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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

COEUR D'ALENE TRIBE, a federally)	Case No.:
recognized Indian Tribe,)	
)	COMPLAINT
Plaintiff,)	
)	
vs.)	
)	
STEVE W. HAWKS and DEANNE A.)	
HAWKS, husband and wife,)	
)	
Defendants)	

Plaintiff, COEUR D'ALENE TRIBE, a native sovereign entity, alleges the following:

PARTIES

1. Plaintiff is the Coeur d'Alene Tribe, a federally recognized Indian Tribe and a sovereign government with a reservation located in Kootenai and Benewah Counties within the state of Idaho.

2. Defendants have an interest in real property abutting the lake Coeur d'Alene waterway, specifically the St. Joe River, within the confines of the Coeur d'Alene Tribal Reservation.

COMPLAINT: 1

JURISDICTION & VENUE

3. This Court has jurisdiction over this action pursuant to *Hilton v. Guyot*, 159 U.S. 113 (1895), *Wilson v. Marchington*, 127 F.3d 805 (1997), and 28 U.S.C. § 1362.

4. The Coeur d'Alene Tribe is legally entitled to the exclusive use and occupancy of the submerged lands and waters within the Coeur d'Alene Reservation and regulates the use of the submerged lands. *See Idaho v. United States and Coeur d'Alene Tribe*, 533 U.S. 262 (2001).

5. On, July 15, 2016, in Case No. CV-DE-2016-0074 before the Tribal Court of the Coeur d'Alene Tribe of the Coeur d'Alene Indian Reservation, a final, conclusive, and enforceable Judgment was entered against Defendants. This Court has jurisdiction to recognize and enforce the Judgment of the Coeur d'Alene Tribal Court pursuant to the principles of comity. *See Wilson v. Marchington*, 127 F.3d 805 (1997).

CLAIM FOR RECOGNITION OF TRIBAL COURT JUDGMENT

6. The Coeur d'Alene Tribe exercises exclusive sovereignty and dominion over the submerged lands and waters within the Coeur d'Alene Reservation. The Coeur d'Alene Tribal Court had exclusive jurisdiction over the subject matter of Tribal Court of the Coeur d'Alene Tribe Case No. CV-DE- 2016-0074.

7. Defendants are the owners or have an interest in real property on the St. Joe River within the Coeur d'Alene Tribal Reservation. Therefore, the Coeur d'Alene Tribal Court had personal jurisdiction over Defendants.

8. The underlying matter, Tribal Court of the Coeur d'Alene Tribe Case No. CV-DE- 2016-0074, involved encroachments owned by Defendants, in or above the submerged lands of the Coeur d'Alene Tribal Reservation, specifically consisting of a boat garage and pilings within the St. Joe River.

9. Tribal Court of the Coeur d'Alene Tribe Case No. CV-DE- 2016-0074 was heard before the Tribal Court of the Coeur d'Alene Tribe, the Honorable Ken Nagy presiding, on June 21, 2016.

10. The Coeur d'Alene Tribe has adopted a tribal code, and specifically the Coeur d'Alene Tribal Code (hereinafter "CTC") 44-1.01, *et seq.*, addresses encroachment such as the Defendants' encroachments.

11. Pursuant to CTC 44-24.01(e), the Coeur d'Alene Tribal Court had exclusive jurisdiction over the matter as it has jurisdiction over any suit for possession, trespass, or civil penalty resulting from any violations of Chapter 44 of the Coeur d'Alene Tribal Code.

12. Defendants were given notice and opportunity to be heard in Tribal Court of the Coeur d'Alene Tribe Case No. CV-DE- 2016-0074, yet they failed to appear in the case and at the June 21, 2016 hearing.

13. Despite the Defendants' default and absence at the June 21, 2016 hearing, the Coeur d'Alene Tribal Court heard testimony and reviewed evidence presented by Plaintiff. Following that hearing the Court granted a final, conclusive, and enforceable Judgment against Defendants in favor of Plaintiff; a copy true and complete of that Judgment is attached hereto as Exhibit "1". The Court entered its Findings of Fact and Conclusions of Law on July 15, 2016; a copy true and complete of the Court's Findings of Fact and Conclusions of Law is attached hereto as Exhibit "2".

14. On July 15, 2016, in Case No. CV-DE-2016-0074 before the Tribal Court of the Coeur d'Alene Tribe of the Coeur d'Alene Indian Reservation, Plaintiff was granted final, conclusive, and enforceable Judgment against Defendants.

15. The July 15, 2016 final, conclusive, and enforceable Judgment of the Tribal Court of the Coeur d'Alene Tribe of the Coeur d'Alene Indian Reservation is entitled to recognition under the principles of comity. *See Wilson v. Marchington*, 127 F.3d 805 (1997).

WHEREFORE, Plaintiff prays for the following relief:

1. For recognition and enforcement of the July 15, 2016 Judgment of the Tribal Court of the Coeur d'Alene Tribe of the Coeur d'Alene Indian Reservation;
2. For an award of attorney fees and costs. In the event of default Plaintiff requests an award of attorney fees in the amount of \$2,000.00; and
3. For such other and further relief as the Court may deem just and equitable.

DATED this 12 day of August, 2016.

SMITH + MALEK, PLLC

By 

PETER J. SMITH IV, ISB No. 6997
Attorneys for Plaintiff

EXHIBIT "1"

Judgment
July 15, 2016

EVERETT B. COULTER, JR.
CHRISTOHER J. KERLEY
EVANS, CRAVEN & LACKIE, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201-0910
(509) 455-5200; (509) 455-3632

Attorneys for Plaintiff

FILED

Date: 7-18-16

Time: 10:40

Coeur d'Alene
Tribal Court

RR
Court Clerk

by: _____

RECEIVED

IN THE TRIBAL COURT OF THE COEUR D' ALENE TRIBE
OF THE COEUR D' ALENE INDIAN RESERVATION

COEUR D'ALENE TRIBE, a federally
recognized Indian Tribe,

Plaintiff,

vs.

STEVE W. HAWKS and DEANNE A.
HAWKS, husband and wife,

Defendants.

Case No. CV-DE-2016-0074

JUDGMENT

THIS MATTER having come on regularly for hearing upon the Motion and application of the Plaintiff for entry of a judgment against Defendants. The Court finds the following:

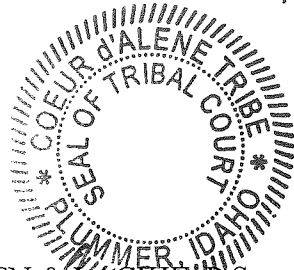
1. The Court has jurisdiction over this matter pursuant to CTC 44-1.01, *et seq.*, and *Idaho v. United States and Coeur d'Alene Tribe*, 533 U.S. 262 (2001);
2. The Court finds Defendants have received notice of this suit, and further finds the Defendants are in default and an Order of Default has been entered; and
3. The Court finds that a judgment should be entered against the Defendant for a civil penalty in the amount of \$ 3,900⁰⁰, and a finding that the Defendants are trespassing upon tribally controlled lands, and lastly the Tribe is entitled to remove the encroachments.


JUDGMENT

NOW, THEREFORE IT IS ORDERED AND DECREED as follows:

1. A judgment in the amount of \$ 3,900⁰⁰ as a civil penalty is entered against Defendants and in favor of Plaintiff;
2. It is the judgment of this Court that the Defendant have trespassed against Plaintiff by maintaining encroachments without proper permits; and
3. The Tribe is entitled to remove the encroachments.

DONE IN OPEN COURT this 15th day of July 2016. (K)





TRIBAL COURT JUDGE

Presented by:

EVANS, CRAVEN & LACROIX, P.S.

By



EVERETT B. COULTER, JR.
Attorney for Plaintiff

CLERK'S CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury under the laws of the state of Idaho, that on the 18 day of July, 2016, the foregoing was delivered to the following persons in manner indicated:

Steven W. Hawks Deanne A. Hawks 89231 Highway 3 North St. Maries, ID 83861	Via Regular Mail <input checked="" type="checkbox"/> Via Certified Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Hand Delivered <input type="checkbox"/>
Norman Semanko Moffatt, Thomas, Barrett, Rock, Fields P.O. Box 829 Boise, ID 83701	Via Regular Mail <input checked="" type="checkbox"/> Via Certified Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Hand Delivered <input type="checkbox"/>
Everett B. Coulter, Jr. Evans, Craven & Lackie, P.S. 818 W. Riverside Ave., Ste. 250 Spokane, WA 99201	Via Regular Mail <input checked="" type="checkbox"/> Via Certified Mail <input type="checkbox"/> Via Facsimile 509/455-3632 <input type="checkbox"/> Hand Delivered <input type="checkbox"/>


Clerk

EXHIBIT "2"

**Findings of Fact and
Conclusions of Law
July 15, 2016**

FILED

Date: 7-18-16

Time: 10:40

Coeur d'Alene
Tribal Court

R
Court Clerk

by: _____

RECEIVED

EVERETT B. COULTER, JR.
CHRISTOPHER J. KERLEY
EVANS, CRAVEN & LACKIE, P.S.
818 W. Riverside, Suite 250
Spokane, WA 99201-0910
(509) 455-5200; (509) 455-3632

Attorneys for Plaintiff

**IN THE TRIBAL COURT OF THE COEUR D' ALENE TRIBE
OF THE COEUR D' ALENE INDIAN RESERVATION**

COEUR D'ALENE TRIBE, a federally
recognized Indian Tribe,

Plaintiff,

vs.

STEVE W. HAWKS and DEANNE A.
HAWKS, husband and wife,

Defendants.

Case No. CV-DE-2016-0074

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

THIS MATTER coming regularly on for hearing before the Coeur d'Alene Tribal Court on June 21, 2016, at 11:00 a.m. The Court having reviewed the Summons and Complaint filed in Tribal Court on May 13, 2016, the Affidavit of Service indicating that the Defendants were served on May 24, 2016, the Motion and Affidavit for Default and Default Judgment, the Affidavit of Jason Brown, and considering the testimony of Jason Brown presented in Tribal Court in support of the relief requested by the Coeur d'Alene Tribe. The Court now makes the following:

FINDINGS OF FACT

1. The Coeur d'Alene Tribe is a federally recognized Indian Tribe with a tribal reservation in north Idaho including parts of Kootenai and Benewah County.
2. The Coeur d'Alene Tribal Reservation encompasses the southern part of Lake Coeur d'Alene and parts of the St. Joe River.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

3. Steve W. Hawks and Deanne A. Hawks are husband and wife and own an interest in real property abutting the Lake Coeur d'Alene waterway and specifically the St. Joe River within the confines of the Coeur d'Alene Tribal Reservation.

4. The Defendants have owned and maintained pilings in the St. Joe River below the ordinary high water mark of 2,128 feet.

5. The Court considered Plaintiff's Exhibit No. 1 which was admitted into evidence that depicts the location of the pilings in the bed of the St. Joe River below the river level of 2,128 feet.

6. The oral testimony of Jason Brown established that the Defendants have a waterline lying on the river bed out to pilings that are at an approximate water depth of 2,113 feet and that the waterline lies on the river bottom. The line is attached to a piling.

7. The Tribe's Exhibit Nos. 2 and 3 depict the Defendants' boat garage located within a side channel lagoon of the St. Joe River and that the boat garage is moored by way of a piling driven into the bed of the river lagoon. The Tribe's Exhibit Nos. 2 and 3 were admitted into evidence by the Court.

8. The pilings, waterline and boat garage constitute an encroachment as defined by the Coeur d'Alene Tribal Code.

9. Jason Brown is the program manager for the Coeur d'Alene Tribe pertaining to lake management and is the person in charge of processing and enforcing encroachment permits for property owners that have encroachments in the Coeur d'Alene waterway.

10. Starting in 2003 and 2004 Jason Brown submitted several letters and compliance orders to the Defendants advising the Defendants that they needed to obtain encroachment permits from the Coeur d'Alene Tribe pursuant to the Coeur d'Alene Tribal Code. The Defendants never responded to the letters or compliance orders.

11. Suit in this matter was filed on May 13, 2016, in the Coeur d'Alene Tribal Court and service of process was on May 24, 2016. Defendants did not appear or answer the Complaint.

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

12. Defendants and their attorney did receive notice of the Motion for Default and default judgment hearing as evidenced by the Certificate of Mailing appended to the Notice of Hearing and the Motion for Default and Default Judgment.

13. More than twenty (20) days have elapsed since the Defendants were served with the Summons and Complaint.

14. The Coeur d'Alene Tribal Code Section 44-1.01 et seq. provides that the Coeur d'Alene Tribe may seek a civil penalty not to exceed \$500 per day for every day an encroachment exists without a permit from the Coeur d'Alene Tribe. The Tribe has not sought the maximum \$500 per day civil penalty but rather has sought \$100 per day from the date of filing on May 13, 2016, through June 21, 2016, for a total of 39 days at \$100 per day and a money judgment amount of \$3,900.

15. The Tribe has further sought a finding that the Defendants are trespassing upon Tribally controlled lands and that the Tribe is entitled to remove the encroachments due to a lack of a permit for the encroachments.

CONCLUSIONS OF LAW

1. The Coeur d'Alene Tribal Court has jurisdiction over this matter based upon *Idaho v. United States and Coeur d'Alene Tribe*, 533 U.S. 262 (2001) and the Coeur d'Alene Tribe's code provisions in Section 44-1.01 et seq. allowing the Tribe to regulate the Lake Coeur d'Alene waterway within the Coeur d'Alene Tribal Reservation boundary.

2. The Tribe has subject matter jurisdiction over the matter based upon the encroachments maintained by the Defendants without a permit from the Coeur d'Alene Tribe.

3. The Coeur d'Alene Tribal Court has personal jurisdiction over the Defendants based upon the Defendants owning real property within the reservation boundaries that is adjacent to the Lake Coeur d'Alene waterway and maintaining encroachments without a permit from the Coeur d'Alene Tribe.

4. The Coeur d'Alene Tribe has regulatory jurisdiction over the Lake Coeur d'Alene waterway and adjudicatory jurisdiction for violations of the Coeur d'Alene Tribal Code pertaining to encroachments without a Tribal permit.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

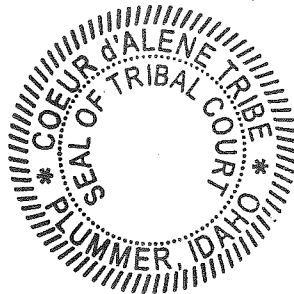
5. The Defendants are in default for failing to appear and defend in this matter and an Order of Default has been entered. The Court having reviewed the Complaint for damages and eviction filed in the Tribal Court takes the allegations in the Complaint as true.

6. The Coeur d'Alene Tribe should be awarded a judgment against the Defendants in the amount of \$3,900.

7. The Court concludes that the Defendants are trespassing upon Tribally-controlled lands and that the Tribe is entitled to an Order of Eviction to remove the encroachments.

8. Pursuant to Coeur d'Alene Tribal Code Section 44-24.01(e), the Coeur d'Alene Tribal Court has exclusive jurisdiction over encroachment violations as defined in Chapter 44 of the Coeur d'Alene Tribal Code including suits for damages or trespass.

DONE IN OPEN COURT this 15th day of June, 2016.

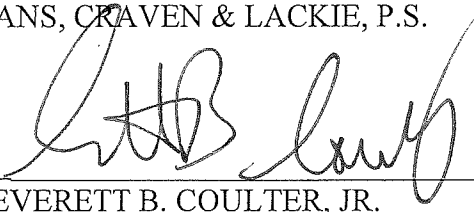


TRIBAL COURT JUDGE

Presented by:

EVANS, CRAVEN & LACKIE, P.S.

By

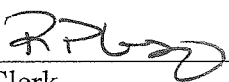

EVERETT B. COULTER, JR.
Attorney for Plaintiff

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

CLERK'S CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 18 day of July, 2016, the foregoing was delivered to the following persons in manner indicated:

Steven W. Hawks Deanne A. Hawks 89231 Highway 3 North St. Maries, ID 83861	Via Regular Mail <input checked="" type="checkbox"/> Via Certified Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Hand Delivered <input type="checkbox"/>
Norman Semanko Moffatt, Thomas, Barrett, Rock, Fields P.O. Box 829 Boise, ID 83701	Via Regular Mail <input checked="" type="checkbox"/> Via Certified Mail <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Hand Delivered <input type="checkbox"/>
Everett B. Coulter, Jr. Evans, Craven & Lackie, P.S. 818 W. Riverside Ave., Ste. 250 Spokane, WA 99201	Via Regular Mail <input checked="" type="checkbox"/> Via Certified Mail <input type="checkbox"/> Via Facsimile 509/455-3632 <input type="checkbox"/> Hand Delivered <input type="checkbox"/>


Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff(s)

v.

Defendant(s)

)
)
)
)
)
)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff Benewah (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Smith + Malek, PLLC 1250 W. Ironwood Drive, Suite 316, Coeur d'Alene, ID 83814

DEFENDANTS

County of Residence of First Listed Defendant Benewah (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor Standards, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Wilson v. Marchington, 127 F.3d 805 (1997)

Brief description of cause: Recognition of Tribal Court Judgment under principal of Comity

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMANDS CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE August 12, 2016

SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE