THE HONORABLE DAVID G. ESTUDILLO

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

LEXINGTON INSURANCE COMPANY, et al.,

Plaintiffs,

v.

CINDY SMITH, in her official capacity as Chief Judge for the Suquamish Tribal Court, et al.,

Defendants,

and

THE SUQUAMISH TRIBE, a federally-recognized Indian Tribe,

Intervenor Defendant.

No. 3:21-cv-05930-DGE

PLAINTIFFS' NOTICE OF MOTION AND CROSS-MOTION FOR SUMMARY JUDGMENT

NOTE ON MOTION CALENDAR: June 17, 2020

ORAL ARGUMENT REQUESTED

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

TO THE COURT AND TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on a date to be determined by the Clerk of the Court, in the courtroom of the Honorable David G. Estudillo, United States District Judge, Western District of Washington, located at 1717 Pacific Avenue, Tacoma, WA 98402-3200, in Courtroom B, or by remote conferencing, as directed by the Court, Plaintiffs[1] will and hereby do move the Court for an order granting summary judgment under Federal Rule of Civil Procedure 56, in favor of Plaintiffs and against Defendants Cindy Smith, Eric Nielsen, Bruce Didesch, Steven Aycock, and the Suquamish Tribe, on Plaintiffs' claims for injunctive and declaratory relief. Plaintiffs request a declaration under 28 U.S.C. § 2201 and Federal Rule of Civil Procedure Rule 57 that the Suquamish Tribal Court lacks jurisdiction over Plaintiffs and the claims brought against the Plaintiffs in *Suquamish Indian Tribe v. Lexington Insurance Company*, No. 200601-C, and that the Suquamish Tribal Court's ongoing exercise of jurisdiction over Plaintiffs and the aforementioned claims violates federal law. Plaintiffs also request a permanent injunction under Federal Rule of Civil Procedure 65 enjoining Defendants, their agents, employees, successors, and assigns from engaging in further proceedings involving Plaintiffs before the Suquamish Tribal Court in *Suquamish Indian Tribe v. Lexington Insurance Company*, No. 200601-C.

Plaintiffs are entitled to relief as a matter of law because the undisputed material facts show that the exercise of tribal jurisdiction over nonmember Plaintiffs by Defendants, as judicial officials for the Suquamish Tribe, is in violation of federal law. This cross-motion for summary judgment is based on the notice of motion and memorandum of points and authorities; the supporting declarations of Michael Sweeney, Jill McTiernan, and Matthew A. Hoffman; Plaintiffs' request for judicial notice; Plaintiffs' complaint; Defendants' answer; and any other matters that the Court may consider.

---

[1] Plaintiffs are Lexington Insurance Company; Homeland Insurance Company of New York; Hallmark Specialty Insurance Company; Aspen Specialty Insurance Company; Aspen Insurance UK LTD.; Certain Underwriters at Lloyd's, London and London Market Companies Subscribing to Policy No. PJ193647; Certain Underwriters at Lloyd's, London Subscribing to Policy No. PJ1900131; Certain Underwriters at Lloyd's, London and London Market Companies Subscribing to Policy No. PJ1933021; Certain Underwriters at Lloyd's, London Subscribing to Policy Nos. PD-10364-05 and PD-11091-00; and Endurance Worldwide Insurance Limited (t/as Sompo International) Subscribing to Policy No. PJ1900134-A.

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

DATED: May 2, 2022

GIBSON, DUNN & CRUTCHER LLP

By: s/ *Richard J. Doren*
Richard J. Doren

333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: (213) 229-7000
Email: rdoren@gibsondunn.com

MEMORANDUM OF POINTS AND AUTHORITIES

TABLE OF CONTENTS

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

TABLE OF AUTHORITIES

Page(s)

CASES

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

TABLE OF AUTHORITIES (*continued*)

Page(s)

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

TABLE OF AUTHORITIES (*continued*)

Page(s)

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

TABLE OF AUTHORITIES (*continued*)

Page(s)

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

TABLE OF AUTHORITIES (*continued*)

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

I. INTRODUCTION

Nearly two years ago, the Suquamish Tribe and its corporate arm, Port Madison Enterprises ("PME"), sued various non-tribal property insurance companies in their own tribal court to obtain coverage for the business income they lost at the beginning of the COVID-19 pandemic. The threshold problem with that lawsuit—which has prompted this second litigation—is that the tribal court has no jurisdiction over the nonmember insurers (the Plaintiffs in this action), and the time and effort they continue to spend litigating in tribal court is causing the insurers irreparable harm. This Court can and should halt the tribal-court litigation.

Tribal courts have extremely limited jurisdiction and generally may decide only disputes between members of the relevant tribe. They may adjudicate disputes involving nonmembers only in rare cases. The insurance-coverage suit brought by the Tribe and PME is not such a case, yet the tribal court continues to exercise jurisdiction over the Plaintiffs, in violation of federal law. This Court has the authority to, and should, permanently enjoin the Defendants, the tribal judicial officials overseeing the tribal-court litigation, from continuing to violate the law in this way. *See Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 796 (2014); *Evans v. Shoshone-Bannock Land Use Policy Comm'n*, 736 F.3d 1298 (9th Cir. 2013).

Policyholders have filed literally hundreds of cases across the country over pandemic-related business-income losses just like the Tribe and PME claim to have suffered. State and federal courts have dismissed the vast majority of such claims; an "overwhelming consensus" has formed that "COVID-19 does not cause . . . physical loss or damage to property," and that pure financial losses without property loss or damage do not trigger coverage under property insurance policies. *Nguyen v. Travelers Cas. Ins. Co. of Am.*, 2021 WL 2184878, at *1 (W.D. Wash. May 28, 2021). Indeed, *every* federal and state appellate court to consider these issues has joined that consensus, including the Ninth Circuit.[2] The substance of the Tribe and PME's case is identical

[2] *E.g.*, *10012 Holdings, Inc. v. Sentinel Ins. Co.*, 21 F.4th 216 (2d Cir. 2021); *Uncork & Create LLC v. Cincinnati Ins. Co.*, 27 F.4th 926 (4th Cir. 2022); *Q Clothier New Orleans, L.L.C. v. Twin City Fire Ins. Co.*, 29 F.4th 252 (5th Cir. 2022); *Santo's Italian Café LLC v. Acuity Ins. Co.*, 15 F.4th 398 (6th Cir. 2021); *Sandy Point Dental, P.C. v. Cincinnati Ins. Co.*, 20 F.4th 327 (7th Cir. 2021); *Oral Surgeons, P.C. v. Cincinnati Ins. Co.*, 2 F.4th 1141 (8th Cir. 2021);

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

to those other cases. The only difference is where this case was brought: a tribal court.

The tribal court is not the proper forum for the Tribe and PME's insurance-coverage claims. Because Native American tribes are "distinct, independent political communities" with limited sovereign powers, their authority is confined to "the land held by the tribe" and to "tribal members," and does not, as a general matter, extend to "non-Indians who come within their borders." *Plains Commerce Bank v. Long Family and Cattle Co.*, 554 U.S. 316, 327 (2008). As a result, tribal courts *presumptively* lack jurisdiction over nonmembers. Only in exceptional circumstances may a tribal court exercise jurisdiction over a nonmember. The Supreme Court recognized two such circumstances in *Montana v. United States*, 450 U.S. 544 (1981), authorizing the exercise of tribal court jurisdiction over a nonmember when the nonmember's conduct (1) arises from a consensual relationship with the tribe or its members, or (2) imperils the tribe's political or economic well-being. *Id.* at 565–66. In addition to those two "*Montana* exceptions," the Ninth Circuit has created a third exception, the right-to-exclude doctrine, in which a tribe's power to exclude nonmembers from its land includes "the lesser authority to set conditions on their entry through regulations." *Water Wheel Camp Rec. Area, Inc. v. LaRance*, 642 F.3d 802, 811 (9th Cir. 2011) (per curiam).

Each of these exceptions applies only rarely, and none applies in this case. The two *Montana* exceptions permit tribal jurisdiction only when a nonmember's conduct took place "on the land," within the territorial boundaries of a tribe, and only when the exercise of such jurisdiction is essential to protect tribal self-government and control internal relations. *Plains Commerce Bank*, 554 U.S. at 334, 336–37. Similarly, the right-to-exclude doctrine applies only when nonmembers have physically entered or engaged in activity on tribal land. *Emp'rs Mut. Cas. Co. v. McPaul*, 804 F. App'x 756, 757 (9th Cir. 2020).

If a tribe imposes its adjudicatory authority on nonmembers even absent any nonmember

---

Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am., 15 F.4th 885 (9th Cir. 2021); *Goodwill Indus. of Cent. Okla. Inc. v. Philadelphia Indem. Ins. Co.*, 21 F.4th 704 (10th Cir. 2021); *Gilreath Family & Cosmetic Dentistry, Inc. v. Cincinnati Ins. Co.*, 2021 WL 3870697 (11th Cir. 2021) (per curiam); *Inns by the Sea v. Cal. Mut. Ins. Co.*, 71 Cal. App. 5th 688 (2021); *Indiana Repertory Theatre v. Cincinnati Cas. Co.*, 180 N.E.3d 403 (Ind. Ct. App. 2022); *Sanzo Enters., LLC v. Erie Ins. Exch.*, 182 N.E.3d 393 (Ohio Ct. App. 2021); *Wakonda Club v. Selective Ins. Co. of Am.*, 2022 WL 1194012, --- N.W.2d ---- (Iowa Apr. 22, 2022).

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

activity on tribal land, federal courts are empowered to permanently enjoin the tribe's officials from engaging in such unlawful conduct. *See Nat'l Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845, 852 (1985). The Court should exercise that power here. Although Plaintiffs provide insurance coverage for the Tribe and PME's property, they have never entered or engaged in related activity *on tribal land*. Contractual relationships alone are not enough to establish tribal court jurisdiction. Plaintiffs' contract-based activities—reviewing and determining coverage under the policies at issue, for example—have not occurred *on tribal land*, as Plaintiffs have never entered the Tribe's borders.

Appellate courts, including the Ninth Circuit, have affirmed decisions invalidating or enjoining similar contract-based disputes that were wrongfully initiated in tribal courts against nonmember companies who, like Plaintiffs, had never entered or engaged in relevant conduct on the tribal lands at issue. In *McPaul*, for example, the Ninth Circuit affirmed a judgment declaring that tribal court jurisdiction could not be exercised over a nonmember insurance company whose "relevant conduct" (negotiating and issuing general liability insurance policies) occurred "entirely outside of tribal land." 804 F. App'x at 757. And in *Stifel, Nicolaus & Co. v. Lac du Flambeau Band of Lake Superior Chippewa Indians*, 807 F.3d 184, 207–09 (7th Cir. 2015), the Seventh Circuit affirmed a preliminary injunction against tribal court proceedings over the validity of bonds issued by various nonmember financial entities. The court held that the nonmembers had not engaged in any relevant "activities on the reservation" and that the tribal court action did "not seek redress for any of [their] consensual activities on tribal land." *Id.*

Like the plaintiffs in *McPaul* and *Stifel*, Plaintiffs have done nothing within the Tribe's borders; their relevant conduct took place only in their off-reservation places of business. And the insurance policies themselves were issued as part of a nationwide property insurance program administered and maintained by a third party, Alliant Insurance Services, Inc. The Tribe and PME participate in this program and obtained insurance through Alliant or the Tribe's broker, not directly from Plaintiffs. Likewise, Plaintiffs participate in this program through contracts with Alliant and/or brokers to provide insurance and underwriting services to program insureds who meet specific underwriting standards. As a result, there was no direct contact between Plaintiffs

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

and the Tribe and PME when the relevant policies were negotiated and issued.

The Tribe's exercise of adjudicatory authority over disputes arising from the insurance policies here cannot be justified by reference to its own sovereign interests. Because Plaintiffs are nonmembers whose relevant conduct occurred far from the reservation, regulating their conduct does not implicate tribal self-governance or internal tribal affairs. Although the Tribe regulates all sorts of reservation activities—hunting, fishing, gaming, domestic violence, torts, and more—it does not regulate insurance. That fact undermines any suggestion that the Tribe's exercise of authority over Plaintiffs now is somehow "necessary for tribal self-government or controlling internal relations." *Kodiak Oil & Gas (USA) Inc. v. Burr*, 932 F.3d 1125, 1138–39 (8th Cir. 2019).

This Court should apply established precedent and enjoin Defendants' continued exercise of unlawful authority over Plaintiffs. Courts regularly issue injunctions to stop unlawful tribal court actions similar to these, finding each of the elements necessary for an injunction satisfied. *See* Section IV.B, *infra* (collecting authorities). Here, as in those cases, Plaintiffs will "suffer irreparable harm if they are compelled to litigate the dispute in a forum which does not have jurisdiction." *Washington v. Tribal Ct. for Confederated Tribes & Bands of Yakama Nation* (*Yakama*), 2013 WL 139368, at *3 (E.D. Wash. Jan. 10, 2013). Moreover, the Tribe and PME will not be "deprived of a forum to entertain their claims because those claims" could be heard in another court, tipping the "balance of equities" in Plaintiffs' favor. *Id.* And it is "in the public interest that the parties' dispute be resolved in the forum which is properly vested with subject matter jurisdiction over the dispute." *Id.*

Plaintiffs respectfully request that the Court grant summary judgment in favor of Plaintiffs, declaring that the Suquamish Tribal Court lacks jurisdiction over Plaintiffs and issuing a permanent injunction enjoining Defendants from continuing their exercise of invalid jurisdiction.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties and the Underlying Insurance Contracts

The Tribe is a federally recognized Native American tribe, and PME is the Tribe's corporate arm. Dkt. 48 ¶¶ 35–36. Both the Tribe and PME are located on the Port Madison Indian Reservation on the Kitsap Peninsula, where they operate various businesses, including a casino.

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

Id. The Tribe and PME are insured through a nationwide property insurance program known as the Tribal Property Insurance Program ("TPIP"), *id.* ¶ 37, which is part of a larger property insurance program known as the Alliant Property Insurance Program ("APIP") that also insures municipalities, hospitals, and non-profit organizations. McTiernan Decl. ¶ 2. Various insurance companies, including each Plaintiff in this action, participate in APIP (and its subprogram TPIP) by providing insurance and underwriting services at different layers of coverage and varying percentages of risk insured by those layers. *Id.* ¶ 3; *id.*, Exs. A at 12–26, 28–32, 44–45, 53, 77; B at 13–27, 29– 3, 108–09, 117, 141.

TPIP is maintained and administered by a third-party service called "Tribal First," which is a specialized program of Alliant Underwriting Solutions and/or Alliant Insurance Services, Inc., which are California corporations located in California. Hoffman Decl., Exs. A–C. Through their insurance broker Brown & Brown, the Tribe and PME bought multiple property insurance policies issued by Plaintiffs under TPIP for the policy period from July 1, 2019, to July 1, 2020. Dkt. 48 ¶ 11; McTiernan Decl., Exs. A at 12, 17, 22; B at 13, 18, 23. The Tribe and PME obtained these property insurance policies not directly from Plaintiffs, but through Alliant and Brown & Brown, Dkt. 48 ¶ 11, based on underwriting guidelines established between Alliant and Plaintiffs. McTiernan Decl. ¶ 4. Plaintiffs themselves negotiated and entered into separate contracts with Alliant and/or brokers setting forth each Plaintiff's obligations under TPIP. *Id.* ¶ 5. Plaintiffs did not have direct contact with the Tribe and PME before the issuance of their property insurance policies, Dkt. 48 ¶ 11, and Plaintiffs learned of potential TPIP insureds, including the Tribe and PME, only through Alliant. McTiernan Decl. ¶ 6. Alliant (not Plaintiffs) processed the Tribe's and PME's submissions for insurance; collected premiums from the Tribe and PME; prepared and provided quotes, cover notes, policy documentation, and evidences of insurance to the Tribe and PME; and developed and maintained an underwriting file for the Tribe and PME. *Id.* ¶ 7.

Each property insurance policy provided through TPIP to the Tribe and PME for the 2019–2020 policy period incorporates a master policy form that sets forth the terms, conditions, and exclusions of coverage applicable to the Tribe and PME (the "Policy"). *Id.*, Exs. A at 46–113; B at 110–77. The Policy does not contain any provision through which Plaintiffs consent to the

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

jurisdiction of the Tribe or its Tribal Court. *Id.* Nor does the Policy contain any provision through which Plaintiffs consent to the laws of the Tribe governing the interpretation of the Policy. *Id.* The Policy does not specifically name any TPIP insured, including either the Tribe or PME, or any TPIP insurer, including Plaintiffs. *Id.* The Policy instead states that the "Named Insured" is "shown on the Declaration page, or as listed in the Declaration Schedule Addendum attached to this policy," and that Tribal First (i.e., Alliant) maintains a "Named Insured Schedule" in its files. *Id.*, Exs. A at 50; B at 114.

Copies of the Policy and other related documents were prepared by Alliant, *id.* ¶ 4, and provided to the Tribe and PME by Alliant and/or Brown & Brown (not Plaintiffs). Dkt. 48 ¶ 11. Included among those documents were declaration pages associated with the Lexington property insurance policies issued to the Tribe and PME. McTiernan Decl., Exs. A at 12, 17, 22; B at 13, 18, 23. In each of those declaration pages, the "Named Insured" is identified as "All Entities listed as Named Insureds on file with Alliant Insurance Services, Inc.," and the "Mailing Address of Insured" is identified as the one "on file with Alliant Insurance Services, Inc." in "Thousand Oaks, CA." *Id.* The Tribe and PME also received documents entitled "Tribal Property Insurance Program Evidence of Coverage." *Id.*, Exs. A at 2–10; B at 2–11. The "Evidence of Coverage" documents are printed on "Tribal First Alliant Underwriting Solutions" letterhead and signed by Ray Corbett, Senior Vice President of Alliant Specialty Insurance Services. *Id.* They indicate that they were prepared by Alliant and were "based on facts and representations supplied to [Alliant] by [the Tribe and PME]." *Id.*, Exs. A at 9; B at 10. They also indicate that any "Notification of Claims" must be sent to "Tribal First" in San Diego, California. *Id.*, Exs. A at 8; B at 9.

B. The Tribe's and PME's COVID-19-Related Insurance Claims

In March 2020, the Tribe and PME temporarily suspended some of their non-essential business operations because of the COVID-19 pandemic, and in March and April 2020, the Tribe and PME submitted related insurance claims under the Policy to their insurance broker, who then sent them to Lexington/AIG Claims, Inc. Dkt. 48 ¶ 54; Sweeney Decl., Exs. A at 3, 6; B at 2, 4. Lexington issued letters and emails to the Tribe and PME reserving "all rights and defenses under the policy and the law." Dkt. 48 ¶ 59; Sweeney Decl., Exs. C at 10; D at 10. The letters and emails

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

were sent by or on behalf of Lexington from outside the territorial boundaries of the Tribe, on non-Reservation and non-tribal land. Sweeney Decl. ¶ 2. In fact, all of Lexington's activities related to the Policy and to the Tribe's and PME's claims occurred away from the Reservation and tribal land. *Id.*

On June 4, 2020, the Tribe and PME sued Lexington (and the other insurers who are Plaintiffs in this action) in their own Tribal Court. Dkt. 48 ¶¶ 63, 67; *Suquamish Tribe v. Lexington Insurance Company*, No. 200601-C. This lawsuit came before Lexington issued a decision on the Tribe's and PME's insurance claims. Hoffman Decl., Ex. D ¶ 54. The Tribe and PME claimed the insurers breached the contract and sought a declaration that their COVID-19-related financial losses were covered under the Policy. Dkt. 48 ¶ 69; Hoffman Decl., Ex. D ¶¶ 55–60; 61–65. Defendant Cindy Smith presides over the Tribal Court action. Dkt. 48 ¶ 68.

C. The Tribal Court Action and Exhaustion of Tribal Remedies

Before a federal court may consider the question "whether a tribal court has exceeded the lawful limits of its jurisdiction," the tribal court itself must first be given a "full opportunity" to evaluate and determine its own jurisdiction. *Nat'l Farmers*, 471 U.S. at 856–57. Once "tribal remedies" have been exhausted, a tribal court's determination of its own jurisdiction is subject to review by a federal court. *Id.* at 853. To exhaust tribal remedies, "tribal appellate courts must have the opportunity to review the determinations of the lower tribal courts." *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 17 (1987). Thus, exhaustion is complete when tribal appellate review is complete. *Id.*; *see also Elliott v. White Mountain Apache Tribal Court*, 566 F.3d 842, 844 (9th Cir. 2009); *Ford Motor Co. v. Todecheene*, 488 F.3d 1215, 1216–17 (9th Cir. 2007).

Plaintiffs exhausted all available remedies before the Tribal Court and the Tribal Court of Appeals. Soon after the Tribal Court action began, in August 2020, Plaintiffs made limited special appearances and moved to dismiss the Tribal Court action for lack of subject matter and personal jurisdiction under both Suquamish tribal law and federal law. Dkt. 48 ¶ 71. Judge Smith denied those motions in March 2021, based on the grounds that tribal jurisdiction applied under the right-to-exclude doctrine and the first *Montana* exception because Plaintiffs consensually entered into an insurance contract with the Tribe and PME, despite Plaintiffs' lack of physical presence on

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

tribal land. *Id.* ¶ 75; Hoffman Decl., Ex. E at 13, 17.

Plaintiffs timely moved for permission to appeal, which was granted. Dkt. 48 ¶ 76. After briefing and argument, the three-judge panel of the Tribal Court of Appeals (Defendants Eric Nielsen, Bruce Didesch, and Steven Aycock) affirmed the Tribal Court's order in September 2021. *Id.* ¶¶ 77–81. The Tribal Court of Appeals issued an amended decision in October 2021. *Id.* ¶ 81; Hoffman Decl, Ex. F.

A few days later, the Tribe and PME filed a first amended complaint in the Tribal Court action, Dkt. 48 ¶ 82; Hoffman Decl, Ex. D, to which Plaintiffs filed answers on December 1, 2021 to avoid default. Dkt. 48 ¶ 85. The Tribal Court action remains ongoing, and the Tribal Court continues to assert jurisdiction over Plaintiffs. *Id.* ¶ 87.

On December 22, 2021, Plaintiffs filed this action in the federal court for the Western District of Washington, naming the tribal judges who denied Plaintiffs' jurisdictional challenge as defendants under the doctrine of *Ex Parte Young*. Dkt. 1. On March 16, 2022, the Suquamish Tribe waived its sovereign immunity from suit for the limited purpose of defending the jurisdiction of the Suquamish Tribal Court in this action, and this Court granted the Tribe's unopposed motion to intervene on March 29, 2022. Dkt. 38–39, 47. The parties stipulated to filing cross-motions for summary judgment. Dkt. 38.

III. LEGAL STANDARD

Summary judgment should be granted when "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "Where the nonmoving party . . . bear[s] the burden of proof at trial on a dispositive issue" but "fails to make a showing sufficient to establish the existence of an element essential to [its] case," summary judgment is warranted. *Celotex Corp. v. Catrett*, 477 US 317, 322–24 (1986). This is because "a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Id.*

A court should grant a permanent injunction on summary judgment "so long as there are no issues of material fact relevant to whether injunctive relief is proper." *J.T. v. Regence BlueShield*, 291 F.R.D. 601, 613 (W.D. Wash. 2013). "The standard for determining whether a

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

permanent injunction should issue is essentially the same as the standard for a preliminary injunction, except that the Court determines the movant's actual success on the merits rather than the movant's likelihood of success on the merits." *Chiwewe v. Burlington N. & Santa Fe Ry. Co.*, 239 F. Supp. 2d 1213, 1215 (D.N.M. 2002). A permanent injunction should issue where a moving party establishes "(1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006).

Further, declaratory relief is appropriate where there is a "a case of actual controversy," 28 U.S.C. § 2201(a), and "'the judgment will serve a useful purpose in clarifying and settling the legal relations in issue[] and . . . terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding.'" *Eureka Fed. Sav. & Loan Ass'n v. Am. Cas. Co. of Reading, Pa.*, 873 F.2d 229, 231 (9th Cir. 1989).

IV. ARGUMENT

Under well-established Supreme Court precedent, there is a presumption against tribal court jurisdiction over nonmembers that can be overcome only if one of a few rare exceptions applies. While Plaintiffs "bear[] the initial responsibility" to show that there is no genuine dispute as to any material fact, Defendants, as the parties claiming jurisdiction over Plaintiffs in the ongoing Tribal Court action, bear the burden of proving at least one of the exceptions applies. *See Celotex Corp.*, 477 U.S. at 323. But under the undisputed facts of this case, Defendants cannot do so. Plaintiffs are therefore entitled to judgment as a matter of law and to a permanent injunction requiring Defendants to halt the Tribal Court action.

Plaintiffs have unsuccessfully contested the Tribal Court's jurisdiction and will soon face burdensome discovery and motion practice, as well as a potential adverse judgment. Defendants, as judicial officials of the Tribe, have exercised and continue to exercise the Tribe's adjudicatory authority over Plaintiffs in violation of federal decisional law. The unlawful use of authority in this manner will continue to result in irreparable harm to Plaintiffs, who must continue to litigate

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

and defend themselves in the Tribal Court action unless and until an injunction is issued.

A. The Tribal Court Lacks Jurisdiction over Plaintiffs

When it "is clear that [a] Tribal Court does not have jurisdiction over [a] tribal lawsuit," a federal court should issue a permanent injunction because "the [nonmembers have] succeed[ed] on the merits of their tribal jurisdiction argument." *Chiwewe*, 239 F. Supp. 2d at 1218–19.

Because Native American "tribes do not, as a general matter, possess authority over non-Indians who come within their borders," the exercise of jurisdiction by a tribal court over a nonmember is "presumptively invalid." *Plains Commerce Bank*, 554 U.S. at 328, 330 (citing *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 659 (2001)). This general rule against tribal jurisdiction over nonmembers derives from the historically "unique and limited character" of tribal sovereignty. *United States v. Cooley*, 141 S. Ct. 1638, 1642 (2021). When tribes were incorporated into the United States, they became "dependent" sovereigns and "lost many of the attributes of sovereignty." *Montana*, 450 U.S. at 563–64. Among those lost attributes was the ability to freely and independently determine their external relations with nonmembers. *See Cooley*, 141 S. Ct. at 1642–43; *see also Plains Commerce Bank*, 554 U.S. at 328 ("This general rule restricts tribal authority over nonmember activities taking place on the reservation."); *Montana*, 450 U.S. at 564–65 ("[T]he inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe."). Here, it is undisputed that Plaintiffs are nonmembers of the Tribe and have no say in the laws and regulations that govern the Tribe and the Tribe's lands and members. Thus, the Tribal Court's exercise of jurisdiction over Plaintiffs is presumptively invalid. *See Plains Commerce Bank*, 554 U.S. at 330.

In *Montana*, the Supreme Court recognized two narrow exceptions to the general rule against tribal jurisdiction over nonmembers. First, a tribe "may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements." 450 U.S. at 565. Second, a tribe may "exercise civil authority over the conduct of non-Indians on fee lands within its reservations when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Id.* at 566. The

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

Supreme Court has explained that the *Montana* exceptions are "limited" and must not be construed in a manner that would "'swallow the rule,'" or "'severely shrink' it." *Plains Commerce Bank*, 554 U.S. at 330. In fact, with "one minor exception, [the Supreme Court has] never upheld under *Montana* the extension of tribal civil authority over nonmembers on non-Indian land." *Nevada v. Hicks*, 533 U.S. 353, 359–60 (2001).

The "burden rests on the tribe to establish one of the exceptions to *Montana*'s general rule that would allow an extension of tribal authority to regulate nonmembers." *Plains Commerce Bank*, 554 U.S. at 330. The Tribe cannot meet this burden, but the Tribal Court of Appeals nevertheless held that the exercise of tribal jurisdiction over Plaintiffs was permissible. That court declined to recognize a presumption against jurisdiction over nonmembers and misapplied the *Montana* exceptions, impermissibly expanding the reach of the Tribe's authority. Thus, this Court should declare that the Tribal Court lacks jurisdiction and enjoin Defendants from continuing to violate federal law in this way.

1. The *Montana* Exceptions Do Not Apply

a. The First *Montana* Exception Does Not Apply

The first *Montana* exception permits the exercise of tribal jurisdiction over the "activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements." 450 U.S. at 565. Although Plaintiffs have contractual insurance relationships with the Tribe and PME, the first *Montana* exception does not provide a basis for tribal jurisdiction because none of Plaintiffs' relevant contractual activities occurred on the Tribe's land.

The Supreme Court has explained that "*Montana*'s list of cases fitting within the first exception indicates the type of activities the Court had in mind." *Strate v. A-1 Contractors*, 520 U.S. 438, 456–57 (1997). And each of the cases on *Montana*'s list involves nonmember *activity on tribal land*. *See id.* at 446 ("*Montana* thus described a general rule that, absent a different congressional direction, Indian tribes lack civil authority over the conduct of nonmembers on non-Indian land within a reservation . . . ."). The first case cited by *Montana* was *Williams v. Lee*, 358 U.S. 217 (1959). *Williams* concerned a payment dispute between tribal customers and a

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

nonmember's general store on tribal land. *Id*. at 217–18. Tribal jurisdiction was affirmed because the nonmember business owner "was on the reservation and the transaction with an Indian took place there." *Id*. at 223. The remaining three cases cited by *Montana* concerned the taxation of businesses owned and operated by nonmembers on tribal lands. *See Morris v. Hitchcock*, 194 U.S. 384, 390 (1904) (permit tax on nonmember-owned livestock within the territorial boundaries of a tribe); *Buster v. Wright*, 135 F. 947, 950 (8th Cir. 1905) (permit tax for nonmember trading posts within the territorial boundaries of a tribe); *Washington v. Confederated Tribes of Colville Indian Rsrv.*, 447 U.S. 134, 152–54 (1980) (tax on cigarette sales to nonmembers within reservation).

Montana was decided over 40 years ago, and the Supreme Court has had occasion to discuss it several times. In its most recent cases, it has observed that its "*Montana* cases have *always* concerned nonmember conduct *on the land*." *Plains Commerce Bank*, 554 U.S. at 334 (emphases added); *accord id.* at 328 (the "general rule" announced in *Montana* "restricts tribal authority over nonmember activities taking place on the reservation"); *Cooley*, 141 S. Ct. at 1643 ("We have subsequently repeated *Montana*'s proposition and exceptions in several cases involving a tribe's jurisdiction over the activities of non-Indians within the reservation."). Tribal jurisdiction over nonmember conduct "on the land" comports with the territorial limitations on tribal sovereignty. *See Plains Commerce Bank*, 554 U.S. at 330 (tribal sovereignty "centers on the land held by the tribe"); *Hicks*, 533 U.S. at 392 ("tribes retain sovereign interests in activities that occur on land owned and controlled by the tribe").

As the Ninth Circuit has explained, "tribal jurisdiction is, of course, cabined by geography: The jurisdiction of tribal courts does not extend beyond tribal boundaries." *Philip Morris USA, Inc. v. King Mountain Tobacco Co.*, 569 F.3d 932, 938 (9th Cir. 2009). And other federal appellate courts have observed that "[n]either *Montana* nor its progeny purports to allow Indian tribes to exercise civil jurisdiction over the activities or conduct of non-Indians occurring *outside their reservations*." *Hornell Brewing Co. v. Rosebud Sioux Tribal Ct.*, 133 F.3d 1087, 1091 (8th Cir. 1998). The Seventh Circuit, for example, held in *Jackson v. Payday Financial, LLC*, 764 F.3d 765 (7th Cir. 2014) that *Montana*'s first exception does not apply to off-reservation conduct arising from contracts between a nonmember and a tribe or its members. There, nonmember consumers

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

brought a putative class action against several lenders owned by a tribal member who resided on tribal land. *Id.* at 768. The lenders argued the tribal court had jurisdiction under the first *Montana* exception because the nonmember consumers obtained loans from companies owned by a tribal member through contracts that included forum-selection clauses requiring litigation to be conducted in tribal court. *Id.* at 781–82. The Seventh Circuit held that the tribal court could not exercise jurisdiction over the loan dispute, explaining that the plaintiffs had "not engaged in *any* activities inside the reservation. They did not enter the reservation to apply for the loans, negotiate the loans, or execute the loan documents." *Id.* at 782 (emphasis in original). And "[b]ecause the Plaintiffs' activities d[id] not implicate the sovereignty of the tribe over its land and its concomitant authority to regulate the activity of nonmembers on the land, the tribal courts d[id] not have jurisdiction over the Plaintiffs' claims." *Id.*

The Seventh Circuit reaffirmed this principle in *Stifel, Nicolaus & Co. v. Lac du Flambeau Band of Lake Superior Chippewa Indians*, 807 F.3d 184 (7th Cir. 2015), rejecting the tribal defendants' argument that "the court need not limit its consideration [of the *Montana* exceptions] to the on-reservation actions of [nonmembers]." *Id.* at 207. The court had "made clear in *Jackson* . . . that *Plains Commerce Bank* 'circumscribed' the already narrow *Montana* exceptions" and "that a tribe's authority to regulate nonmember conduct 'centers on the land.'" *Id.* Because none of the nonmember conduct at issue occurred "on tribal land," the court upheld a preliminary injunction barring tribal judicial officials from conducting tribal court proceedings. *Id.* at 207–09.

The story is much the same here. Plaintiffs have "not engaged in *any* activities inside the reservation" to satisfy *Montana*'s first exception because Plaintiffs never entered onto tribal land. *Jackson*, 764 F.3d at 782. Although Plaintiffs have contractual relationships with the Tribe and PME, Plaintiffs have not engaged in any activity related to those contracts on the Tribe's land. Sweeney Decl. ¶ 2. Instead, all conduct by Plaintiffs relating to the contracts, including all review and consideration of the Tribe and PME's claims, occurred remotely, far from tribal land. *Id.*

In buying insurance coverage, the Tribe and PME never even dealt directly with Plaintiffs. Dkt. 48 ¶ 11. Plaintiffs contracted with Alliant or other brokers, all nonmembers of the Tribe, to join a nationwide insurance program in which the Tribe and PME participate. McTiernan Decl. ¶

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

5. In their dealings with Alliant or these brokers, Plaintiffs did not enter the Tribe's land and did not execute any documents on the Tribe's land, nor did Plaintiffs interact directly with the Tribe or PME. *Id.*; Sweeney Decl. ¶ 2; Dkt. 48 ¶ 11. As the Seventh Circuit noted in *Jackson*, "[t]he question of a tribal court's *subject matter jurisdiction* over a nonmember . . . is tethered to the *nonmember's* actions, specifically the *nonmember's actions on the tribal land*." 764 F.3d at 782 n.42 (emphasis in original). As in *Jackson*, there can be no tribal court subject matter jurisdiction here.

The Tribal Court of Appeals rejected Plaintiffs' argument that "physical presence on tribal land is a necessary requirement" for tribal jurisdiction, in part because it did "not find [that] any federal courts have squarely addressed the issue." Hoffman Decl., Ex. F at 8, 11. The authorities cited above demonstrate otherwise. The application of *Montana* has "always" concerned nonmember conduct "on the land," within the territorial boundaries of a tribe. *Plains Commerce Bank*, 554 U.S. at 334. A nonmember's *physical* presence on tribal land is a requirement that inheres within the geographically limited nature of tribal jurisdiction and sovereignty.

The Tribal Court of Appeals also erroneously relied on *Allstate Indemnity Co. v. Stump*, 191 F.3d 1071 (9th Cir. 1999). *Allstate* involved a car accident between tribal members on a tribal reservation and claims of bad faith against a nonmember insurance company for refusing to settle the resulting personal-injury action. *Id.* at 1074. The Ninth Circuit declined to hold that there was tribal court jurisdiction over the insurer's conduct, instead recognizing only that there was a "colorable" argument for jurisdiction and requiring the parties to exhaust tribal remedies. *Id.* at 1075–76. But that is not the same thing as deciding the tribal court *did*, in fact, have jurisdiction. In fact, neither the Supreme Court nor any other federal appellate court has *ever* held an insurance relationship with a tribe or its members is enough to establish tribal jurisdiction over a nonmember insurer in the absence of any physical presence on tribal land. *See, e.g.*, *Admiral Ins. Co. v. Blue Lake Rancheria Tribal Court*, 2012 WL 1144331, at *6 (N.D. Cal. Apr. 4, 2012) (expressing doubt as to tribal court jurisdiction over a nonmember based on an insurance contract, because *Hicks* and *Plains Commerce Bank* may have "alter[ed] the viability of *Allstate*'s holding").

The Tribal Court of Appeals also cited a district court decision holding that a tribal court

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

had jurisdiction over a nonmember insurer, *State Farm Insurance Cos. v. Turtle Mountain Fleet Farm LLC*, 2014 WL 1883633 (D.N.D. May 12, 2014). According to that court, the focus of the first *Montana* exception is "whether there is a sufficient nexus between the claims being asserted and the consensual relationship," not "where the conduct [of the nonmember] took place." *Id.* at *10. That decision was wrong: Although the exercise of tribal jurisdiction must have a nexus to the consensual relationship between the tribe and nonmember, this requirement does not *replace* the need for a relationship with nonmember conduct on the land. *See, e.g.*, *Plains Commerce Bank*, 554 U.S. at 334 (the "*Montana* cases have always concerned nonmember conduct on the land").

In short, where an insurer has not engaged in relevant activity on a tribe's land, the first *Montana* exception does not apply. *See Jackson*, 764 F.3d at 782; *Stifel*, 807 F.3d at 208; *see also, e.g.*, *Smith v. W. Sky Fin., LLC*, 168 F. Supp. 3d 778, 783 (E.D. Pa. 2016) (no tribal jurisdiction over nonmember's activities under loan agreement, all of which occurred "off of the reservation," even though "contracts formed over the Internet create ambiguity as to place"); *Hengle v. Asner*, 433 F. Supp. 3d 825, 862 (E.D. Va. 2020) (no "colorable" basis for tribal jurisdiction where nonmembers negotiated, executed, and repaid loans with tribal entities in various states "far from the Tribe's reservation in California"). Because Plaintiffs have not engaged in any relevant activity while physically on the Tribe's land, the first *Montana* exception does not apply here.

b. The Second *Montana* Exception Does Not Apply

The second *Montana* exception permits the exercise of tribal jurisdiction over a nonmember whose conduct "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe." *Montana*, 450 U.S. at 566. The Tribe has never asserted that this exception applies to Plaintiffs in the Tribal Court action, so the Tribal Court of Appeals did not consider or evaluate it. There is a reason the Tribe has never argued the point: The second *Montana* exception does not apply here.

This exception has a particularly "elevated threshold." *Plains Commerce Bank*, 554 U.S. at 341. The challenged conduct "must do more than injure the tribe, it must 'imperil the subsistence' of the tribal community," and the exercise of tribal jurisdiction over that conduct must be "'necessary to avert catastrophic consequences.'" *Id.* This elevated threshold has not been met

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

here. The nonmember conduct at issue in the Tribal Court action does not threaten the political integrity, economic security, or health or welfare of the Tribe; imperil the subsistence of the Tribe's community; or require the exercise of jurisdiction to avert catastrophic consequences. The second *Montana* exception therefore does not provide a basis for tribal jurisdiction over Plaintiffs.

c. The Exercise of Tribal Jurisdiction Does Not Stem from the Tribe's Inherent Sovereign Authority

Neither *Montana* exception applies for another, more fundamental reason: The Tribe's exercise of jurisdiction does not "stem from [its] inherent sovereign authority to set conditions on entry, preserve tribal self-government, or control internal relations." *Plains Commerce Bank*, 554 U.S. at 336–37. As the Supreme Court confirmed in *Plains Commerce Bank*, this is a threshold requirement under *Montana*, as tribes may regulate nonmember "activities or land uses" *only when* they "intrude on the internal relations of the tribe or threaten self-rule." *Id.* at 334–35; *see also Strate*, 520 U.S. at 459 (the *Montana* exceptions apply only where tribal adjudicatory or regulatory authority "is needed to preserve the right of reservation Indians to make their own laws and be ruled by them"); *Montana*, 450 U.S. at 564 (the "exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of the tribes"); *WPX Energy Williston, LLC v. Fettig, et al.*, No. 1:21-cv-145, Order (D.N.D. Apr. 20, 2022) ("[U]nder the Supreme Court's analysis in *Plains Commerce Bank*, the first *Montana* exception is triggered when . . . such activities arising from the consensual relationship implicate the tribe's sovereign interests."). Thus, if the exercise of tribal jurisdiction over a nonmember "cannot be justified by reference to the tribe's sovereign interests," it is invalid. *Plains Commerce Bank*, 554 U.S. at 336.

The Supreme Court and several federal appellate courts have expressly applied this threshold requirement in deciding there is no tribal jurisdiction. For example:

- *Plains Commerce Bank*, 554 U.S. at 336–37: The Supreme Court found that a tribal court lacked jurisdiction over a dispute involving the sale of non-Indian fee land by a nonmember bank. The Court explained that regulating the sale of non-Indian fee land could not be justified by the tribe's sovereign interests in "protecting internal relations and self-

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

government," because the "mere fact of resale" had not threatened those interests. Certain "*uses* to which land is put" by a nonmember very well could implicate sovereign interests, but no such use of land was at issue, and the tribe therefore lacked authority over the sale.

- *Jackson*, 764 F.3d at 783: The Seventh Circuit rejected the argument that "a nonmember's consent to tribal authority" was "sufficient to establish the jurisdiction of a tribal court," because the tribal court's jurisdiction over nonmembers must also "stem from the tribe's inherent sovereign authority." And the dispute at issue, concerning off-reservation loan activity, did not implicate "*any* aspect of 'the tribe's inherent sovereign authority.'"
- *Kodiak Oil*, 932 F.3d at 1138: The Eighth Circuit decided a tribal court lacked jurisdiction over nonmember oil and gas companies accused of failing to pay royalties under leases with various tribal members. Although the leases were "consensual relationships with tribal members," a "consensual relationship alone is not enough" to establish tribal jurisdiction. The exercise of tribal jurisdiction had to stem from the tribe's sovereign interests, and the regulation of nonmember companies and their lease-related activity was "not necessary for tribal self-government or controlling internal relations."
- *NLRB v. Little River Band of Ottawa Indians Tribal Government*, 788 F.3d 537, 544–46, 551–55 (6th Cir. 2015): The Sixth Circuit held that the National Labor Relations Board had authority to regulate the labor-organizing activity of a tribe's casino employees and to prevent the tribe's enforcement of conflicting tribal laws, because imposing federal labor laws on the tribe did not interfere with the tribe's self-governance. The court reviewed "the law governing implicit divestiture of tribal sovereignty" and concluded that in *Montana*, *Hicks*, and *Plains Commerce Bank*, the Supreme Court had made clear that tribal jurisdiction over nonmembers extends "only so far as 'necessary to protect tribal self-government or to control internal relations'" and must "'flow directly from these limited sovereign interests.'" The Sixth Circuit determined that labor regulations concerning tribal and non-tribal casino employees did not sufficiently implicate those interests.

Here, the exercise of tribal jurisdiction over Plaintiffs in the Tribal Court action is not

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

necessary to protect tribal self-government or to control internal relations, and is therefore invalid. The Tribal Court action concerns contracts with non-tribal insurers and their *off-reservation* conduct, none of which implicates the Tribe's sovereign interests. As the Supreme Court and other federal appellate courts have emphasized time and again, "tribes retain sovereign interests in activities that occur *on land* owned and controlled by the tribe," which is simply not the case here. *Hicks*, 533 U.S. at 392 (emphasis added); *Plains Commerce Bank*, 554 U.S. at 327 (tribal sovereignty "centers on the land held by the tribe and on non-tribal members within the reservation"); *see, e.g.*, *Stifel*, 807 F.3d at 207 ("The actions of nonmembers outside of the reservation do not implicate the Tribe's sovereignty.").

But perhaps the clearest indication that this case has no bearing on tribal sovereignty is that the Tribe does not regulate insurance in the first place. Of the 18 Titles that make up the Suquamish Tribal Code, *not one* concerns the regulation of insurance. *See* Suquamish Tribe, Suquamish Tribal Code, https://suquamish.nsn.us/home/government/suquamish-tribal-code/ (last visited Apr. 22, 2022). The Tribe and PME have never disputed this. By comparison, Washington has vested authority to set insurance policy and to regulate insurance in the Washington Insurance Commissioner, whose duties include rulemaking, investigation, and oversight of a broad range of insurance matters. *See, e.g.*, RCW 48.02.010, RCW 48.02.060 *et seq.* The absence of insurance regulation by the Tribe and the exclusive regulation of insurance by the States indicate that the Tribal Court's exercise of jurisdiction over Plaintiffs is not necessary to protect the Tribe's self-government or to control internal tribal relations. A state or federal court can and should decide the contractual dispute here—without endangering or compromising the Tribe's sovereignty. *See Kodiak Oil*, 932 F.3d at 1138 (rejecting application of first *Montana* exception where "complete federal control of oil and gas leases on allotted lands—and the corresponding lack of any role for tribal law or tribal government in that process—undermine[d] any notion that tribal regulation in this area [was] necessary for tribal self-government").

The absence of insurance regulation by the Tribe is significant also because "a tribe's adjudicative jurisdiction [can]not exceed its legislative jurisdiction." *Strate*, 520 U.S. at 453; *see also Plains Commerce Bank*, 554 U.S. at 330 ("reaffirm[ing]" the principle that tribal courts lack

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

jurisdiction to hear claims exceeding the bounds of a tribe's "legislative jurisdiction"). In other words, because the Tribe does not regulate insurance and has not been granted regulatory authority by Congress over any aspect of the insurance industry, the Tribal Court cannot exercise adjudicative jurisdiction over Plaintiffs' insurance activity. *See Jackson*, 764 F.3d at 782 ("[I]f a tribe does not have the authority to regulate an activity, the tribal court similarly lacks jurisdiction to hear a claim based on that activity.").

The Tribal Court of Appeals erred in not even considering, let alone deciding, whether the exercise of tribal jurisdiction over Plaintiffs in the Tribal Court action was "necessary to protect tribal self-government or to control internal relations" or, similarly, whether such adjudicatory authority exceeded the Tribe's legislative authority. The Supreme Court has held that the *Montana* exceptions "cannot be construed in a manner that would swallow the rule" against tribal jurisdiction over nonmembers. *Cooley*, 141 S. Ct. at 1645 (citing *Plains Commerce Bank*, 554 U.S. at 330). But the exercise of tribal jurisdiction over Plaintiffs, as erroneously conceived by the Tribal Court of Appeals, does just that.

The Tribal Court of Appeals construed *Montana* in a way that would give the Tribe authority over nonmembers based solely on the existence of a contractual relationship with the Tribe relating to Reservation property, without accounting for the additional limiting requirements that a nonmember's relevant conduct must physically occur *on tribal land* and that the exercise of tribal jurisdiction must be justified by reference to the Tribe's *sovereign interests*. This construction is untenable. It would allow the Tribe to exercise jurisdiction over every nonmember it contracts with (including via third-party brokers), regardless of whether the nonmember's relevant conduct actually takes place on the Tribe's land, implicates tribal self-government and internal relations, or conforms to its legislative authority. And with regard to the first *Montana* exception in particular, it allows the Tribe to regulate the terms of its "consensual relationships" with nonmembers, even though the first *Montana* exception is confined to regulating nonmember *conduct* on the land that implicates a tribe's sovereign interests, rather than regulating the consensual relationships themselves.

Tribal courts presumptively lack jurisdiction over nonmembers, and the *Montana*

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

exceptions create jurisdiction only in the rare case. The Tribal Court of Appeals' decision flips that presumption on its head and makes tribal jurisdiction the rule rather than the exception. Tribal courts do not gain jurisdiction whenever a tribal member reaches outside of the reservation to enter into a commercial contract with a nonmember.

2. The Right to Exclude Does Not Apply

The Ninth Circuit allows tribal jurisdiction over nonmembers based not just on the two narrow *Montana* exceptions but also the right-to-exclude doctrine. *Water Wheel*, 642 F.3d at 804–05. Under that doctrine, a tribe's "sovereign authority over tribal land" provides it with the power to exclude nonmembers from the land, which "necessarily includes the lesser authority to set conditions on their entry through regulations." *Id.* at 811. The Tribal Court of Appeals decided that here, the doctrine permits the exercise of tribal jurisdiction over Plaintiffs because the contracts at issue "were expressly directed and tied to the Tribe's trust lands and businesses located on" the Tribe's Reservation, and the Tribal Court action was based on losses that "occurred on" those lands. Hoffman Decl., Ex. F at 14. The Tribal Court of Appeals incorrectly applied the doctrine, which does not permit the exercise of tribal jurisdiction under these circumstances.

The "right to exclude" does not apply here for much the same reason that the first *Montana* exception does not apply: The nonmember must have *physically entered* tribal land, and the nonmember's *physical presence on the land* must be at issue and implicate that tribe's ability to manage its lands. The Ninth Circuit has repeatedly underscored that the right to exclude is connected to the nonmember defendant's presence on tribal land. For example:

- *Water Wheel*, 642 F.3d at 812–14: The Ninth Circuit affirmed a tribe's regulatory jurisdiction over a nonmember based on the right-to-exclude doctrine, "where the non-Indian activity in question occurred on tribal land" and "the activity interfered directly with the tribe's inherent powers to exclude and manage its own lands."
- *Knighton v. Cedarville Rancheria of Northern Paiute Indians*, 922 F.3d 892, 901–04 (9th Cir. 2019): The Ninth Circuit held that a tribe had "authority to regulate [a nonmember employee's] conduct on tribal land pursuant to its sovereign exclusionary powers," given that the nonmember's "alleged conduct violated the [t]ribe's regulations that were in place

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

at the time of her employment," while she was "on tribal land."

- *Grand Canyon Skywalk Dev. v. 'SA' Nyu Wa Inc.*, 715 F.3d 1196, 1204–05 (9th Cir. 2013): The Ninth Circuit found tribal jurisdiction was "not plainly lacking" over a non-tribal corporation that contracted with a tribe to build and manage a tourist destination on tribal land. Because the "essential basis for the agreement" was "access to" tribal land and the agreement "interfered with the [tribe's] ability to exclude" the non-tribal corporation, the tribe likely had authority over the parties, lands, and interests implicated by that agreement.

When a nonmember has *not* physically entered and engaged in activity on tribal land, the "right to exclude" does not apply. *See McPaul*, 804 F. App'x at 757. In *McPaul*, the Ninth Circuit held that because a nonmember insurance company's "relevant conduct—negotiating and issuing general liability insurance contracts to non-Navajo entities—occurred entirely outside of tribal land," a tribal court's jurisdiction could not be premised on the tribe's right to exclude. *Id.* As the district court in *McPaul* elaborated, the nonmember insurer "never set foot on reservation land, interacted with tribal members, or expressly directed any activity within the reservation's borders." *Emp'rs Mut. Cas. Co. v. Branch*, 381 F. Supp. 3d 1144, 1149–50 (D. Ariz. 2019).

The Tribe's right to exclude does not apply to Plaintiffs and therefore does not permit the exercise of tribal jurisdiction over them. Like the insurer in *McPaul*, Plaintiffs have not entered, sent employees to, maintained operations within, trespassed on, or engaged in any activity on the Tribe's land. And the insurance contracts at issue neither provide Plaintiffs access to tribal land nor contain terms affecting or impairing the Tribe's ability to exclude anyone from its land.

As part of its analysis of the "right to exclude" doctrine, the Tribal Court of Appeals held the Tribe "could have excluded [Plaintiffs] from selling" insurance policies to the Tribe regarding "on-reservation property and businesses." Hoffman Decl., Ex. F at 14 n.14. But the court cited no authority to support this proposition, which appears to conflate commercial discretion with sovereign authority. What the Tribe may or may not be able to do as a private party negotiating the terms of a business relationship must not be confused with what it is permitted to do as a tribal sovereign seeking to impose its authority on a nonmember. *See San Manuel Indian Bingo and Casino v. NLRB*, 475 F.3d 1306, 1312–13 (D.C. Cir. 2007) ("[T]ribal sovereignty is not absolute,

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

permitting a tribe to operate in a commercial capacity without legal constraint."); *see also Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 146 (1982) (cautioning against "confus[ing] the Tribe's role as commercial partner with its role as sovereign"); *Montana*, 450 U.S. at 564 ("'The areas in which such implicit divestiture of sovereignty has been held to have occurred are those involving *the relations between an Indian tribe and nonmembers of the tribe*.'" (emphasis in original)). Indeed, when "a tribal government goes beyond matters of internal self-governance and enters into off-reservation business transaction[s] with non-Indians, its claim of sovereignty is at its weakest." *San Manuel*, 475 F.3d at 1313.

Because Plaintiffs have not entered the Tribe's land, there is nothing for the Tribe to exclude, and so the right-to-exclude doctrine does not permit the exercise of tribal jurisdiction over Plaintiffs. This Court should halt Defendants' unlawful exercise of authority.

B. Plaintiffs Are Entitled to a Permanent Injunction

Because "there are no issues of material fact relevant to whether injunctive relief is proper," *J.T.*, 291 F.R.D. at 613, this Court should permanently enjoin the Defendants from continuing its exercise of tribal jurisdiction over Plaintiffs in violation of federal law.

1. Plaintiffs Will Continue to Suffer Irreparable Harm if Defendants Are Not Enjoined

Absent injunctive relief from this Court, Plaintiffs will continue to suffer irreparable harm from the unlawful exercise of jurisdiction over them in the tribal court. To date, Plaintiffs have had no choice but to defend themselves in a court that has no lawful authority over them. Plaintiffs have had to appear and answer in Tribal Court, or else risk default. And they imminently will be required to engage in hearings, discovery, motion practice, and trial in Tribal Court. Plaintiffs also face the potential of an adverse judgment. These unfair and invalid proceedings will continue if an injunction is not issued.

Federal courts have recognized such ongoing and impending injuries as sufficient to warrant preliminary and permanent injunctions. The Seventh Circuit in *Stifel*, for example, affirmed a preliminary injunction that was based in part on the irreparable harm that nonmembers would suffer by being "forced to litigate" in a "court that likely lacks jurisdiction over them." 807

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

F.3d at 194, 214. The Eastern District of Washington found the same in *Yakama*. 2013 WL 139368, at *3. Litigating in a court that lacks jurisdiction results in "unnecessary time, money and effort" and thus demonstrates the requisite "unwarranted and irreparable harm." *Koniag, Inc. v. Kanam*, 2012 WL 2576210, at *5 (D. Alaska July 3, 2012). Courts have found that litigating in tribal court would irreparably harm nonmembers in a long list of other cases, too. *E.g.*, *McKesson Corp. v. Hembree*, 2018 WL 340042, at *10 (N.D. Okla. Jan. 9, 2018); *Rolling Frito-Lay Sales LP v. Stover*, 2012 WL 252938, at *6 (D. Ariz. Jan. 26, 2012); *Kerr-McGee Corp. v. Farley*, 88 F. Supp. 2d 1219, 1233 (D.N.M. 2000). This Court should find the same here.

2. Remedies Available at Law Are Inadequate to Compensate for Plaintiffs' Injury

Plaintiffs lack any adequate remedy at law. This case clears that bar, too. Plaintiffs seek to put a stop to Defendants' invalid exercise of tribal jurisdiction over them. There is no remedy at law that could redress this injury, including damages. In fact, because tribal officials enjoy immunity from monetary suit, Plaintiffs would be barred from seeking remedies at law under *Ex Parte Young*, 209 U.S. 123 (1908), which allows nonmembers to seek *only* injunctive and declaratory relief against tribal officials. *Burlington N. & Santa Fe Ry. Co. v. Vaughn*, 509 F.3d 1085, 1092 (9th Cir. 2007); *Miller v. Wright*, 705 F.3d 919, 928 (9th Cir. 2013) ("[T]o the extent the complaint seeks monetary relief, such claims are barred under *Ex Parte Young*.").

3. Considering the Balance of Hardships, Defendants Will Suffer No Serious Injury if They Are Enjoined

The balance of hardships tips sharply in Plaintiffs' favor. Plaintiffs are suffering ongoing irreparable harm because they have been forced to litigate in a court that lacks jurisdiction over them without a right of merits review outside of the tribal court system. The Defendants, by contrast, face no serious risk of harm. If an injunction were issued against them, the only potential injury to them (and the Tribe and PME) would be dismissal of the Tribal Court action. But the Tribe and PME would not be without remedy. They would still be free to assert their claims in a state or federal court of competent jurisdiction, as courts have repeatedly observed in similar circumstances. *E.g.*, *Yakama*, 2013 WL 139368, at *3; *McKesson*, 2018 WL 340042, at *10; *Koniag*, 2012 WL 2576210, at *5; *Rolling Frito-Lay Sales*, 2012 WL 252938, at *6; *UNC Res.,*

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

Inc. v. Benally, 518 F. Supp. 1046, 1053 (D. Ariz. 1981). Because the threat of dismissal of the Tribal Court action to Defendants, the Tribe, and PME is far less significant than the threat to Plaintiffs of unnecessary and unlawful litigation, the balance of hardships favors Plaintiffs.

4. An Injunction Against Defendants Is in the Public Interest

Federal courts have consistently recognized that it is in the public's interest to prevent excessive exercises of tribal court jurisdiction and instead to have disputes resolved in their proper forums. For example, in *Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140, 1153 (10th Cir. 2011), the Tenth Circuit held that a tribal court lacked jurisdiction to order a nonmember law firm to return paid fees to a tribe. In affirming a preliminary injunction enjoining the tribal court's order, the Tenth Circuit was "not persuaded" that the invalid "exercise of tribal authority over . . . a non-consenting, nonmember, [was] in the public's interest." *Id.* at 1158. Rather, as other courts have held, the public's interest is better served by enjoining unlawful exercises of tribal jurisdiction and ensuring disputes proceed in "properly vested" forums. *See Yakama*, 2013 WL 139368, at *3 ("It is in the public interest that the parties' dispute be resolved in the forum which is properly vested with subject matter jurisdiction."); *accord Koniag*, 2012 WL 2576210, at *5; *McKesson*, 2018 WL 340042, at *10; *Rolling Frito-Lay Sales*, 2012 WL 252938, at *6. The same is true here.

C. Plaintiffs Are Entitled to Declaratory Relief

Declaratory relief is proper because there is a clear "case of actual controversy" between Plaintiffs and Defendants, 28 U.S.C. § 2201(a), as Defendants continue to violate Plaintiffs' rights by exercising jurisdiction over them without any basis in law. Further, a finding by this Court that the Tribal Court lacks jurisdiction over Plaintiffs will "clarify[] and settl[e] the legal relations" between the parties and "afford relief from the uncertainty, insecurity, and controversy" of Plaintiffs' subjection to a foreign court's unlawful authority.

V. CONCLUSION

The Court should grant summary judgment in favor of Plaintiffs, declaring that the Suquamish Tribal Court lacks jurisdiction over Plaintiffs and permanently enjoining Defendants from exercising jurisdiction over Plaintiffs in violation of federal law.

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000

Respectfully submitted,

Dated: May 2, 2022

GIBSON, DUNN & CRUTCHER LLP

By: s/ *Richard J. Doren*
Richard J. Doren*
Matthew A. Hoffman*
Bradley J. Hamburger*
Daniel R. Adler*
Kenneth H. Oshita*

333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: (213) 229-7000
Email: rdoren@gibsondunn.com
Email: mhoffman@gibsondunn.com
Email: bhamburger@gibsondunn.com
Email: dadler@gibsondunn.com
Email: koshita@gibonsdunn.com
**Admitted Pro Hac Vice*

JENSEN MORSE BAKER PLLC

By: s/ *Gabriel Baker*
Gabriel Baker, WSBA No. 28473

By: s/ *Benjamin J. Roesch*
Benjamin J. Roesch, WSBA No. 39960

1809 Seventh Avenue, Suite 410
Seattle, WA 98101
Telephone: (206) 682-1550
Email: gabriel.baker@jmblawyers.com
Email: benjamin.roesch@jmblawyers.com

Attorneys for Plaintiff Lexington Insurance Company

Dated: May 2, 2022

GORDON THOMAS HONEYWELL LLP

By: s/ *Michael E. Ricketts*
Michael E. Ricketts, WSBA No. 9387

520 Pike Street, Suite 2350
Seattle, WA 98101
Telephone: (206) 676-7500
Fax: (206) 676-7575
Email: mricketts@gth-law.com

Attorneys for Plaintiff Homeland Insurance Company of New York

Dated: May 2, 2022

ZELLE LLP

By: s/ *Bennett A. Moss*
Bennett A. Moss, TX Bar No. 24099137*
Shannon O'Malley, TX Bar No. 24037200*
Kristin C. Cummings, TX Bar No. 24049828*

901 Main Street; Suite 4000
Dallas, TX 75202
Email: somalley@zelle.com
kcummings@zelle.com
bmoss@zelle.com

Attorneys for Plaintiff Homeland Insurance Company of New York
**Admitted Pro Hac Vice*

Dated: May 2, 2022

LETHER LAW GROUP

By: s/ *Thomas Lether*
Thomas Lether, WSBA No. 18089

By: s/ *Eric J. Neal*
Eric J. Neal, WSBA No. 31683

1848 Westlake Ave N, STE 100
Seattle, WA 98109
Telephone: (206) 467-5444
Fax: (206) 467-5544
Email: tlether@letherlaw.com
Email: eneal@letherlaw.com

Attorneys for Plaintiffs Hallmark Specialty Insurance Company, Aspen Specialty Insurance Company, and Aspen Insurance UK Ltd

Dated: May 2, 2022

FORSBERG & UMLAUF, P.S.

By: s/ *Robert W. Novasky*

Robert W. Novasky, WSBA No. 21682

1102 Broadway, Suite 510
Tacoma, WA 98402
Telephone: (253) 572-4200
Email: rnovasky@foum.law

Attorneys for Plaintiffs Certain Underwriters at Lloyd's, London and London market companies subscribing to Policy Nos. PJ193647, PJ1900131, PJ1933021, PD-10364-05, PD-11091-00, and PJ1900134-A

CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned certifies, under penalty of perjury under the laws of the United States of America and the State of Washington, that on the 2nd day of May, 2022, the document attached hereto was delivered to the below counsel in the manner indicated:

Co-Counsel for Lexington Insurance Company:
Richard J. Doren
Matthew A. Hoffman
Bradley J. Hamburger
Daniel R. Adler
Kenneth H. Oshita
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
rdoren@gibsondunn.com
mhoffman@gibsondunn.com
bhamburger@gibsondunn.com
dadler@gibsondunn.com
koshita@gibsondunn.com

Admitted Pro Hac Vice

☒ Via CM/ECF
☐ Via electronic mail
☐ Via U.S. Mail, postage prepaid
☐ Via Facsimile
☐ Via Courier
☐ Via Overnight delivery

Counsel for Homeland Insurance Company of New York
Michael E. Ricketts, WSBA No. 9387
Gordon Thomas Honeywell LLP
520 Pike Street, Suite 2350
Seattle, WA 98101
mricketts@gth-law.com

☒ Via CM/ECF
☐ Via electronic mail
☐ Via U.S. Mail, postage prepaid
☐ Via Facsimile
☐ Via Courier
☐ Via Overnight delivery

Co-Counsel for Homeland Insurance Company of New York
Shannon O'Malley, TX Bar No. 24037200
Kristin C. Cummings, TX Bar No. 24049828
Bennett A. Moss, TX Bar No. 24099137
Zelle LLP
901 Main Street; Suite 4000
Dallas, TX 75202
somalley@zelle.com
kcummings@zelle.com
bmoss@zelle.com

Admitted Pro Hac Vice

☒ Via CM/ECF
☐ Via electronic mail
☐ Via U.S. Mail, postage prepaid
☐ Via Facsimile
☐ Via Courier
☐ Via Overnight delivery

Counsel for Hallmark Specialty Insurance Company, Aspen Specialty Insurance Company, and Aspen Insurance UK Ltd Thomas Lether, WSBA No. 18089 Eric J. Neal, WSBA No. 31863 Kevin J. Kay, WSBA No. 34546 Kasie Kashimoto, WSBA No. 54268 Lether Law Group 1848 Westlake Ave N, STE 100 Seattle, WA 98109 tlether@letherlaw.com eneal@letherlaw.com kkay@letherlaw.com kkashimoto@letherlaw.com	☒ Via CM/ECF ☐ Via electronic mail ☐ Via U.S. Mail, postage prepaid ☐ Via Facsimile ☐ Via Courier ☐ Via Overnight delivery
Counsel for Certain Underwriters at Lloyd's, London and London market companies subscribing to Policy Nos. PJ193647, PJ1900131, PJ1933021, PD-10364-05, PD-11091-00, and PJ1900134-A Robert W. Novasky, WSBA No. 21682 Forsberg & Umlauf, P.S. 1102 Broadway, Suite 510 Tacoma, WA 98402 rnovasky@foum.law	☒ Via CM/ECF ☐ Via electronic mail ☐ Via U.S. Mail, postage prepaid ☐ Via Facsimile ☐ Via Courier ☐ Via Overnight delivery
Counsel for Defendant-Intervenor The Suquamish Tribe Timothy Woolsey, WSBA No. 33208 Office of the Tribal Attorney P.O. Box 498 Suquamish, WA 98392 twoolsey@suquamish.nsn.us	☒ Via CM/ECF ☐ Via electronic mail ☐ Via U.S. Mail, postage prepaid ☐ Via Facsimile ☐ Via Courier ☐ Via Overnight delivery
Benjamin D. Greenberg, WSBA No. 44120 Dorsey & Whitney LLP 701 Fifth Avenue; Suite 6100 Seattle, WA 98104 Greenberg.ben@dorsey.com *Counsel for Defendant-Intervenor The Suquamish Tribe*	☒ Via CM/ECF ☒ Via electronic mail ☐ Via U.S. Mail, postage prepaid ☐ Via Facsimile ☐ Via Courier ☐ Via Overnight delivery
Co-Counsel for Defendant-Intervenor The Suquamish Tribe Vernle C. Durocher, Jr. Andrew Brantingham	☒ Via CM/ECF ☐ Via electronic mail ☐ Via U.S. Mail, postage prepaid ☐ Via Facsimile

Katie C. Pfeifer Dorsey & Whitney LLP 50 South Sixth Street; Suite 1500 Minneapolis, MN 55402 Durocher.skip@dorsey.com Brantingham.andrew@dorsey.com Pfeifer.katie@dorsey.com *Admitted Pro Hac Vice*	☐ Via Courier ☐ Via Overnight delivery
Defendant Cindy Smith, in her official capacity as Chief Judge for the Suquamish Tribal Court Cindy Smith Chief Judge for the Suquamish Tribal Court 18490 Suquamish Way; Suite 105 Suquamish, WA 98392 csmith@suquamish.nsn.us	☒ Via CM/ECF ☐ Via electronic mail ☐ Via U.S. Mail, postage prepaid ☐ Via Facsimile ☐ Via Courier ☐ Via Overnight delivery
Defendant Eric Nielsen, in his official capacity as Chief Judge for the Suquamish Tribal Court of Appeals Eric Nielsen Chief Judge for the Suquamish Tribal Court of Appeals 1908 East Madison Street Seattle, WA 98122 nielsene@nwattorney.net	☒ Via CM/ECF ☐ Via electronic mail ☐ Via U.S. Mail, postage prepaid ☐ Via Facsimile ☐ Via Courier ☐ Via Overnight delivery
Defendant Bruce Didesch, in his official capacity as Judge for the Suquamish Tribal Court of Appeals Bruce E. Didesch Judge for the Suquamish Tribal Court of Appeals P.O. Box 1076 Mead, WA 99021 bruce@dideschlaw.com	☒ Via CM/ECF ☐ Via electronic mail ☐ Via U.S. Mail, postage prepaid ☐ Via Facsimile ☐ Via Courier ☐ Via Overnight delivery
Defendant Steven Aycock, in his official capacity as Judge of the Suquamish Tribal Court of Appeals Steven Aycock Judge for the Suquamish Tribal Court of Appeals 7570 West Cherrywood Drive	☒ Via CM/ECF ☐ Via electronic mail ☐ Via U.S. Mail, postage prepaid ☐ Via Facsimile ☐ Via Courier ☐ Via Overnight delivery

Boise, ID 83704
mjbsreno@gmail.com

Signed this 23rd day of March, 2022, in Kansas City, MO.

s/Gwendolyn Wall
Gwendolyn Wall, paralegal

GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
(213) 229-7000