tribal Court, 566
3 F.3d 842 (9th Cir. 2009)).

4 The Ninth Circuit has noted that "[f]ederal law has long
5 recognized a respect for comity and deference to the tribal court
6 as the appropriate court of first impression to determine its
7 jurisdiction." Grand Canyon Skywalk Dev., LLC v. 'Sa' Nyu Wa
8 Inc., 715 F.3d 1196, 1200 (9th Cir. 2013). The Supreme Court has
9 cited three reasons for this approach: (1) Congress's commitment
10 to "a policy of supporting tribal self-government and self-
11 determination;" (2) the prudence of allowing "the forum whose
12 jurisdiction is being challenged the first opportunity to
13 evaluate the factual and legal bases for the challenge;" and
14 (3) the interest of judicial economy, which is served "by
15 allowing a full record to be developed in the Tribal Court."
16 Nat'l Farmers Union Ins. Companies v. Crow Tribe of Indians, 471
17 U.S. 845, 856 (1985).

18 Accordingly, "non-Indian defendants *must exhaust tribal*
19 *court remedies before seeking relief in federal court[.]*"
20 Burlington N. R. Co. v. Crow Tribal Council, 940 F.2d 1239, 1244
21 (9th Cir. 1991) (emphasis in original). The Ninth Circuit has
22 noted that the exhaustion requirement applies "even where
23 defendants allege that proceedings in tribal court exceed tribal
24 sovereign jurisdiction." Id. at 1244. Therefore, "federal
25 courts should not even make a ruling on tribal court jurisdiction
26 . . . until tribal remedies are exhausted." Grand Canyon
27 Skywalk, 715 F.3d at 1200. However, a party need not show that
28 it has exhausted its tribal court remedies where:

(1) an assertion of tribal jurisdiction is motivated by a desire to harass or is conducted in bad faith; (2) the action is patently violative of express jurisdictional prohibitions; (3) exhaustion would be futile because of the lack of adequate opportunity to challenge the court's jurisdiction; or (4) it is plain that no federal grant provides for tribal governance of nonmembers' conduct on [its] land[.]

Burlington, 940 F.2d at 1244.

If none of these exceptions apply, federal jurisdiction will not lie until all tribal remedies have been exhausted.

As noted above, Plaintiff concedes that it has not exhausted its tribal remedies. Opp. to Tribe MTD at 7; Opp. to Tribal Court MTD at 9. Specifically, it does not argue that it has already challenged the Tribal Court's jurisdiction in the Tribal Court. Rather, Plaintiff argues that that it would be forced "to expend substantial money and resources to establish the lack of the Tribal Court's jurisdiction by exhausting Tribal Court remedies where [each of the four above-quoted exceptions applies.]" Opp. to Tribe MTD at 8-9; Opp. to Tribal Court MTD at 10. However, Plaintiff goes no further than naming each of the four exceptions to the traditional requirement of tribal court exhaustion. Plaintiff does not address why any of these exceptions should apply to this case. Nor does Plaintiff point to any specific factual allegations which would support the application of a specific exception to this case. Indeed, in Plaintiff's Complaint, there are no additional specific factual allegations to support the application of each exception to the exhaustion requirement. See Compl. ¶ 9 (citing Elliot for the four exceptions to the exhaustion requirement, but not providing

1 additional, specific supporting allegations). Without any
2 supporting allegations, and without any further argument to
3 connect the facts of this case to one of the four exceptions
4 listed above, the Court finds that none of these exceptions
5 apply. In light of Plaintiff's failure to exhaust its tribal
6 court remedies, this Court may "not even make a ruling on tribal
7 court jurisdiction." Grand Canyon Skywalk, 715 F.3d at 1200.

8 Plaintiff's attempt to distinguish Burlington is
9 unpersuasive. Opp. to Tribe MTD at 8; Opp. to Tribal Court MTD
10 at 9. Although the factual and procedural background of
11 Burlington differs somewhat from that of this case, the Ninth
12 Circuit's general description of the exhaustion requirement - and
13 the four exceptions to that requirement - is nevertheless binding
14 on this Court. Burlington, 940 F.2d at 1244 at 1065. Moreover,
15 the Burlington court precisely addressed the issue presented
16 here, noting that the exhaustion requirement applies "even where
17 defendants allege that proceedings in tribal court exceed tribal
18 sovereign jurisdiction." Id. at 1244. Regardless of the factual
19 differences between Burlington and the present case, Burlington
20 accurately lays out the applicable legal framework.

21 Plaintiff cites a number of cases which discuss the limited
22 circumstances in which a federal court need not recognize the
23 judgment of a tribal court. Opp to Tribe MTD at 9; Opp to Tribal
24 Court MTD at 10-11 (both citing Wilson v. Marchington, 127 F.3d
25 805 (9th Cir. 1997) and AT & T Corp. v. Coeur d'Alene Tribe, 295
26 F.3d 899 (9th Cir. 2002)). However, the issue presently before
27 the Court is not whether the judgment of the Tribal Court should
28 be recognized and enforced; rather, the Court must initially

1 consider whether Plaintiff's failure to exhaust its tribal
2 remedies is fatal to its invocation of federal jurisdiction. The
3 cases cited by Plaintiff, which discuss "comity" and
4 "recognition" of tribal court judgments, are not instructive on
5 this point.

6 As Plaintiff has failed to exhaust its tribal court remedies
7 - and as Plaintiff has failed to establish that one of the four
8 exceptions to the exhaustion requirement applies - this Court may
9 not consider the merits of Plaintiff's claim. Burlington, 940
10 F.2d at 1244; Grand Canyon Skywalk, 715 F.3d at 1200. The Court
11 need not - and should not - address Defendant Tribe and Tribal
12 Court Defendants' arguments with respect to sovereign immunity,
13 ripeness, and failure to state a claim, in light of Plaintiff's
14 failure to exhaust its tribal court remedies. See Burlington,
15 940 F.2d at 1242-43 (declining to consider "jurisdictional issues
16 of constitutional dimension" before considering the exhaustion
17 issue). Because Plaintiff can cure the jurisdictional defect by
18 exhausting its tribal court remedies, Defendant Tribe and Tribal
19 Court Defendants' motions to dismiss are granted without
20 prejudice.

21 2. Motion for Sanctions

22 Defendant Tribe urges the Court to "impose Rule 11 sanctions
23 on Plaintiff's counsel for premature filing of the Complaint in
24 this matter." Mot. for Sanctions at 1. Defendant Tribe further
25 argues that "the Complaint is not legally tenable or well-
26 grounded in fact." Mot. for Sanctions at 1. Plaintiff responds
27 that sanctions are not appropriate because "there is a genuine
28 and legitimate dispute as to the jurisdiction asserted by" the

1 Tribal Court. Opp. to Mot. for Sanctions at 5.

2 Rule 11 of the Federal Rules of Civil Procedure provides for
3 the imposition of sanctions when a filing is frivolous, legally
4 unreasonable, lacks factual foundation, or is brought for an
5 improper purpose. Fed. R. Civ. P. 11(b)(1)-(4). The Ninth
6 Circuit has established "that sanctions must be imposed on the
7 signer of a paper if either a) the paper is filed for an improper
8 purpose, or b) the paper is 'frivolous.'" Townsend v. Holman
9 Consulting Corp., 929 F.2d 1358, 1362 (9th Cir. 1990).

10 Rule 11 sanctions are not appropriate in this case.
11 Although Plaintiff has failed to convince this Court that
12 Plaintiff's failure to exhaust its tribal court remedies should
13 be excused, the Court does not find that Plaintiff's complaint
14 was frivolous or brought for an improper purpose. Plaintiff
15 correctly cited four well-established exceptions to the
16 exhaustion requirement, but failed to successfully argue that the
17 facts of this case merit the application of one of those
18 exceptions. Not all unsuccessful arguments are sanctionable.
19 Defendant Tribe's motion for sanctions is denied.

20 3. Motion for Preliminary Injunction

21 As the Court has granted Defendant Tribe and Tribal Court
22 Defendants' motions to dismiss for failure to exhaust tribal
23 remedies, the Court does not have jurisdiction to consider
24 Plaintiff's motion for a preliminary injunction. Relatedly, the
25 Court need not consider Defendants' joint objection to
26 Plaintiff's motion, on the grounds that service was improper
27 (Doc. #22). Plaintiff's motion for a preliminary injunction is
28 denied for lack of jurisdiction.

III. ORDER

For the reasons set forth above, the Court GRANTS WITHOUT PREJUDICE Defendant Tribe's motion to dismiss, GRANTS WITHOUT PREJUDICE Tribal Court Defendants' motion to dismiss, DENIES Defendant Tribe's motion for sanctions, and DENIES Plaintiff's motion for a preliminary injunction. Plaintiff may file a First Amended Complaint once it has exhausted its tribal court remedies.

IT IS SO ORDERED.

Dated: February 12, 2015

John A. Mendez
JOHN A. MENDEZ,
UNITED STATES DISTRICT JUDGE