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SUPREME COURT
OF THE STATE OF WASHINGTON

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OUTSOURCE SERVICES MANAGEMENT, LLC,

Respondent,

vs.

NOOKSACK BUSINESS CORPORATION,

Appellant.

SUPPLEMENTAL BRIEF
OF PETITIONER NOOKSACK BUSINESS CORPORATION

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I. Introduction

This case presents the opportunity to establish the proper analysis to determine whether subject matter jurisdiction exists in Washington courts for a contract dispute involving an Indian tribe. Specifically, this Court is asked to decide whether the out-of-state lender met its burden as plaintiff to establish subject matter jurisdiction for this lawsuit against the Nooksack Business Corporation (“NBC”), a tribally-chartered corporation of the Nooksack Tribe. The Court should conclude that the lender did not meet its burden and that NBC’s motion to dismiss should have been granted based on lack of subject matter jurisdiction. This Court should recognize the Nooksack Tribe’s overriding interest in self-governance, and conclude that the power to hear and adjudicate disputes arising on Indian land is an essential attribute of the Tribe’s sovereignty that denies the courts of this state of subject matter jurisdiction.

This Court should reverse and require dismissal after concluding that the Court of Appeals’ analysis in its January 14, 2013 published decision (“Decision,” at App. A to Petition for Review), which affirmed the trial court, was flawed. Both the trial court and the Court of Appeals erred when they held that NBC’s waiver of sovereign immunity alone established subject matter jurisdiction. This Court first should hold that an independent analysis of subject matter jurisdiction not dependent on the

waiver of sovereign immunity is required. When the Court conducts that analysis, it should hold that no authority authorizes the exercise of subject matter jurisdiction. In examining the relationship of PL-280 and RCW 37.12.010 to this state's subject-matter jurisdiction jurisprudence, the Court should conclude that Washington did not assume jurisdiction for this dispute. Any exercise of subject matter jurisdiction, moreover, according to this Court's *Powell* decision and the United States Supreme Court's *Williams v. Lee* decision, requires application of the "infringement test." The Court of Appeals erred when it failed to apply the required infringement test. Application of that test should result in the conclusion that the exercise of subject matter jurisdiction for this lawsuit is improper.

The lender would like to pretend that this lawsuit does not involve a tribal entity and is but "an ordinary contract dispute." *Answer*, 20. It is not. The lender sold its loan to NBC for operation of the Indian casino on the Nooksack reservation, an endeavor uniquely related to NBC's tribal status and integral to the existence and affairs of the Nooksack Tribe. The lender offered no evidence that anyone associated with NBC or the Tribe ever set foot off the reservation for anything involving this transaction, which was entered and performed on the reservation. The lender asserts security interests in personal property located on the reservation. Accordingly, a storied history and complex body of law accompany this

lawsuit. The Court should conclude that Washington courts do not have subject matter jurisdiction to entertain the lender's lawsuit.

II. Assignments of Error

A. The trial court erred as a matter of law when it denied NBC's motion to dismiss the complaint for lack of subject matter jurisdiction where the case by a non-Indian entity against an Indian tribal corporation arises on an Indian reservation, the assumption of jurisdiction would interfere with the Tribe's self-governance and Washington courts lack subject matter jurisdiction over such actions.

B. The trial court erred as a matter of law when it denied NBC's motion to dismiss the complaint for lack of subject matter jurisdiction on the basis that the parties' agreements conferred subject matter jurisdiction where the law does not permit parties to confer subject matter jurisdiction.

III. Statement of Issue

The Court accepted this issue: Do Washington state courts have subject matter jurisdiction to hear this dispute initiated by an out-of-state lender against an arm of the Nooksack Tribe based solely on a waiver of sovereign immunity contained in the loan documents at issue, or should this Court hold that Washington courts do not have jurisdiction over this dispute? Sub-issues are presented in the Petition.

IV. Supplemental Statement of the Case

NBC relies on its Statements of the Case in its *Petition for Review*, *Opening Brief* and *Reply Brief*. In brief, NBC is a tribally-chartered corporation of the Nooksack Tribe. NBC entered a loan agreement with

the respondent lender to operate its Nooksack River Casino in Deming, Whatcom County, Washington on the Nooksack Reservation. The lender seeks enforcement of the loan agreement and possession of collateral located on the reservation. See CP 380-87. The trial court denied NBC's motion to dismiss. The Court of Appeals affirmed that denial based on NBC's waiver of sovereign immunity, an analysis unparalleled in any state or federal decision for its reliance on NBC's waiver of sovereign immunity to resolve the subject matter jurisdiction issue.

V. **Argument and Authority**

This Court should reverse the Court of Appeals' erroneous conclusion that a contractual waiver of the Nooksack Tribe's sovereign immunity establishes subject matter jurisdiction in a state court over this dispute. See *Decision* at 16-18 (App. A to *Petition*).

That conclusion conflicts with the rule followed in Washington that parties to an action cannot by stipulation or agreement confer jurisdiction upon a court. That conclusion also is contrary to decisions of this Court and the United States Supreme Court holding that the state's authority over reservation lands derives solely from a federal delegation of jurisdiction under Pub. L. No. 83-280, 67 Stat. 588 (1953) ("PL-280"). Washington accepted only a limited portion of the jurisdiction offered by Congress through PL-280. See *State v. Jim*, 173 Wn.2d 672, 678-79, 273

P.3d 434 (2012) (addressing limited state jurisdiction “codified” at RCW 37.12.010); *State v. Clark*, ___ Wn.2d ___, No. 87376-3, Slip. Op. at 4-6 (July 25, 2013) (same). Washington’s limited jurisdiction does not include civil subject matter jurisdiction for actions like this one arising on the reservation against sovereign tribal governments or tribal corporations. Finally, the Court of Appeals misapplied *C&L Enters., Inc. v. Citizen Band of Potawatomi Indian Tribe of Oklahoma*, 532 U.S. 411, 121 S. Ct. 1589, 149 L. Ed. 2d 623 (2001) and *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.*, 523 U.S. 751, 118 S. Ct. 1700, 140 L. Ed. 2d 981 (1998), which do not hold or suggest that a sovereign immunity analysis replaces a subject matter jurisdiction analysis.

Reversal also is proper because the Court of Appeals failed to apply the “infringement test” articulated by the United States Supreme Court in *Williams v. Lee*, 358 U.S. 217, 220, 79 S. Ct. 269, 3 L. Ed. 2d 251 (1959) and adopted by this Court in *Powell v. Farris*, 94 Wn.2d 782, 620 P.2d 525 (1980). Pursuant to this precedent the state may only exert its authority over reservation lands where doing so does not undermine tribal self-governance by infringing “on the right of reservation Indians to make their own laws and be ruled by them.” The *Decision* incorrectly concluded that the “infringement test” applies only to cases involving individual tribal members, not tribal corporations such as NBC. See *Decision* at 14

(App. A to *Petition*). That conclusion is inconsistent with *Powell* and *State v. Clark*, and with the fundamental principles of tribal sovereignty that underlie *Williams v. Lee* and its progeny.

A. This Court should hold that because subject matter jurisdiction cannot be conferred by agreement among parties, NBC's waiver of sovereign immunity does not establish subject matter jurisdiction.

This Court should reject the conclusion of the trial court and the Court of Appeals that NBC's waiver of sovereign immunity establishes subject matter jurisdiction for the lender's lawsuit against NBC in Washington courts. Litigants may not confer subject matter jurisdiction upon a court. *See Dougherty v. Dep't of Labor & Indus.*, 150 Wn.2d 310, 315, 76 P.3d 1183 (2003) ("Jurisdiction exists because of a constitutional or statutory provision. A party cannot confer jurisdiction; all that a party does is invoke it."); *Skagit Surveyors & Engineers, L.L.C. v. Friends of Skagit County*, 135 Wn.2d 542, 556, 958 P.2d 962 (1998) (same); *Wesley v. Schneckloth*, 55 Wn.2d 90, 93, 346 P.2d 658 (1959) ("A constitutional court cannot acquire jurisdiction by agreement or stipulation."). *See also Weeks Constr., Inc. v. Oglala Sioux Housing Authority*, 797 F.2d 668, 671-72 (8th Cir. 1986) ("Mere consent to be sued, even consent to be sued in a particular court, does not alone confer jurisdiction upon that court to hear a case if that court would not otherwise have jurisdiction over the

suit. . . [A] waiver of immunity does not determine in what forum a suit . . . may properly be brought.”).

Other courts have recognized that a tribe’s waiver of sovereign immunity does not resolve the subject matter jurisdiction issue. *See Robles v. Shoshone-Bannock Tribes*, 876 P.2d 134, 136 (Idaho 1994) (recognition of an effective waiver of sovereign immunity does not end jurisdictional inquiry; the tribal corporation may be subject to suit, but the correct forum may not be a state court); *Nelson v. Dubois*, 232 N.W.2d 54, 57 (N.D. 1975) (in suit by non-Indians against Indian for tort arising on reservation, Indian defendant's consent to state court as forum was insufficient to confer jurisdiction if state court otherwise found to lack jurisdiction over action); *Cohen v. Little Six, Inc.*, 543 N.W.2d 376, 381 (Minn. Ct. App. 1996); *Duluth Lumber & Plywood Co. v. Delta Development, Inc.*, 281 N.W.2d 377, 383 (Minn. 1979). *See also* Vetter, William V., *Essay: Doing Business with Indians and the Three “S”es: Secretarial Approval, Sovereign Immunity, and Subject Matter Jurisdiction*, 36 Ariz. L. Rev. 169, 185-86 (1994) (“Tribal immunity is not the only problem for persons wishing to bring suit against an Indian individual or entity. A waiver of immunity does not grant jurisdiction, even if the waiver names a specific court. The question of the right to sue (immunity) is distinct from the question of jurisdiction.”). Like these courts and consistent with its

analysis in *Wright v. Colville Tribal Enterprise Corp.*, 159 Wn.2d 108, 111, 147 P.3d 1275 (2006), this Court should hold that the waiver of sovereign immunity does not resolve the subject matter jurisdiction issue, which requires an independent analysis.

The Court of Appeals misconstrued federal cases such as *C&L, supra*, and *Kiowa, supra*, when it held that NBC's waiver of sovereign immunity in the loan agreements resolved the challenge to subject matter jurisdiction. The lender asserts that there is "no material distinction" between this case and *C&L* or *Kiowa*. See *Answer* at 1, 8-9. This is wrong. NBC identified in its Petition the material distinction that *C&L* and *Kiowa* analyzed sovereign immunity, not the issue of subject matter jurisdiction presented here. See *Petition* at 11-13 and note 5. The lender, meanwhile, acknowledges that the tribe in *C&L* "asserted that it was immune from suit in state court." *Answer* at 10. This acknowledgment underscores the material distinction: NBC's challenge is based on lack of subject matter jurisdiction not on sovereign immunity, the sole issue raised in *C&L*. The lender's briefing is not persuasive, therefore, because it quotes language from *C&L* in a vacuum without acknowledging this distinction. The United States Supreme Court has never held that a waiver of sovereign immunity resolves whether subject matter jurisdiction exists.

Tribal sovereign immunity and tribal sovereign authority are two

distinct doctrines with different historical origins and purposes. *Oneida Indian Nation of N.Y. v. Madison County*, 605 F.3d 149, 156-57 (2d Cir. 2010), *reversed in part, vacated in part, affirmed in part on other grounds*, 665 F.3d 408 (2d Cir. 2011). This Court should reject as incorrect the analysis in the Decision because it blends the two doctrines and incorrectly relies on a waiver of sovereign immunity to resolve the subject matter jurisdiction issue.

B. This Court should reverse because Washington has never accepted pursuant to Public Law 280 general civil jurisdiction to adjudicate disputes involving tribal sovereign entities arising on the reservation.

No basis exists for subject matter jurisdiction. The lender argued, and the Court of Appeals agreed, that PL-280 and RCW 37.12 “do not apply to or restrict the jurisdiction of Washington courts to adjudicate disputes involving tribal sovereign entities.” *Answer* at 13, citing *Decision* at 17. That conclusion upsets well-established Washington and federal case law because it starts with the presumption that state courts possessed general civil jurisdiction over tribal sovereign entities prior to the enactment of PL-280 and that neither PL-280 nor RCW 37.12 served to “restrict” that jurisdiction. In fact, PL-280 and RCW 37.12 authorize jurisdiction, they do not restrict it. *See Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 513, 111 S. Ct. 905, 112 L.

Ed. 2d 1112 (1991).

Rather than assume jurisdiction and look for grounds to restrict it, this Court first should identify an express delegation from Congress to exercise jurisdiction. There is none. Nor has the State of Washington acted to claim civil jurisdiction over this dispute. The United States Supreme Court in the *Yakima Indian Nation* decision accepted the State of Washington's position that it did, and could, assume only "checkerboard jurisdiction." *Washington v. Confederated Bands and Tribes of the Yakima Indian Nation*, 439 U.S. 463; 493-99, 99 S. Ct. 740, 58 L. Ed. 2d 740 (1979). The lender invites this Court to push Washington courts beyond the established checkerboard jurisdiction that the State voluntarily assumed. But such jurisdiction only should be assumed pursuant to PL-280 and RCW 37.12.¹

NBC chronicled Washington's jurisprudence concerning authority over Indian country, including its intersection with PL-280, in its *Petition* at 8-10. The limited extent of state court jurisdiction established by the *Yakima Indian Nation* decision, and recently reiterated by this Court in *State v. Jim, supra*, and *State v. Clark, supra*, should control the outcome

¹ As noted in the *Petition* at 9 note 2, an individual defendant such as NBC may not unilaterally confer jurisdiction upon the state where RCW 37.12.021 sets forth a specific procedure requiring a tribal resolution and a governor's proclamation.

of this case. Where an Indian nation has not given its consent pursuant to RCW 37.12.021, like here, it is “subject only to the nonconsensual jurisdiction asserted by the State in RCW 37.12.010.” *State v. Jim*, 173 Wn.2d. at 679. The lender concedes that jurisdiction does not exist based on RCW 37.12. *Answer* at 2 (“Public Law 280 has no bearing on this case.”). This supports a holding against jurisdiction.

The United States Supreme Court has never held that PL-280 confers authority on a State to extend the full range of its authority over Indians and Indian reservations. *See Bryan v. Itasca County*, 426 U.S. 373, 96 S. Ct. 2102, 48 L. Ed. 2d 710 (1976); *Rice v. Rehner*, 463 U.S. 713, 734 n.18, 103 S. Ct. 3291, 77 L. Ed. 2d 961 (1983); *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 208-210, and n.8, 107 S. Ct. 1083, 94 L. Ed. 2d 244 (1987). Neither have Washington courts. *See Young v. Duenas*, 164 Wn. App. 343, 353, 262 P.3d 527 (2011) (“RCW 37.12.010 and PL-280 do not extend state’s jurisdiction to sovereign tribal governments, their entities, or their employees.”), *citing Wright v. Colville supra*, 159 Wn.2d at 116.

The lender asserts with no citation to authority that Washington courts enjoy “concurrent jurisdiction with the federal government in civil disputes where the tribal sovereign has waived its immunity.” *Answer* at 3. As a basis for jurisdiction the lender relies exclusively on Washington

courts' general jurisdiction authorized to hear contract disputes. *See Answer* at 8. This is insufficient for the reasons stated above.

The position of the lender adopted by the Court of Appeals that jurisdiction exists unless disproven conflicts with the principle that jurisdiction over tribes and their property is reserved to tribes and the federal government unless expressly granted. It also conflicts with the lender's burden as plaintiff to establish jurisdiction. Finally, it conflicts with this Court's recognition that, "State jurisdiction over Indian country is codified at RCW 37.12.010." *State v. Jim*, 173 Wn.2d at 679. This Court, therefore, should reject the exercise of jurisdiction.

C. This Court should reverse because the United States Supreme Court's infringement test articulated in *Williams v. Lee* is applicable and is not satisfied.

Reversal also is proper because the exercise of jurisdiction would infringe on the Nooksack Tribe's sovereignty. The Court of Appeals erred in failing to apply the *Williams v. Lee* infringement test because "the concerns regarding tribal sovereignty as expressed in *Williams* do not apply" in a case concerning a tribal entity, not an individual Indian. *Decision*, 14. That conclusion conflicts with this Court's decisions applying *Williams v. Lee*, and the plain language of PL-280 and RCW 37.12.010. It also is entirely inconsistent with the Nooksack Tribe's inherent sovereignty to govern matters arising on reservation lands. This

Court should hold that the test applies and is not satisfied.

“Th[is] principle of tribal self-government . . . seeks an accommodation between the interests of the Tribe[] and the Federal Government, on the one hand, and those of the State, on the other.” *Colville*, 447 U.S. at 156. This Court recently explored the required accommodation and reiterated the infringement test in *State v. Clark*, *Slip Op.* at 7-15. The interests of the Nooksack Tribe are implicated where the lender seeks to force a resolution of this dispute in state court. No authority justifies restricting the concerns and principles articulated in *Williams v. Lee* to proceedings involving individual tribal members and not tribes or tribal corporations chartered under tribal law. Such an approach would be arbitrary and illogical. This Court should reject it.

The United States Supreme Court has recognized that Indian tribes retain “attributes of sovereignty over both their members and their territory.” *United States v. Mazurie*, 419 U.S. 544, 557, 42 L. Ed. 2d 706, 95 S. Ct. 710 (1975). That Court also has stressed that “Congress’ objective of furthering tribal self-government encompasses far more than encouraging tribal management of disputes between members. . .” *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 335, 103 S. Ct. 2378, 76 L. Ed. 2d 611 (1983). Because of the strong federal interest in encouraging tribal self-government, see *White Mountain Apache Tribe v.*

Bracker, 448 U.S. 136, 144, 100 S. Ct. 2578, 65 L. Ed. 2d 665 (1980), the United States Supreme Court has “repeatedly” recognized that tribal courts are the “appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of both Indians and non-Indians.” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 65, 98 S. Ct. 1670, 56 L. Ed. 2d 106 (1978). In short, the United States Supreme Court has “consistently guarded the authority of Indian governments over their reservations.” *Superior Oil Co. v. Merritt*, 619 F. Supp. 526, 533 (D. Utah 1985), quoting *Williams v. Lee*, 358 U.S. at 223.

Based on these authorities and principles, this Court should hold that the *Williams v. Lee* infringement test must be satisfied before Washington courts exercise any authority.

Application of the *Williams v. Lee* infringement test to the facts of this case should prevent the exercise of jurisdiction. First, the test applies because the dispute involves a non-tribal claim against the Tribe. See, e.g. *Smith v. Salish Kootenai College*, 434 F.3d 1127, 1135 (9th Cir. 2006) (applying *Williams v. Lee* infringement test to lawsuit against a tribal entity); *Seneca-Cayuga Tribe v. Oklahoma*, 874 F.2d 709, 714 (10th Cir. 1989) (evaluating whether state regulation of tribal government’s economic enterprises would infringe on Tribal self-government, citing *Williams v. Lee*); *California v. Cabazon Band of Mission Indians*, 480

U.S. 202, 214-15, 107 S. Ct. 1083, 94 L. Ed. 2d 244 (1987) (California's interest in thwarting organized crime not sufficient to overcome infringement on tribal self-government posed by imposition of gambling laws on tribal high-stakes bingo).

Second, the claim arises on Indian lands. As the Court of Appeals correctly reasoned in *Maxa v. Yakima Petroleum*, 83 Wn. App. 763, 924 P.2d 372 (1996), *rev. den*, 131 Wn.2d 1016 (1997), where a dispute arises is critical in the jurisdictional analysis and any doubt requires application of the infringement test, as follows:

If the dispute involving the contracts arose on the reservation, deferral of the case to the tribal court would be appropriate. *Thomsen*, 39 Wn. App. at 513 (Indian tribes retain inherent sovereign power to exercise civil jurisdiction over non-Indian consensual commercial relations on their reservations). In such a case, the consensual nature of the relationship between the tribe member and nonmember, coupled with the situs of the dispute, would place subject matter jurisdiction in the tribal court. *Montana*, 450 U.S. at 565-66. *See also Milbank Mut. Ins. Co. v. Eagleman*, 218 Mont. 58, 705 P.2d 1117 (1985) (Montana state courts lack subject matter jurisdiction over disputes between Indians and non-Indians arising out of on-reservation conduct). Mr. Maxa's complaint, however, centers on breaching conduct that occurred off reservation, in Petroleum's failure to pay employee benefits, the promissory notes and another contractual obligation. The contracts themselves were executed off reservation. If it were decided, in light of these facts, that the action arose off reservation, the state court would have exclusive subject matter jurisdiction. *Powell*, 94 Wn.2d at 785. When, as here, a dispute does not clearly arise either on or off a reservation, the essential question is whether state

assumption of jurisdiction would interfere with reservation self-government. *Williams v. Lee*, 358 U.S. 217, 220, 79 S. Ct. 269, 3 L. Ed. 2d 251 (1959), cited in *Powell*, 94 Wn.2d at 786.

Maxa, 83 Wn. App. 768-769. Thus, if the dispute arose on the reservation or if that question presents a close call, a court should examine whether the assumption of jurisdiction would interfere with reservation self-government.

This Court need not examine whether the dispute arose on the reservation because the lender never contested that issue and waived it. See *Opening Brief*, 17-18; *Reply Brief*, 14-15; *Petition*, 16. The lender as plaintiff had the burden to establish jurisdiction. But the lender never attempted to establish that the action arose off-reservation because it contended that the issue was irrelevant. CP 64-82 (Lender's trial court brief offering no authority or argument that action did not arise in Indian country or any fact of any material action by NBC off-reservation). The lender now attempts to rely on speculation by the trial judge concerning the location of NBC's bank account. See *Answer* at 5-6. The lender's mere utterance at oral argument before the trial court that it "rejects the idea that the contract was performed within the confines of the reservation" is insufficient and does not support the lender's current position that it "repeatedly" disputed the issue. See *Answer* at 12 note 11.

If the Court does examine the issue, it should conclude that the dispute arose on the reservation or, at the very least, that the lack of clarity that the dispute arose off-reservation requires application of the infringement test. The facts preponderate in favor of the conclusion that the dispute arose on the reservation. The loan agreements were executed, performed, and allegedly breached on the Nooksack Reservation. *See Horizon House v. Cain Bros. & Co., LLC*, 2012 U.S. Dist. LEXIS 14821 at *5, n 2 (W.D. Wash. 2012) (contract executed when signed in office of party against whom would be enforced, not where and when signed by party who would enforce). The lender required that Casino operations take place *only* on the reservation. CP 432 (Loan Agreement, § 6.30). The funds advanced by the lender were for constructing and furnishing the Casino on the reservation, and could be used for no other purpose. CP 413 (§ 2.5). NBC and the collateral purporting to secure the debt are located on the reservation, CP 516 (§1 at p.2), and thus the situs of the debt (the place where it can be enforced) is the reservation. *See In re Estate of Breese*, 51 Wn.2d 302, 307, 317 P.2d 1055 (1957) (“the situs of a debt as the place where it can be enforced.”) The revenues pledged under the Loan Agreement were generated on the reservation. The breach of the Loan Agreements that were alleged to have occurred in 2012 occurred on the reservation when the NBC made the decision to withhold the proceeds

from Casino operations. See *First Nat'l Bank v. El Camino Res., Ltd.*, 447 F. Supp. 2d 902, 912 (N.D. Ill. 2006) (in breach of contract case, the situs is where business decisions causing breach occurred). In light of these facts, where the lender's bank account may have been located has minimal relevance. The dispute arose on the reservation.

This Court should conclude that the exercise of jurisdiction would interfere with the Nooksack Tribe's sovereignty and self-government. The proceeds of the Casino enterprise are for the welfare and governance of the Tribe. The enterprise is run by NBC on the reservation. It employs numerous tribal members. The collateral sought by NBC is on the reservation. The transaction at its heart involves a "reservation affair." Tribal courts play a vital role in tribal self-government, cf. *United States v. Wheeler*, 435 U.S. 313, 332, 98 S. Ct. 1079, 55 L. Ed. 2d 303 (1978), and the federal government has consistently encouraged their development. *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 14-15, 107 S. Ct. 971, 94 L. Ed. 2d 10 (1987). Federal courts have concluded that the performance of contracts related to a tribe's gaming operation located on the tribe's reservation are "reservation affairs." *Fine Consulting, Inc. v. Rivera*, 915 F. Supp. 2d 1212 (D.N.M. 2013); *Calumet Gaming Group-Kansas, Inc. v. Kickapoo Tribe*, 987 F. Supp. 1321, 1329 (D. Kan. 1998). This dispute, arising from the lender's consensual relationship with NBC, belongs in

tribal court.

This Court should decide against the exercise of state court jurisdiction in deference to the Nooksack Tribe's self-governance including the Tribe's interest in resolving its affairs through its tribal courts. This Court's decision not to exercise jurisdiction to avoid interference with the Nooksack Tribe's self-government would be consistent with numerous federal decisions.² It would advance the Nooksack Tribe's political integrity, economic security, health and welfare, and the development of its tribal courts. The State of Washington has little to no interest in providing a state court venue to this out-of-state

² See *Montana v. United States*, 450 U.S. 544, 565-66, 101 S. Ct. 1245, 67 L. Ed. 2d 493 (1981) (tribes have inherent authority over civil disputes affecting important personal and property interests of Indians and non-Indians); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 65, 98 S. Ct. 1670, 56 L. Ed. 2d 106 (1978) ("Tribal courts have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of both Indians and non-Indians."); *Fisher v. District Court of Sixteenth Judicial Dist.*, 424 U.S. 382, 387-88, 96 S. Ct. 943, 47 L. Ed. 2d 106 (1976) (state-court jurisdiction over adoptions would interfere with tribal self-government); *Weeks Construction, Inc. v. Oglala Sioux Housing Authority*, 797 F.2d 668, 673 (8th Cir. 1986) ("The power to hear and adjudicate disputes arising on Indian land is an essential attribute of [tribal] sovereignty."); *Iowa Mutual Insurance Co. v. LaPlante*, 480 U.S. 9, 18, 107 S. Ct. 971, 94 L. Ed. 2d 10, (1987) (recognizing tribal courts presumptive civil jurisdiction over activities of non-Indians on reservation lands); *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1228 (9th Cir. 1989) (tribal courts presumptively have civil jurisdiction over disputes directly implicating tribal affairs or arising on reservations). See also *Cohen v. Little Six, Inc.*, 543 N.W.2d 376, 381 (Minn. Ct. App. 1996) ("If jurisdiction does not attach under Public Law 280 and the disputed events occurred wholly within the confines of an Indian reservation, state court jurisdiction over the matter interferes with tribal self-governance."), citing *Duluth Lumber*, 281 N.W.2d at 382.

lender who sought out the Nooksack Tribe to sell the Tribe a loan concerning on-reservation activities. The lender will not be deprived of a venue. It can bring its claims in tribal court, as the loan agreement provided.

VI. Conclusion

This Court should reverse and require dismissal of the action against NBC for lack of subject matter jurisdiction. State authority over tribes must be denied where statutory authority is lacking and where the state's authority would undermine tribal self-governance. In this case, the law, the facts and considerations of accommodation support dismissal.

Respectfully submitted on this 9th day of August, 2013.

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CERTIFICATE OF SERVICE

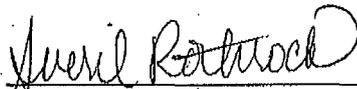
I hereby certify that on the 9th day of August, 2013, I caused to be served the foregoing **SUPPLEMENTAL BRIEF OF PETITIONER NOOKSACK BUSINESS CORPORATION** on the following parties at the following address:

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Outsource Services Management, LLC v. Nooksack Business Corporation
Supreme Court No. 88482-0
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If you have any questions, please contact our office.

Thank you,

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