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**UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF ARIZONA**

Daniel Felix and Dorothy Felix,

Plaintiffs,

vs.

Pic-N-Run, Inc., an Arizona Corporation;  
Milan Building Associates, Inc., a Texas  
Corporation; Stella Jeanette Eldridge, Vernon  
W. Eldridge; the Environmental Protection  
Agency, an agency of United States Federal  
Government; the Navajo Nation; the Navajo  
Nation Environmental Protection, an agency of  
the Navajo Nation; Service Station Equipment  
& Sales Co. Inc., an Arizona Corporation,  
Underground Analytical Services, Inc., an  
Arizona Corporation; Petroleum Systems  
Incorporated, an Arizona Corporation;  
Spencer Riedel; and the Estate of Sybil  
Baldwin,

Defendants.

Vernon W. Eldridge, Stella Jeanette Eldridge,  
Milan Building Associates, Inc., a Texas  
Corporation,

Counter Claimants,

vs.

Daniel Felix, Dorothy Felix,

**Case No. CV-09-8015-PCT-JAT**

THE ESTATE OF SYBIL BALDWIN'S  
REPLY TO PLAINTIFFS'  
RESPONSE AND REPLY TO  
DEFENDANT PIC-N-RUN'S  
RESPONSE TO THE MOTION TO  
DISMISS OF THE ESTATE OF  
SYBIL BALDWIN

(Assigned to the Honorable  
James A. Teiborg)

Counter Defendants.

Vernon W. Eldridge, Stella Jeanette Eldridge,  
Milan Building Associates, Inc., a Texas  
Corporation,

Cross Claimants,

vs.

Pic-N-Run, Inc., an Arizona Corporation;  
Service Station Equipment & Sales Co., Inc. an  
Arizona Corporation; Underground Analytical  
Services, Inc., an Arizona Corporation;  
Petroleum Systems Inc., an Arizona  
Corporation; Spencer Riedel; and Estate of  
Sybil Baldwin,

Cross Defendants.

Estate of Sybil Baldwin,

Counter Claimant,

vs.

Daniel Felix and Dorothy Felix,

Counter Defendants.

Estate of Sybil Baldwin,

Cross Claimant,

vs.

Pic-N-Run, Inc., an Arizona Corporation;  
Milam Building Associates, Inc., a Texas  
Corporation, Stella Jeanette Eldridge; Vernon  
W. Eldridge; Service Station Equipment &  
Sales Co., Inc. an Arizona Corporation;  
Petroleum Systems Inc., an Arizona  
Corporation; and Spencer Riedel,

Cross Defendants.

Pic-N-Run, Inc., An Arizona Corporation, Inc.,

Counter Claimant,

vs.

Daniel Felix and Dorothy Felix,

Counter Defendants.

Pic-N-Run, An Arizona Corporation,

Cross Claimant,

vs.

Milan Building Associates, Inc., a Texas Corporation; Stella Jeanette Eldridge, Vernon W. Eldridge; Service Station Equipment & Sales Co. Inc., an Arizona Corporation; Underground Analytical Services, Inc. An Arizona corporation; Spencer Riedel; and the Estate of Sybil Baldwin,

Cross Defendants.

Service Station Equipment & Sales Co. Inc., an Arizona Corporation,

Counter Claimant,

vs.

Daniel Felix and Dorothy Felix,

Counter Defendants.

Service Station Equipment & Sales Co. Inc., an Arizona Corporation,

Cross Claimant,

vs.

Pic-N-Run, Inc., an Arizona Corporation; Milan Building Associates, Inc., a Texas Corporation; Stella Jeanette Eldridge, Vernon W. Eldridge, and Estate of Sybil Baldwin.

Cross Defendants,

Spencer Riedel,

Counter Claimant,

vs.

Daniel Felix and Dorothy Felix,

Counter Defendants.

Spencer Riedel,

Cross Claimant,

vs.

Pic-N-Run, Inc., an Arizona Corporation; Milan Building Associates, Inc., a Texas Corporation; Stella Jeanette Eldridge, Vernon W. Eldridge; Service Station Equipment & Sales Co., an Arizona Corporation; and Estate of Sybil Baldwin.

Cross Defendants.

Defendant Estate of Sybil Baldwin (herein after referenced to as “Estate”) replies to Plaintiff’s response to the Estate’s motion to dismiss (“motion”) and replies to Defendant Pic-N-Run’s response to the motion. The replies are as follows:

# MEMORANDUM IN SUPPORT OF THE REPLIES

1 I. INTRODUCTION

2 Plaintiffs responded to the motion of the Estate on May 27, 2011, and Defendant Pic-N-  
3 Run responded to the motion on May 31, 2011. Milam essentially agreed with the motion but on  
4 different grounds. The Estate is not replying to Milan's response. Estate does agree with the  
5 Reply of Milam in that federal court should not maintain jurisdiction on judicial economy and  
6 efficiency grounds.  
7

8 The other responses do not justify keeping this case in federal court.

9 II. ARGUMENT

10 **A. There is no state claim in this case and the case should be dismissed.**

11 There are no disputes on two points. The first is, no federal claims exists after May 4,  
12 2010 when this court dismissed all federal claims arising from RCA, 42 U.S.C. § 6921.  
13 Secondly, the gasoline contamination occurred on Navajo trust land and not on state land.  
14

15 On May 4, 2010, when the court dismissed all federal claims, it entered an order  
16 determining that it had jurisdiction in accordance with 28 U.S.C. § 1367 (c)(3) and Schneider v.  
17 TRW, Inc. 938 F. 2d 986, 988, (9<sup>th</sup> Cir. 1991). In Schneider, the court was dealing with state  
18 causes of action after dismissing the federal claims.  
19

20 In the responses filed by Plaintiffs and Defendant Felix, their arguments are that this  
21 federal court has jurisdiction over the claims because remaining claims are state claims. See,  
22 PNR's response at 3 and Plaintiff's response at 3. There are no state claims. As mentioned in the  
23 motion, Congress enacted Public Law 280 to allow states such as Arizona to assume state civil  
24 and criminal jurisdiction over Indian country. (Emphasis Added). See, the Estate's motion to  
25 dismiss at p.5. Also, Article XX of the Arizona Constitution disclaimed civil and criminal  
26  
27  
28

1 jurisdiction over Indian lands. See, the Estate's motion to dismiss at p. 5. This disclaimer clause  
2 was enacted on February 6, 1984.

3 Since 1984, Arizona has not assumed civil and criminal jurisdiction over Indian land. As  
4 indicated above, there is no dispute that the gasoline contamination occurred on Navajo trust  
5 land. Arizona has not assumed civil jurisdiction over this particular land. Therefore, Arizona law  
6 does not apply to this case. As it pertains to this case, there are no state claims. Absent state  
7 claims, this court does not have jurisdiction over the case. The court should dismiss the case.  
8

9 **B. Tribal remedies should be exhausted and allow the tribal court to resolve**  
10 **issue such as whether the tribe has jurisdiction over a non-tribal member.**

11 The main principle in regards to exhaustion of tribal remedies is that the tribal court gets  
12 an opportunity entertain issues in the case. This basically means that the tribal court should get  
13 the first opportunity to review the case before the case goes to the federal court.  
14

15 In Lanphere v. Puyallup Tribe Tax Department, 387 Fed. Appx. 766 WL 2790929 (C.A.  
16 9(Wash.)), the court dismissed the case for failure to exhaust tribal remedies. Lanphere explained,  
17 in part, that the federal district court correctly held that the tribal court jurisdiction is colorable or  
18 plausible, and therefore, the tribal court is not plainly lacking. Id. In Lanphere, the non tribal  
19 member voluntarily engaged in commercial activities of purchasing and selling cigarettes on  
20 tribal land. Id. Therefore, tribal court jurisdiction is plausible and exhaustion of tribal remedies is  
21 required. Id.  
22

23 As it presents to the present case, tribal court jurisdiction is plausible. The gasoline  
24 contamination occurred on Navajo tribal trust land. Defendant Pic-N-Run voluntarily engaged in  
25 commercial activities of the Navajo reservation by operating a gas and convenient store. See,  
26 Exhibit 2 attached to Estate's motion to dismiss. Defendant Pic-N-Run subleased the tribal trust  
27 land from Defendant Sybil Baldwin, a member of the Navajo Nation. The lease agreement shows  
28

her census number as C# 67,186. All Defendants also voluntarily engaged in commercial activities on the Navajo trust land by subcontracting and performing certain functions that lead to the gasoline contamination. See, the Second Amended Complaint.

With these facts, tribal court jurisdiction is plausible. The tribal court should be given the first opportunity to address issues relating to whether it has jurisdiction over the non-tribal member and whether the Montana exceptions allow the tribal court to have jurisdiction. This case should be dismissed for failure to exhaust tribal remedies.

**C. The Montana exception applies to Defendant Pic-N-Run.**

In the response of Defendant Pic-N-Run, it argues that the tribal court does not have jurisdiction over non-tribal member per Montana and asserts that the two exceptions of Montana do not apply. See, Response of PNR at 7. Defendant Pic-N-Run is wrong.

Defendant Pic-N-Run cites Montana as follows:

A tribal may regulate, through taxation, licensing, or other means, the activities of non-members who enter consensual relationship with the tribe or its members through commercial dealings, contracts, leases, or other arrangement. A tribe may also retain inherent authority to exercise civil authority over the conduct of non-Indians on fee land within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security or the health and welfare of the tribe. See, PNR's response a 6. (Emphasis Added).

After citing the above, Defendant Pic-N-Run argues that all parties are not members of the Navajo tribe, and they do not have a contract with the tribe to implicate one of the exceptions to Montana. This is incorrect. First, Montana states that the tribe has jurisdiction if the non-tribal member enters into a contract, lease or other arrangement with a tribal member. This requirement is met. Pic-N-Run has a sublease with Defendant Sybil Baldwin. This is acknowledged by Pic-N-Run at its foot note number 3 in the response. See, Defendant PNR's response at 7. The other parties are not raising the issue, and no reply is necessary for their situation. As to Defendant Pic-N-Run's response, Defendant Pic-N-Run voluntarily consented to conduct business on

1 Navajo trust land by entering into the sublease with the Estate, and as such, the Montana  
2 exception has been met. The tribal court has jurisdiction to entertain Defendant Pic-N-Run's  
3 case. This case should be dismissed.

4 III. CONCLUSION

5 For the foregoing reasons, Defendant Estate requests the court to dismiss the case.

6 Respectfully submitted on this 17th day of June 2011.

7  
8 /s/ Sampson Martinez  
9 Sampson Martinez  
Attorney for Defendant Estate

10 CERTIFICATION OF SERVICE

11 The original has been e-filed with the  
12 Clerk of the Court on this 17<sup>th</sup> day of  
13 June, 2011

14 The Honorable James A. Teilborg  
15 United States District Judge  
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16 Phoenix, Arizona 85003

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