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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON**

**JAMES CLEMENTS and  
JASON CLEMENTS,**

Plaintiffs,

v.

**THE CONFEDERATED  
TRIBES OF THE COLVILLE  
RESERVATION and  
THE COURT OF THE  
CONFEDERATED  
TRIBES OF THE COLVILLE  
RESERVATION,**

Defendants.

**No: 2:19-cv-00201-RMP**

**DEFENDANTS'  
MEMORANDUM IN SUPPORT  
OF MOTION TO DISMISS**

**INTRODUCTION**

The Confederated Tribes of the Colville Reservation (the “Tribes”) and the Colville Tribal Court (collectively, the “Defendants”) hereby move to dismiss Plaintiffs’ Complaint for lack of subject matter jurisdiction. In this case, Plaintiffs’ claims are precluded by Defendants’ sovereign immunity from suit. Well-established case law indicates that Indian tribes and their governmental entities, including tribal courts, enjoy sovereign immunity from the type of declaratory and injunctive relief sought by Plaintiffs. In addition, Plaintiffs must first exhaust their remedies in the Colville Tribal Court before seeking to bring any action in federal court challenging the Tribal Court’s jurisdiction over them.

Despite Plaintiffs’ assertions to the contrary, their Tribal Court remedies have not yet been exhausted. Plaintiffs expressly consented to the sole and exclusive jurisdiction of the Colville Tribal Court over any dispute arising from the Contract with the Tribes. The Colville Tribal Court has yet to engage in fact-finding to review “the arguments for and against personal jurisdiction.” Further, the parties have not yet had the opportunity to engage in discovery and participate in a trial to determine whether the Colville Tribal Court may “pierce the corporate veil” and proceed to assert personal jurisdiction over Plaintiffs. Accordingly, Plaintiffs must first exhaust their Tribal Court remedies before seeking redress in

1 the courts of another sovereign. For these reasons, Plaintiffs' claims must be  
2 dismissed.

### 3 SUMMARY OF THE CASE

4 In November 2016, the Tribes and South Bay Excavating, Inc. ("South  
5 Bay") executed a Contract for Repair and/or Construction Services, which was  
6 signed by Plaintiff Jason Clements in his capacity as the vice president of South  
7 Bay. Contract, Ex. 1. Under the Contract, South Bay was to install approximately  
8 35 miles of optical fiber cable in a corridor within the Colville Reservation in  
9 exchange for \$2,457,194 paid by the Tribes with 20 percent of the contract price to  
10 be paid prior to the commencement of the project. *Id.* §§ 2–3, Ex. 1. The parties  
11 agreed that time for performance of the Contract was deemed to be "of the  
12 essence" with all work to be completed no later than October 31, 2017. *Id.* §§ 6,  
13 14 Ex. 1. In the Contract, South Bay and the Tribes agreed that the Tribal Courts  
14 of the Colville Confederated Tribes would have "sole and exclusive jurisdiction  
15 over disputes" arising from the Contract. *Id.* § 20, Ex. 1.

16 Between the dates of November 23, 2016, through March 13, 2016, the  
17 Tribes paid a total amount of \$550,883.60 to South Bay, paid in advance of work  
18 completion pursuant to the Contract. Tribal Ct. Compl. ¶ 7, Ex. 2. On or about  
19 June 1, 2017, without advance notice to the Tribes, South Bay failed to show up to  
20 perform the work required under the Contract. Letter from the Tribes to Jim

1 Clements, Ex. 3. On June 22, 2017, the Tribes received a letter from South Sound  
2 Bank notifying the Tribes that it held a security interest in South Bay's accounts  
3 and it was exercising its right to collect any amounts owed by the Tribes to South  
4 Bay. Letter from South Sound Bank to the Tribes, Ex. 4. Based on South Bay's  
5 failure to perform the work required under the Contract, the Tribes made no  
6 subsequent payments to South Bay or the South Sound Bank. Tribal Ct. Compl. ¶  
7 13, Ex. 2.

8 On July 6, 2017, without any notice to the Tribes, Jason Clements filed a  
9 certificate of incorporation to establish Liquid Networks, Inc. ("Liquid  
10 Networks"), a Washington profit corporation. Certificate of Incorporation, Ex. 5.  
11 On July 7, the Tribes received a letter stating that the Contract entitled: Project  
12 Name "CTCR 12 Fiber Projects" had been assigned to Liquid Networks, Inc. from  
13 South Bay. Letter from Counsel for Liquid Networks to the Tribes, Ex. 6;  
14 Assignment of Contract, Ex. 7. This assignment was not permitted under the  
15 Contract, which expressly provides that "[c]ontractor shall be solely responsible  
16 for all construction under this Contract, including the techniques, sequences,  
17 procedures, and means for coordination of all work." Contract § 13(a), Ex. 1. The  
18 creation of Liquid Networks and assignment of the Contract appear to have been  
19 done solely to evade collections efforts by South Sound Bank.

1       Following the unauthorized assignment of the contract by South Bay, the  
2 Tribes expended time and financial resources negotiating with, and attempting to  
3 understand, the actions taken by Plaintiffs to incorporate Liquid Networks and  
4 assign the contract with the Tribes to this newly established business entity. On  
5 August 28, 2017, the Tribes sent a demand letter to South Bay clarifying the  
6 amount due and owed to the Tribes at that time of \$385,000 for work not yet  
7 completed and \$25,000 in required TERO fee payments, and clarified that the  
8 Tribes terminated the Contract for cause. Letter from the Tribes to Jim Clements,  
9 Ex. 3. South Bay apparently refused service of the letter and provided the Tribes  
10 with no response. The Tribes has taken measures to mitigate the damages caused  
11 by South Bay, and as a result, the Tribes must republish a request for proposal to  
12 solicit bids by contractors to complete the remainder of the project, or complete the  
13 work themselves.

14       On January 5, 2018, the Tribes filed a complaint in Colville Tribal Court  
15 against James Clements and Jason Clements, as well as South Bay and Liquid  
16 Networks alleging breach of contract in their individual and corporate capacities.  
17 Tribal Ct. Compl., Ex. 2. On May 17, 2018, the Colville Trial Court entered an  
18 order denying Plaintiffs' motion to dismiss for lack of personal and subject matter  
19 jurisdiction over the case. Tribal Ct. Order dated May 17, 2018, Ex. 8. Plaintiffs  
20 filed an interlocutory appeal in the Colville Tribal Court of Appeals, which alleged

1 lack of personal and subject matter jurisdiction over them. Tribal Ct. Order dated  
2 Mar. 19, 2019, Ex. 9.

3 On March 19, 2019, the Colville Tribal Court of Appeals affirmed the Trial  
4 Court's decision that the Tribal Court may properly exercise subject matter  
5 jurisdiction over this case and make a determination, following discovery,  
6 regarding personal jurisdiction. *Id.*, Ex. 9. In its decision, the Colville Tribal  
7 Court of Appeals determined that the Colville Trial Court properly had subject  
8 matter jurisdiction over Plaintiffs based on the Contract provision stating that the  
9 Colville Tribal Court has sole and exclusive jurisdiction over disputes under the  
10 Contract. *Id.*, Ex. 9.

11 The Colville Tribal Court of Appeals further concluded that there has not  
12 been any fact-finding to review the question of whether there is personal  
13 jurisdiction over Plaintiffs and/or liability in their individual capacity. *Id.*, Ex. 9.  
14 The court reasoned that the "question of piercing the corporate veil is a question of  
15 fact." *Id.*, Ex. 9. The court further explained that "[a]s such, it is not ripe for an  
16 interlocutory appeal, it is a matter for the fact-finder at the trial level." *Id.*, Ex. 9.  
17 Plaintiffs' Complaint seeking declaratory and injunctive relief in this federal  
18 District Court followed, notwithstanding the fact that the tribal court matter has yet  
19 to proceed into the discovery phase.

## STANDARD OF REVIEW

Under Rule 12(b)(1) of the Federal Rules of Civil Procedure, a party may move for dismissal of a complaint for lack of subject-matter jurisdiction. Fed. R. Civ. P. 12(b)(1). A federal court's jurisdiction is limited to which is recognized by the U.S. Constitution or federal statute: "Federal courts are not courts of general jurisdiction; they have only the power that is authorized by Article III of the Constitution and the statutes enacted by Congress pursuant thereto." *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986).

Subject matter jurisdiction is a threshold issue that must be addressed before a lawsuit may proceed. *See Bibiano v. Lynch*, 834 F.3d 966, 970 n.4 (9th Cir. 2016). In considering a motion to dismiss for lack of subject matter jurisdiction, "the district court is not restricted to the face of the pleadings, but may review any evidence, such as affidavits and testimony, to resolve factual disputes concerning the existence of jurisdiction." *McCarthy v. United States*, 850 F.2d 558, 560 (9th Cir. 1988). Plaintiffs bear "the burden to establish subject matter jurisdiction by a preponderance of the evidence." *United States ex rel. Solis v. Millennium Pharmaceuticals, Inc.*, 885 F.3d 623, 625 (9th Cir. 2018). "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3).

1 This case fundamentally involves the Tribes' sovereign immunity from suit,  
2 which precludes subject matter jurisdiction over this matter. *See Alvarado v. Table*  
3 *Mountain Rancheria*, 509 F.3d 1008, 1015–16 (9th Cir. 2007) (“[T]ribal immunity  
4 precludes subject matter jurisdiction in an action against an Indian tribe.”).

5 Because Plaintiffs have failed to satisfy their burden of establishing that this Court  
6 has subject matter jurisdiction, this case must be dismissed.

7 **I. Tribal Sovereign Immunity Bars this Lawsuit**

8 The Confederated Tribes of the Colville Reservation is a federally  
9 recognized Indian tribe. 84 Fed. Reg. 1200, 1201 (Feb. 1, 2019). It is well-settled  
10 that “Indian tribes have long been recognized as possessing the common-law  
11 immunity from suit traditionally enjoyed by sovereign powers.” *Santa Clara*  
12 *Pueblo v. Martinez*, 436 U.S. 49, 58 (1978); *see also United States v. Oregon*, 657  
13 F.2d 1009, 1013 (9th Cir. 1981) (quoting *United States v. U.S. Fidelity & Guaranty*  
14 *Co.*, 309 U.S. 506, 512–13 (1940)) (“Indian tribes enjoy immunity because they  
15 are sovereigns pre-dating the constitution, and immunity is thought necessary to  
16 preserve autonomous tribal existence.”).

17 **A. The Tribes Enjoy Sovereign Immunity from Plaintiffs' Claims.**

18 “As a matter of federal law, an Indian tribe is subject to suit only where  
19 Congress has authorized the suit or the tribe has waived its immunity.” *Kiowa*  
20 *Tribe of Okla. v. Mfg. Techs., Inc.*, 523 U.S. 751, 754 (1998); *Michigan v. Bay*



1 *Mills Indian Cmty.*, 572 U.S. 782, 789 (2014) (“[W]e have time and again treated  
 2 the ‘doctrine of tribal immunity [as] settled law’ and dismissed any suit against a  
 3 tribe absent congressional authorization (or a waiver)).” Tribal sovereign  
 4 immunity “extends to suits for declaratory and injunctive relief.” *Imperial Granite*  
 5 *Co. v. Pala Band of Mission Indians*, 940 F.2d 1269, 1271 (9th Cir. 1991) (citing  
 6 *Santa Clara Pueblo*, 436 U.S. at 59)). Thus, the Colville Tribes is immune from  
 7 suit, and the Court lacks subject matter jurisdiction to hear Plaintiffs’ claims  
 8 against the Tribes.

9 **B. The Tribes’ Sovereign Immunity Extends to the Colville Tribal**  
 10 **Court.**

11 The Tribes’ sovereign immunity from suit extends to the Colville Tribal  
 12 Court. Tribal sovereign immunity from suit extends to entities that operate an arm  
 13 of a tribe. *Allen v. Gold Country Casino*, 464 F.3d 1044, 1047 (9th Cir. 2006); *see*  
 14 *also Desautel v. Dupris*, No. CV-11-0301, 2011 WL 5025270, at \*3 (E.D. Wash.  
 15 Oct. 21, 2011) (“[T]ribal agencies, instrumentalities, and individuals acting within  
 16 their official capacity, such as the Colville Business Council[] [and] Colville Tribal  
 17 Courts . . . are also protected by tribal sovereign immunity.”). Consequently, the  
 18 Colville Tribal Court is immune from Plaintiffs’ claims.

19 **C. There Has Been No Waiver of the Tribes’ Sovereign Immunity.**

20 Plaintiffs “bear[] the burden of pointing to such an unequivocal waiver of  
 21 immunity.” *Holloman v. Watt*, 708 F.2d 1399, 1401 (9th Cir. 1983); *see also Dine*

1 *Citizens Against Ruining Our Env't v. Bureau of Indian Affairs*, 932 F.3d 843, 856  
2 (9th Cir. 2019) (quoting *Cook v. AVI Casino Enters., Inc.*, 548 F.3d 718, 725  
3 (9th Cir. 2008)) (“Tribal sovereign immunity protects Indian tribes from suit  
4 absent express authorization by Congress or clear waiver by the tribe.”). In this  
5 case, Plaintiffs allege no waiver of the sovereign immunity. The lack of waiver of  
6 sovereign immunity is fatal to Plaintiffs’ claims.

7 **II. The Exhaustion Doctrine Precludes this Action from Proceeding in**  
8 **Federal Court**

9 Plaintiffs must first exhaust their tribal court remedies before challenging the  
10 Colville Tribal Court’s jurisdiction over them. *See Nat’l Farmers Union Ins. Cos.*  
11 *v. Crow Tribe*, 471 U.S. 845 (1985); *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9  
12 (1987). “Principles of comity require federal courts to dismiss or to abstain from  
13 deciding claims over which tribal court jurisdiction is colorable, provided that  
14 there is no evidence of bad faith or harassment.” *Marceau v. Blackfeet Hous.*  
15 *Auth.*, 540 F.3d 916, 920 (9th Cir. 2008) (quotations omitted); *see also Grand*  
16 *Canyon Skywalk Dev., LLC v. ‘Sa’ Nyu Wa Inc.*, 715 F.3d 1196, 1200 (9th Cir.  
17 2013) (“Federal law has long recognized a respect for comity and deference to the  
18 tribal court as the appropriate court of first impression to determine its  
19 jurisdiction.”); *Wilson v. Horton’s Towing*, 906 F.3d 773, 780 (9th Cir. 2018)  
20 (explaining that the court “need not reach the ultimate issue of whether tribal

1 jurisdiction exists before resolving the threshold question of whether exhaustion is  
2 required because tribal jurisdiction is colorable”).

3 **A. Tribal Court Jurisdiction Over Plaintiffs is Clearly “Colorable” or**  
4 **“Plausible.”**

5 In this case, Tribal Court jurisdiction over Plaintiffs is “colorable” or  
6 “plausible” because the events giving rise to the Tribes’ claims occurred or were  
7 commenced within the boundaries of the Colville Reservation. *See Wilson*, 906  
8 F.3d at 779 (quoting *A & A Concrete, Inc. v. White Mountain Apache Tribe*, 781  
9 F.2d 1411, 1416 (9th Cir. 1986)) (“Tribal jurisdiction is colorable, for example,  
10 when the events that ‘form the bases for [Plaintiff’s] claims occurred or were  
11 commenced on tribal territory.’”); *Water Wheel Camp Recreational Area, Inc. v.*  
12 *LaRance*, 642 F.3d 802, 814 (9th Cir. 2011) (stating that where the nonmember  
13 activity occurred on tribal land, and when there are no competing state interests at  
14 play, “the tribe’s status as landowner is enough to support regulatory jurisdiction  
15 without considering *Montana* [*v. United States*].”).

16 The Tribes’ action brought against Plaintiffs, as well as South Bay and  
17 Liquid Networks, in the Colville Tribal Court is directly related to South Bay’s  
18 breach of contract and failure to complete the work within the Colville Reservation  
19 as required under the Contract with the Tribes. Specifically, the Contract was  
20 authorized by the Tribes and Plaintiff Jason Clements in his capacity as the vice  
21 president of South Bay on the Colville Reservation. Contract, Ex. 1. In addition,  
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1 the work required to be performed by South Bay under the Contract was to be  
2 complete within the boundaries of the Colville Reservation. Contract § 2, Ex. 1;  
3 Tribal Ct. Compl. ¶ 13, Ex. 2. Therefore, the fact that the events giving rise to the  
4 Tribes' claims against South Bay occurred or were commenced with the Colville  
5 Reservation is sufficient to establish that Tribal Court jurisdiction over Plaintiffs is  
6 "colorable" or "plausible."

7 Plaintiffs' consensual relationship with the Tribes forms another basis in  
8 which Tribal Court jurisdiction over this case exists. *See Stock W., Inc. v.*  
9 *Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1228–30 (9th Cir.  
10 1989) (concluding that the district court's dismissal of a case involving a contract  
11 relationship between the Colville Tribes and a non-Indian business for activities  
12 taking place on-reservation on grounds of comity was not an abuse of discretion);  
13 *see also Wilson*, 906 F.3d at 779 ("Although *Montana* does not address the issue of  
14 exhaustion of tribal remedies, its reasoning informs our inquiry into whether tribal  
15 jurisdiction is colorable.").

16 In this case, Plaintiffs expressly consented to Tribal Court jurisdiction by  
17 stipulating that the Colville Tribal Court would have "sole and exclusive  
18 jurisdiction over disputes" arising from the Contract. Contract § 20, Ex. 1. This  
19 express consent to Tribal Court jurisdiction provides sufficient grounds for the  
20 Colville Tribal Court to properly exercise jurisdiction over Plaintiffs in this case.

1 *See Water Wheel*, 642 F.3d at 818 (citing *Plains Commerce Bank v. Long Family*  
2 *Land & Cattle Co.*, 554 U.S. 316, 337 (2008)) (“For purposes of determining  
3 whether a consensual relationship exists under *Montana*’s first exception, consent  
4 may be established ‘expressly or by [the nonmember’s] actions.’”); *Fry v. Colville*  
5 *Tribal Court of Confederated Tribes of Colville Reservation*, No. CV-07-0178, 2007  
6 WL 2405002, at \*3 (E.D. Wash. Aug. 17, 2007) (concluding that a tribal court may  
7 properly exercise jurisdiction over a nonmember based on consent to tribal  
8 jurisdiction in a stipulated judgment with a tribe).

9       Additionally, the Tribes’ claims brought against Plaintiffs in the Colville  
10 Tribal Court, including breach of contract, abuse of the corporate form, breach of  
11 contractual indemnification, and unjust enrichment, arise directly out of the  
12 consensual contract between Plaintiffs and the Tribes. Tribal Ct. Compl., Ex. 2.  
13 The circumstances surrounding Plaintiffs lack of completion of the project, lack of  
14 repayment, and apparent actions made in bad faith are such that Plaintiffs should  
15 have reasonably anticipated that their conduct would “trigger” Tribal Court  
16 jurisdiction over them. *See Knighton v. Cedarville Rancheria of N. Paiute Indians*,  
17 922 F.3d 892, 904 (9th Cir. 2019) (quoting *Water Wheel*, 642 F.3d at 818) (stating  
18 that given the circumstances of a consensual relationship between a nonmember  
19 and a tribe, the nonmember “should have reasonably anticipated that her conduct  
20 might ‘trigger’ tribal authority”); *Phillip Morris USA, Inc. v. King Mountain*

1 *Tobacco Co., Inc.*, 569 F.3d 932, 942 (9th Cir. 2017) (stating that there must be “a  
2 nexus to the consensual relationship between the nonmember and the disputed  
3 commercial contacts with the tribe” for there to be tribal court jurisdiction over a  
4 suit brought against a nonmember). Because the Tribes’ claims brought against  
5 Plaintiffs in the Colville Tribal Court arise directly from the parties’ consensual  
6 relationship, the Tribal Court’s jurisdiction over Plaintiffs is clearly “colorable” or  
7 “plausible” under the first *Montana* exception.

8 Furthermore, Plaintiffs have also made no showing that the Colville Tribal  
9 Court assertion of jurisdiction of the case was made in bad faith. Nor can it be said  
10 that requiring tribal court exhaustion of remedies “would serve no purpose other  
11 than delay.” *Nevada v. Hicks*, 533 U.S. 353, 369 (2001). Therefore, there is no  
12 indication that Tribal Court jurisdiction over the case is improper.

13 Finally, this Court may not issue any ruling in this case until Plaintiffs first  
14 exhaust their Tribal Court remedies and appellate review in Tribal Court is  
15 complete. *Stock W., Inc.*, 873 F.2d at 1228–30 (9th Cir. 1989) (citing *Nat’l*  
16 *Farmers Union*, 471 U.S. at 1228) (“[T]he federal courts should not even make a  
17 ruling on tribal court jurisdiction . . . until tribal remedies are exhausted.”); *Atwood*  
18 *v. Fort Peck Tribal Court Assiniboine*, 513 F.3d 943, 948 (9th Cir. 2008) (“Under  
19 the doctrine of exhaustion of tribal court remedies, relief may not be sought in  
20 federal court until appellate review of a pending matter in a tribal court is

complete.”). Because tribal court jurisdiction over Plaintiffs is “colorable” or “plausible,” Plaintiffs must exhaust all tribal court remedies before seeking relief in this Court.

**B. Plaintiffs Have Failed to Exhaust Remedies in the Colville Tribal Court.**

The U.S. Supreme Court’s rationale for adopting the exhaustion doctrine confirms that the facts pertinent to tribal court jurisdiction to this case must be developed in the Colville Tribal Court. As the Supreme Court stated, the “policy of supporting tribal self-government and self-determination” requires “a rule that will provide the [tribal court] whose jurisdiction is being challenged the first opportunity to evaluate the factual and legal bases for the challenge.” *Nat’l Farmers Union*, 471 U.S. at 856. The Supreme Court emphasized that the “orderly administration of justice in the federal court will be served by allowing a *full record to be developed in the Tribal Court* before either the merits or any question concerning appropriate relief is addressed.” *Id.* (emphasis added).

In this case, Plaintiffs have failed to exhaust remedies in the Colville Tribal Court. The question of whether the Colville Tribal Court may exercise personal jurisdiction over Plaintiffs is still an active issue that must be resolved through the fact-finding role of the Tribal Court. *See* Tribal Ct. Order dated Mar. 19, 2019, Ex. 9 (“There has been no fact-finding for us to review regarding the arguments for and against personal jurisdiction. The question of piercing the corporate veil is a

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question of fact. As such, it is not ripe for an interlocutory appeal, it is a matter for the fact-finder at the trial level.”).

Further, Plaintiffs have failed to support their assertion that they have in fact exhausted their remedies in the Colville Tribal Court. *See* Compl. ¶ 4, ECF No. 1. Comity and deference must be given to the Colville Tribal Court to develop a full record in this case before the merits or any question concerning appropriation relief is addressed. Accordingly, given that this matter is pending at the very early stages at the tribal court level, the exhaustion doctrine precludes Plaintiff’s suit from proceeding in this Court.

### **III. The Colville Tribal Court May Properly Exercise Personal Jurisdiction Over Individual Parties In a Piercing the Corporate Veil Context**

#### **A. Courts May Properly Exercise Personal Jurisdiction Over Individuals in a Piercing the Corporate Veil Context.**

Plaintiffs incorrectly assert that the Colville Tribal Court lacks personal jurisdiction over them. Compl. ¶ 23, ECF No. 1. Case law establishes that when the doctrine of piercing the corporate veil applies, a court may properly exercise personal jurisdiction over the individuals. *See, e.g., OTR Wheel Eng’r, Inc. v. W. Worldwide Sers., Inc.*, No. 2:14-CV-00085, 2014 WL 11514767, at \*1 (E.D. Wash. Aug. 1, 2014) (citing *Certified Bldg. Prods., Inc. v. NLRB*, 528 F.2d 968, 969 (9th Cir. 1976)) (“If a corporation is the alter ego of an individual defendant, a court may ‘pierce the corporate veil’ jurisdictionally and attribute ‘contacts’



1 accordingly.”); *Sky Cable, LLC v. DIRECTV, Inc.*, 886 F.3d 375, 391–92 (4th Cir.  
2 2018) (“[W]hen a court has engaged in traditional veil piercing, the court may  
3 exercise personal jurisdiction vicariously over an individual if the court has  
4 jurisdiction over the individual’s alter ego company.”).

5 Under Washington law, two elements must be established in order to pierce  
6 the corporate veil: (1) the corporate form is used to violate or evade a legal  
7 obligation, and (2) corporate-veil piercing is necessary to prevent a loss to an  
8 innocent party. *Chadwick Farms Owners Ass’n v. FHC LCC*, 207 P.3d 1251, 1262  
9 (Wash. 2009); *Wash. Water Jet Workers Ass’n v. Yarbrough*, 90 P.3d 42, 58  
10 (Wash. 2004); *Exxon Mobile Corp. v. Freeman Holdings of Wash., LLC*, No. CV-  
11 09-0390, 2011 WL 611705, at \*3 (E.D. Wash. Feb. 11, 2011). The Colville Tribal  
12 Court may use state law as guidance as it considers this matter.

13 **B. Discovery and Fact-Finding by the Colville Tribal Court is Necessary**  
14 **to Determine Whether the Tribal Court May Pierce the Corporate**  
15 **Veil and Exercise Personal Jurisdiction Over Plaintiffs.**

16 As explained above, the Colville Tribal Court has not yet engaged in any  
17 fact-finding or made any ruling on the question of whether the Court may apply the  
18 doctrine of piercing the corporate veil and find that personal jurisdiction over the  
19 Plaintiffs exists. The Colville Tribal Court needs to further develop the record and  
20 allow the parties the opportunity to engage in discovery and participate in a trial to  
21 determine whether the Court may proceed to pierce the corporate veil of South Bay

1 and Liquid Networks because: (1) Plaintiffs established Liquid Networks to violate  
2 or evade a legal obligation, and (2) corporate-veil piercing is necessary to prevent  
3 an innocent party.

4 The factual record of this case suggests that Plaintiffs established Liquid  
5 Networks likely to evade South Bay's legal obligations owed to South Sound Bank  
6 as a creditor under its security agreement with the Bank, and for no other apparent  
7 reason. *See* Letter from South Sound Bank to the Tribes, Ex. 4. Neither South  
8 Bay nor Liquid Networks has taken responsibility for the amounts due and owed to  
9 the Tribes, using both corporate entities to defraud creditors, including the Tribes  
10 and South Sound Bank. Additionally, corporate-veil piercing appears to be  
11 necessary in this case to prevent a financial loss to the Tribes who fully expected  
12 that Plaintiffs operating under South Bay would perform the contractually agreed  
13 on work.

14 Ninth Circuit precedent clearly establishes that a tribal court may properly  
15 exercise personal jurisdiction over a non-Indian owner of a corporation based on  
16 both its inherent authority, and traditional principles of personal jurisdiction and  
17 either *Montana* exception. In *Water Wheel*, the Ninth Circuit held that a tribal  
18 court had personal jurisdiction over both a non-Indian corporation and its non-  
19 Indian owner through the tribe's inherent authority to exclude and manage its  
20 lands. 642 F.3d 802, 805 (9th Cir. 2011). The court rejected arguments that the

1 tribal court lacked subject matter jurisdiction over the non-Indian corporation and  
2 its non-Indian owner, and that the court lacked personal jurisdiction over the non-  
3 Indian owner. *Id.* at 805–07. The Ninth Circuit concluded that the tribe had  
4 jurisdiction over the non-Indian owner because he should have anticipated tribal  
5 jurisdiction based on his business dealings with the tribe, which took place on  
6 tribal land. *Id.* at 818.

7 The Ninth Circuit determined that the non-Indian owner was not protected  
8 by the fiduciary shield rule because it was an established fact that he was the  
9 corporation’s “alter ego,” and therefore, his actions on behalf of the corporation  
10 were also on behalf of himself. *Id.* at 818. Further, the court determined that the  
11 tribal court had personal jurisdiction over the non-Indian owner based on  
12 traditional personal jurisdiction principles because he was both physically present  
13 on the tribal land and had sufficient minimum contacts with the land. *Id.* at 819–20  
14 (citing *Burnham v. Superior Court*, 495 U.S. 604, 610 (1990); *Int’l Shoe Co. v.*  
15 *Washington*, 326 U.S. 310, 316 (1945)).

16 The court explained that because the non-Indian owner was on notice of the  
17 “leases’s explicit terms,” the facts “adequately support the tribal court’s conclusion  
18 that [the non-Indian owner] had entered into a consensual relationship with the  
19 tribe and could reasonably anticipate that the tribe would exercise its jurisdictional  
20 authority.” *Id.* at 818. Therefore, the Ninth Circuit concluded that even though the

1 tribal court had jurisdiction over the non-Indian owner based on its inherent  
2 authority, it would also have jurisdiction based on traditional principles of personal  
3 jurisdiction and either *Montana* exception. *See id.* at 816–17, 819–20.

4 Similarly, in this case, Plaintiffs have established contacts with the Colville  
5 Reservation in a manner that they could reasonably anticipate the Tribes would  
6 exercise jurisdiction over them. Specifically, Plaintiffs executed the Contract for  
7 Repair and/or Construction Services with the Tribes on the Colville Reservation.  
8 *See* Contract, Ex. 1 (stating that “the parties executed this Contract at Nespelem,  
9 Washington, on the date herein indicated[,]” which is located within the Colville  
10 Reservation). In addition, Plaintiffs agreed to perform work within the boundaries  
11 of the Colville Reservation, and had notice of the contractual provision stating  
12 Colville Tribal Court would have sole and exclusive jurisdiction over any dispute  
13 arising from the Contract. Contract §§ 2, 20, Ex. 1. Therefore, in a case such as  
14 this one, the Colville Tribal Court may properly exercise personal jurisdiction over  
15 a non-Indian party in a piercing the corporate veil context where there has been an  
16 abuse of a corporate entity and an attempt to defraud the Tribes.

17 This Court should defer to the Colville Tribal Court to develop the record in  
18 this case and engage in fact-finding to determine whether the Tribal Court may  
19 exercise personal jurisdiction over Plaintiffs. Consistent with Ninth Circuit  
20 precedent, Tribal Court jurisdiction over individuals in a piercing the corporate veil

context is appropriate under certain circumstances. Therefore, Plaintiffs improperly contend that the case brought by the Tribes may not proceed against them in Tribal Court.

#### CONCLUSION

For the foregoing reasons, the Court should dismiss Plaintiffs' claims in their entirety.

Respectfully submitted,

Dated: September 20, 2019

/s/ Marty Raap

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