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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

WATER WHEEL CAMP)	
RECREATIONAL AREA, INC.;)	
and ROBERT JOHNSON,)	
)	
Plaintiffs,)	CIV 08-474-PHX-DGC
)	
v.)	PLAINTIFFS' REPLY TO
)	DEFENDANTS' OPPOSITION TO
THE HONORABLE GARY LARANCE,)	EMERGENCY MOTION FOR
in his capacity as the Chief and Presiding)	TEMPORARY RESTRAINING
Judge of the Colorado River Indian)	ORDER AND PRELIMINARY
Tribes Tribal Court; and PRISCILLA)	INJUNCTION
HILL, in her capacity as the Chief Court)	
Clerk of the Colorado River Indian Tribes)	
Tribal Court,)	
)	
Defendants.)	
)	

Plaintiffs Water Wheel Camp Recreational Area, Inc. and Robert Johnson (collectively referred to as "Water Wheel"), by and through their attorneys, submit this Reply to Defendants' Opposition to Emergency Motion for Temporary Restraining Order and Preliminary Injunction ("Defendants' Opposition Brief"). The four (4) bases of opposition contained in the Defendants' Opposition Brief should not persuade this Court,

and plaintiffs respectfully request this Court to enter a Temporary Restraining Order and Preliminary Injunction for the following reasons.

I. Exhaustion of Tribal Court Remedies Is Not Required.

Exhaustion of tribal court remedies by non-Indians is not required, where, as here, neither the Colorado River Indian Tribes ("CRIT" or "Tribe"), nor the court for the Colorado River Indian Tribes ("CRIT Tribal Court"), can make a colorable claim to jurisdiction over Water Wheel. *See Burlington Northern R.R. Co. v. Red Wolf*, 196 F.3d 1059 (9th Cir. 1999), *cert denied*, 529 U.S. 1110 (2000); *BNSF Railway Co. v. Tsosie*, No. 05-386 (D. Ariz. Oct. 11, 2006), *on appeal*, No. 07-15076 (9th Cir. 2007). In any event, Water Wheel filed a motion to dismiss in the CRIT Tribal Court but it was rejected, as was a petition to appeal the interlocutory ruling to the CRIT Tribal Court of Appeals.

At page 4 of Defendants' Opposition Brief, defendants' counsel states "Judge LaRance has not yet heard evidence or made any findings of fact – much less ruled – on the applicability of either of the two exceptions to the *Montana* rule." While this may be partially true, Judge LaRance's Order denying Defendant's Motion to Dismiss (in the CRIT Tribal Court) plainly states that "Defendant Johnson will not be permitted to question, challenge or litigate the fact or argue as a matter of law that the property in question is not within the territory, boundaries or ownership of the [CRIT Reservation]." *See Exhibit C* to Complaint. The same order of the CRIT Tribal Court then takes judicial notice of numerous orders and opinions of the U.S. Department of the Interior ("DOI"),

see id., but such DOI orders and opinions were plainly rejected by the U.S. Supreme Court in *Arizona v. California*, 460, U.S. 605 (1983). *See* Complaint at ¶¶ 23-26.¹

II. There are no Indispensable Parties to this Case.

Plaintiffs' federal lawsuit is an *Ex parte Young* action and neither the United States nor the Tribe is an indispensable party to this action. Plaintiffs have not put the CRIT Reservation boundary into dispute in the instant action, but rather seek only to enjoin the CRIT Tribal Court from exercising jurisdiction over Water Wheel in violation of federal law, and in violation of Water Wheel's lease with DOI. Statements contained in Defendants' Opposition Brief that Water Wheel entered a lease with the Tribe are wrong both as a matter of fact and as a matter of law, and should be rejected by this Court.

Defendants' Opposition Brief also cites to *United States v. Denham* at page 6. That case resulted in a stipulated judgment, not an adjudication, and neither Robert Johnson nor Water Wheel was a party to that case.

III. Plaintiffs Have Never Consented to the Jurisdiction of the CRIT Tribal Court Nor to the Tribe's Eviction Ordinance.

Contrary to assertions contained on page 6 of the Defendant's Opposition Brief, Water Wheel did not request a hearing in the CRIT Tribal Court for March 14, 2008, and has never consented to the jurisdiction of the CRIT Tribal Court. Additionally, Water Wheel has never consented to in writing the Tribe's Eviction Ordinance, which is a purported basis of tribal jurisdiction. Moreover – out of the blue – the CRIT Tribal Court

¹ Defendants' Opposition Brief similarly places great weight on DOI's opinions – specifically a 1969 Secretarial Order that was plainly rejected by the Supreme Court.

ordered *an eviction hearing* for March 14 – before discovery is even concluded – and before Water Wheel can challenge the jurisdiction of the CRIT Tribal Court.

Water Wheel would indeed suffer irreparable and irremediable harm if forced to continue to adjudicate lease disputes in CRIT Tribal Court in violation of federal law and in violation of Water Wheel's lease with DOI.² See Complaint at ¶¶ 17-22.

IV. Plaintiffs Can Succeed on the Merits under *Montana* and its Progeny.

Water Wheel has sufficiently demonstrated their likelihood of success on the merits of its challenge of tribal court jurisdiction under *Montana v. United States*, 450 U.S. 544 (1981) and its progeny as interpreted by this Court and the Ninth Circuit Court of Appeals.

DATED this 13th day of March, 2008.

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² Water Wheel notes that the Declaration of Robert Johnson, which sets forth the substantial irreparable harm likely to befall Water Wheel in the event of an adverse judgment in the Tribal Court Action, is unchallenged, via sworn statement or otherwise, in Defendants' Opposition Brief.

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