IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

RURAL COMMUNITY ASSISTANCE CORPORATION,	)	
Plaintiff,	)	
v.	)	**Civil Action No. 1:25-cv-00679 JFR-GBW**
MAJOR MARKET, INC.,	)	
Defendant.	)	

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

I. INTRODUCTION TO ARGUMENT

Defendant Major Market, Inc. ("Major Market") has filed a motion asking this Court to dismiss or stay this suit due to Plaintiff's failure to exhaust its tribal remedies as required by 471 U.S. 845 (1985) and *Iowa Mutual Insurance Company v. LaPlante*, 480 U.S. 9 (1987).

The dispute which gives rise to this case had its origin in a plan of two Zuni tribal members, Darrell Tsabetsaye and Roscelia Him, to start a convenience store and delicatessen on Zuni tribal lands, as to which they held a traditional use right under the Zuni Pueblo's customary law. To secure financing for this venture required that a lease and leasehold mortgage involving that same land be obtained.

This plan was approved by the Zuni Pueblo Tribal Council per Resolution M70-2017-P009 as part of a tribal policy of encouraging tribal member business development

efforts at Zuni (copy attached to the Motion as **Exhibit 1**). Key excerpts from that Resolution provide:

> WHEREAS, the Zuni Tribal Council is in receipt of a proposed business development plan of Major Market, Inc., doing business as Major Market, Inc., doing business as Major Market Food and a Deli. Major Market, Inc. is owned by Darrell Tsabetsaye and Rosecelia Him, Zuni tribal members, who are proposing to develop said business on their tribal land assignment; and,
>
> WHEREAS, the owners of Major Market, Inc. propose to lease their Zuni tribal land assignment for the purpose of obtaining a business loan and securing said loan with its leasehold interest. A lease, for the purpose of covering the development of Major Market, Inc. business may contain the following proposed terms and conditions as further negotiations of the lease agreement progresses; and,
>
> * * * *
>
> b) Purpose. To conduct retail sale of groceries, general merchandise, sundry items and a deli shop To encumber the leasehold interest to secure a business loan upon full disclosure of the loan.
>
> * * * *
>
> d) Rent. Recognizing the surface-use being held by Darrell Tsabetsaye and Rosecelia Him under a tribal land assignment and in support of tribal entrepreneurs creating business to promote economic development of the community of Zuni, the Zuni Tribal Council agrees to waive valuation and lease the land to their corporation, Major Market, Inc. for a nominal rental of One Dollar ($1.00) per year, subject to the Tribal Council's approval of the final lease agreement.
>
> * * * *
>
> e) Improvements. Major Market, Inc. proposes to place a building to service as business outlet, and that during the term of the lease said improvements shall belong to the Lessee, subject to the covenants, conditions, and restrictions in the lease agreement.
>
> NOW THEREFORE BE IT RESOLVED, that subject to the Zuni Tribal Council's approval of the final lease agreement, and any associated documents, the Zuni Tribal Council hereby gives preliminary approval of

> the proposed business development of Major Market, Inc. and directs all necessary actions be completed for the submission of a complete lease package to Tribal Council, for its consideration, including a business lease, a legal survey of the proposed leased premises, and updated a Categorical Exclusion environmental document to address all environmental concerns. (emphasis added)

For the reasons set out below and in the Motion, the financial arrangements later approved by the parties, the BIA and the Tribe, and implicitly by the Land Assignees who hold traditional use rights to the same Zuni land made subject to the lease and leasehold mortgage, and disputes arising therefrom, including the claims here pled by RCAC, constitute consensual relationships and evidence the existence of "a Reservation Affair" and are claims which fall within the jurisdiction of the Zuni Tribal Courts, all triggering RCAC's duty to exhaust tribal remedies in the Zuni Courts, per the controlling federal law, before seeking relief in this Court.

Further, since RCAC, the non-Indian party in this dispute, is the Plaintiff (not the defendant), it is clear that the Zuni Tribal Court is the appropriate forum for adjudication of this dispute under *Williams v. Lee,* 358 U.S. 217 (1959); *Navajo Nation v. Dalley,* 896 F.3d 1196, 1204-1205 (10th Cir. 2018) (reaffirming *Williams v. Lee* rule that absent Congressional authorization tribal courts rather than state courts have jurisdiction to adjudicate suits filed by non-Indians against Indian parties regarding disputes arising from the Indian party's conduct within their Indian Country). Tribal Court jurisdiction exists under *Williams v. Lee* and its progeny independent of the test established under *Montana v. United States,* 450 U.S. 544 (1981); *Fine Consulting, et al. v. George Rivera,* 915 F.Supp.2d 1212 (D.N.M. 2013) (since tribal court had colorable jurisdiction under

Williams v. Lee and *Montana* tests, suit involving dispute by non-Indian party against tribal defendants involving contracts to be performed by non-Indian on the reservation must be dismissed due to plaintiff failure to exhaust tribal remedies). The *Montana* test is only applicable when the non-Indian party in such a dispute is or would be a tribal court defendant. It is also clear, however, that if *Montana* were otherwise applicable, that the exercise of tribal jurisdiction over this dispute would also be appropriate under that test. *See,* § III, *infra.*

II. THIS COURT IS REQUIRED TO DISMISS OR STAY PLAINTIFF'S SUIT DUE TO PLAINTIFF'S FAILURE TO EXHAUST TRIBAL REMEDIES

A.

National Farmers Union v. Crow Tribe of Indians, 471 U.S. 845 (1985) and *Iowa Mutual Insurance Company v. LaPlante*, 480 U.S. 9 (1987) hold (except for certain exceptions not here relevant)[1], that where a party seeks to secure a federal court ruling on a civil cause of action arising from or involving voluntary transactions or other commercial relationships between one of the parties to the dispute and a tribal member, tribe or tribal entity of that tribe, and in particular which involve or affect the use and

[1] *National Farmers Union* at 856. n.21 ("We do not suggest that exhaustion would be required where an assertion of tribal jurisdiction 'is motivated by a desire to harass or is conducted in bad faith,' *cf. Juidice v. Vail*, 430 US 327, 338, 51 L Ed 2d 376, 98 S Ct 1211 (1977), or where the action is patently violative of express jurisdictional prohibitions, or where exhaustion would be futile because of the lack of an adequate opportunity to challenge the court's jurisdiction."); *El Paso Natural Gas Company v. Neztsosie,* 526 U.S. 473 (1999) (exhaustion of tribal remedies not required where the Congress has clearly expressed an intent that a particular federal claim be heard only in a federal forum); *Nevada v. Hicks,* 533 U.S. 353, 369 (exhaustion of tribal remedies is not required where there is not even a colorable basis for exercise of tribal jurisdiction; held: since tribal court had no jurisdiction to adjudicate tort and § 1983 claims against state officers, exhaustion of tribal remedies was not required as to suit pleading such claims). None of those exceptions apply here.

control of tribal land or related tribal member interests in or on such tribal land, such disputes are categorized as "Reservation Affairs" which trigger the non-Indian Plaintiff's duty to exhaust tribal remedies before seeking relief in the U.S. District Courts. In such cases, the federal court must dismiss (or stay) the federal suit until plaintiff has exhausted its tribal remedies—so long as there exist colorable tribal court jurisdiction over the claims pled under *Montana v. United States,* 450 U.S. 544 (1981) and/or *Williams v. Lee,* 358 U.S. 217 (1959). In *Strate v. A-1 Contractors*, 520 U.S. 438 (1997) and *Atkinson Trading Co., Inc. v. Shirley,* 532 U.S. 645 (2001), the Court reaffirmed the exhaustion of tribal remedies requirements of *National Farmers Union* and *Iowa Mutual* where there exists at least a colorable claim that the federal requirements for exercise of tribal jurisdiction over a non-Indian party—either as plaintiff or as defendant—are met. This exhaustion requirement has been reaffirmed many times. *Norton v. Ute Indian Tribe of the Unitah and Ouray Reservation,* 862 F.3d 1236 (10th Cir. 2017) (District Court erred in failing to enforce plaintiff's duty to exhaust tribal remedies in suit against tribal officers and tribal business committee re dispute over role of county officers on reservation lands); *Valenzuela v. Silversmith,* 699 F.3d 1199 (10th Cir. 2012) (petitioner seeking habeas corpus relief based on detention by order of a tribal court was denied due to petitioner's failure to exhaust tribal remedies); *Crowe & Dunlevy, P.C. v. Stidham,* 640 F.3d 1140, 1149 (10th Cir. 2011) (absent exceptional circumstances, federal courts are to abstain from hearing cases that challenge tribal court authority until tribal remedies, including tribal appellate review, are exhausted); *World Fuel Servs., Inc. v. Nambe Pueblo Devel. Corp.,* 362 F.Supp.3d 1021 (D.N.M. 2019) (requiring exhaustion of tribal

remedies by non-Indian plaintiff re arbitration demand regarding billing dispute over sales of fuel delivered for resale to a convenience store wholly-owned by a federally chartered tribal corporation owned by the Nambe Pueblo); *Hartman v. Kickapoo Tribe Gaming Commission*, 319 F.3d 1230, 1233 (10th Cir. 2003) (affirming dismissal for failure to exhaust tribal remedies of a federal civil suit against Indian tribe, its gaming commission and individual gaming commissioners alleging wrongful suspension of plaintiff's tribal gaming license without a hearing)—reaffirming that exhaustion of tribal remedies in such circumstances is mandatory; *Smith v. Moffett,* 947 F.3d 442, 446 (10th Cir.1991) (order dismissing civil suit against various tribal officials to the extent the claims pled arose on the Navajo Indian Reservation and reiterating that the duty to exhaust tribal remedies in such cases is mandatory—following the "inflexible bar" analysis of *Granberry v. Greer, supra*); *Stock West Corporation v. Michael Taylor,* 964 F.2d 912, 920 (9th Cir. 1992) (*en banc*) (affirming dismissal for failure to exhaust tribal remedies of suit pleading civil tort claims filed by non-Indian contractor **against in-house non-Indian attorney for tribe** who provided legal opinion for Indian tribal corporations where the opinion was prepared on the reservation in connection with an on-reservation transaction between the tribal corporations and the non-Indian contractor, **since there was colorable tribal court jurisdiction over the claims under *Montana* because "the assertion of tribal jurisdiction is plausible and appears to have a valid or genuine basis…, or where "undisputed facts show 'the transactions which form the basis for appellants' claims occurred or were commenced on tribal territory'")**; *Graham v. Applied Geo Technologies, Inc.,* 593 F.Supp.2d 915 (S.D. Miss. 2008)

(requiring exhaustion of tribal remedies on former employee's civil suit against tribally-owned, tribally chartered corporation and various non-Indian officers and employees thereof); *TTEA Corp. v. Ysleta del Sur Pueblo*, 181 F.3d 676 (5th Cir. 1999) (exhaustion of tribal remedies required on tribe's claim that contract with non-Indian was void under 25 U.S.C. § 81); *Ninigret Development Corp. v. Narragansett Indian Wetuomuck Housing Authority*, 207 F.3d 21, 31 (1st Cir. 2000) ("The tribal exhaustion doctrine holds that when a colorable claim of tribal court jurisdiction has been asserted, a federal court may (and ordinarily should) give the tribal court precedence and afford it a full and fair opportunity to determine the extent of its own jurisdiction over a particular claim or set of claims."); *Fine Consulting, et al. v. George Rivera, supra* (dismissing plaintiff's suit seeking relief regarding tort and contract claims asserted by a non-Indian plaintiff based on a contract to be performed for a tribal party in its Indian Country for failure to exhaust tribal remedies).

B.

The loan agreement, promissory note, lease and leasehold mortgage (the "financing arrangements") are all forms of consensual relationships evidencing encumbrance of the subject Zuni tribal land in which RCAC and Major Market are parties. Although Major Market is a New Mexico corporation, it is wholly-owned by the same two Zuni tribal members (referenced in the lease and leasehold mortgage as "Land Assignees") who originally owned (and still own) their traditional use right to that same land and their business development effort was approved by the Zuni Tribal Council and the BIA as part of a local economic and business development initiative endorsed by the

Tribe. *See,* **Exhibit 1** to the Motion. Hence, Major Market constitutes an Indian party whose interests in regard to the subject tribal land and the leasehold thereupon as to which RCAC seeks the equitable remedy of foreclosure triggers RCAC's duty to exhaust its tribal court remedies before seeking that kind of relief in this Court. *Ultra Clean Fuel (Transmix) LLC v. LDC Energy, LLC*, 2025 WL 2336903 (D.N.M. 2025) (holding that dispute between non-Indian plaintiffs and state-chartered LLC wholly-owned by a Laguna Pueblo tribal entity triggered plaintiffs' duty to exhaust tribal remedies where dispute arose from on-reservation activity of the non-Indian plaintiffs per agreement with the Indian owned state chartered LLC).

Further, the customary tribal land use rights owned by the Zuni tribal members, Darrell Tsabetsaye and Roscelia Him, in the Zuni tribal land made subject to the lease and leasehold mortgage are referenced in the lease and leasehold mortgage, and those documents implicitly reflect any understanding of the named parties, the Land Assignees, the Tribe and the BIA that those underlying traditional land use rights would be subordinated to the lease and leasehold mortgage rights conferred upon RCAC for the life of the lease, effectuate the Land Assignees' agreement to subordinate their land use rights to the lease, their signatures on those instruments (even though formally executed as officers of Major Market) must also be deemed to bind them in their individual capacities as "land assignees" to acceptance of this subordination regime. If those Zuni tribal members are not deemed to have agreed to so subordinate their traditional land use rights to the lease, then they would still own those land use rights free and clear of any overlying lease rights. But that would be a nonsensical outcome. The only way to

achieve the original intent of the parties is to recognize that the Land Assignees had agreed to that subordination per the lease and leasehold mortgage. That arrangement would bind the Land Assignees to honor that subordination arrangement, making them implicit parties to the leasehold mortgage and thus having a consensual relationship with RCAC in this regard, further triggering RCAC's duty to exhaust tribal remedies; and, indeed, triggering the duty to join them as party defendants in any leasehold mortgage foreclosure proceeding to ensure the priority of the lease rights over their traditional land use rights is recognized by those land assignees for the benefit of any lessee. *See, Amerendaris Water Development Company v. Rainwater, et al.,* 781 P.2d 799 (N.M. App. 1989) (failure to join in a foreclosure proceeding a party whose rights would be affected by a judgment in that proceeding deprives the court of jurisdiction to grant relief binding on that party in his absence); *Springer Corporation v. Kirkby-Natus*, 453 P.2d 376 (N.M. 1969) (rights of a party who has an interest in land made subject to a mortgage foreclosure but who was not joined in that action are not affected by any entry of judgment in that action). In these circumstances, no forum could grant complete relief in a mortgage foreclosure case without joinder of the underlying Land Assignees as party defendants.

C.

Satisfying the duty to exhaust tribal remedies requires the Plaintiff to seek adjudication of all the legal questions bearing on this dispute in the Zuni Courts (including appeal to the Zuni Tribe's designated appellate body—the Zuni Appellate Court. A true and correct copy of Chapter 3 of the existing Zuni Law and Order Code is

attached to the motion in **Exhibit 2**). *Iowa Mutual Insurance Company v. LaPlante, supra* at 17 ("Until appellate review is complete, the Blackfeet Tribal Courts have not had a full opportunity to evaluate the claims and federal courts should not intervene"). Since Plaintiff has not exhausted its tribal remedies as to its claims, this suit must be dismissed or stayed until the Zuni Courts have been given the opportunity to rule on these and any other issues and defenses that may be germane to the dispute, including adjudication of any of RCAC's mortgage foreclosure claims per §12-1-4 of the Zuni Tribal Code.

D.

Some of the questions which must be put before the Zuni Court and decided by that Court include: (1) whether any of the loan modifications attached to the Complaint but made without BIA and Zuni Tribe approval were legally effective obtaining such approvals of those loan modifications were conditions precedent to those modifications becoming legally effective per 25 C.F.R. § 103.36(a)(1) and 25 C.F.R. § 162.46 and otherwise; and whether RCAC's conduct in treating those unapproved loan modifications as legally effective was inequitable conduct in the circumstances which warrants denial of the equitable remedy of foreclosure without BIA or Zuni Pueblo approval and, (2) whether RCAC's failure to timely call upon the BIA to pay off 90% of the initial loan amount per 25 C.F.R 103.37(a), which could have secured a pay-off of that part of the loan without destroying Major Market's business, but which RCAC failed to do was such inequitable conduct in the circumstances as to warrant denial of RCAC's request for the equitable remedy of foreclosure; and, (3) a determination of whether any of the additional

loan amounts obtained without BIA (or tribal) approval of the loan modifications are or are not secured by the leasehold mortgage on which RCAC seeks foreclosure or constitute unsecured debt; and, (4) whether any of those additional loan amounts not approved by the Tribe or BIA as required are actually a part of the debt covered by the terms and conditions of the Loan Agreement and Promissory Note *e.g.* for interest, late fees, legal fees and defined monthly payments (or may be debt owed outside of that framework); and, (5) whether the equitable remedy of foreclosure regarding the leasehold mortgage is permitted as to any part of the monies advanced by RCAC; and, (6) what will be the effect of that foreclosure on the underlying traditional use right of the Zuni tribal members involved, if they are not joined as party defendants in any such foreclosure proceeding.

All of those issues must be decided by application of the choice of law rules set out at §1-3-8 of the Zuni Tribal Code (attached as part of **Exhibit 2** to the Motion). That choice of law regime requires the application of Zuni written and unwritten law.

Applying Zuni law to any leasehold mortgage foreclosure proceeding involving Zuni land and Zuni member land assignment rights is also appropriate based on the general rule that the law of the place where the land is located is the proper law to apply in mortgage foreclosure proceedings which will determine rights to use and occupy any of such land. *State of New Mexico v. Real Estate Law Center, D.C.,* 430 F.Supp. 900 (D.N.M. 2019) (New Mexico law—the State in which mortgage related fraud activities were claimed to have occurred—was the appropriate law to be applied notwithstanding choice of law clause calling for application of California law); *Business Loan Center, Inc.*

v. Nischal, 331 F.Supp.2d 301, 310 (D.N.J. 2004) (the law of the place where real property is located should be applied in mortgage foreclosure proceedings).

There are also no choice of law provisions in the leasehold mortgage (**Exhibit C** to the Motion and Doc I-3) which purports to make any other law applicable; and, the "Governing Law" provision of the subject lease (**Exhibit D** to the Motion and Doc I-4 to the Complaint) provides:

> This Lease shall be construed in accordance with the applicable federal laws of the Zuni Tribe, and where there are none, the laws of the State of New Mexico shall be looked at for guidance, provided that nothing stated herein shall subject the Zuni Tribe to jurisdiction of the state courts of New Mexico or to the taxing or regulatory jurisdiction of the State of New Mexico.

Requiring exhaustion of Tribal remedies in this case is thus further supported by the fact that the Zuni Tribal Courts have more expertise in interpreting and applying Zuni written and customary law than does this Court. *See, U.S. v. Tsosie,* 849 F. Supp. 768 (D.N.M 1994) (federal court abstained and directed exhaustion of tribal remedies where parties' claims to the land were based in part, upon Navajo custom and tradition which tribal courts were best qualified to interpret and apply); *U.S. v. Plainbull,* 957 F2d 724, (9th Cir. 1992) (The district court did not abuse its discretion by deferring to the tribal courts for resolution of disputes over transactions taking place within the boundaries of a reservation and where tribal law was applicable to the dispute).

E.

Since the claims pled and the relief sought here by RCAC arise from the subject leasehold mortgage addressed above, the requirement that the Plaintiff's claims as pled

must have some kind of logical connection to ("nexus with") those underlying financing arrangements is also clearly satisfied. This nexus requirement is addressed at:

> *Atkinson Trading Company, Inc. v. Shirley, supra* at 123 S.Ct. at 1833 (requiring that the cause of action pled must have some logical connection ("nexus") to the underlying consensual relationships to anchor *Montana* jurisdiction); *MacArthur v. San Juan County,* 309 F.3d 1216, 1223 (10th Cir. 2022) (the *Montana* nexus requirement is not met where there is no logical connection between the plaintiff's cause of action and the underlying consensual relationships). This *Montana* nexus requirement is satisfied here because Plaintiffs seek relief based on the same financing arrangement that otherwise the consensual relationship which those financing arrangements widens.

These are all issues (together with all the other equitable issues that must otherwise be addressed in any foreclosure proceeding) that must first be addressed by the Zuni Tribal Court rather than by this Court. *MacArthur v. San Juan County,* 309 F.3d 1216, 1227 (10th Cir. 2002) (reversing district court's dismissal of claims arising within Indian Reservation boundaries on jurisdictional (sovereign immunity) grounds because district court should first have required exhaustion of tribal remedies to give tribal court first chance to rule on the sovereign immunity defense); *and see, Sharber v. Spirit Mountain Gaming, Inc.,* 343 F.3d 974 (9th Cir. 2003):

> Nor did the district court err in concluding that the tribal exhaustion requirement also applies to issues of tribal sovereign immunity. Determining whether the tribe has waived immunity, or whether Congress has abrogated its immunity, requires "a careful study of the application of tribal laws, and tribal court decisions." *Stock West Corp. v. Taylor,* 964 F.2d 912, 920 (9th Cir. 1992); *see also Nat'l Farmers,* 471 U.S. at 855-56, 105 S.Ct. 2447. Accordingly, the district court properly "stayed its hand until after the ... Tribal Courts have the opportunity to resolve the question." *Stock West Corp.,* 964 F.2d at 920.

F.

Plaintiff's duty to exhaust tribal remedies did not go away just because Plaintiff won the race to the courthouse. That duty exists even when no tribal lawsuit is pending at the time a federal action is commenced. *Brown v. Washoe Hous. Auth.,* 835 F.2d 1327 (10th Cir. 1988) (dismissing non-Indian plaintiff's suit for failure to exhaust tribal remedies even though no tribal court action involving that dispute was pending and expressly rejecting argument that exhaustion was not required in that circumstance); *Smith v. Moffett,* 947 F.2d 442, 445 (10th Cir. 1991) (same); *Sharber v. Spirit Mt. Gaming, Inc.,* 343 F.3d 974 (9th Cir. 2003) (same); *Burlington N. R.R. v. Crow Tribal Council,* 940 F.2d 1239, 1245-1247 (9th Cir. 1991) (same); *Weeks Const., Inc. v. Oglala Sioux Hous. Auth.,* 797 F.2d 668, 673-674 (8th Cir. 1986) (same); *Ninigret Development Corp. v. Narragansett Indian Wetuomuck Housing Authority*, 207 F.3d 21, 31 (1st Cir. 2000) (same).

Indeed, the whole federal policy of requiring exhaustion of tribal remedies would be rendered meaningless if that policy could be evaded by simply winning a race to the federal courthouse. This is especially true where, as here, the party seeking to evade tribal jurisdiction is a non-Indian Plaintiff seeking judicial relief against a tribal entity for causes of action arising within that Tribe's Indian Country, as to which it has long been settled that tribal courts are the appropriate forums for resolving such disputes. *Williams v. Lee, supra; Fine, supra.*

III. THE ZUNI TRIBAL COURTS CLEARLY HAVE COLORABLE JURISDICTION TO ADJUDICATE PLAINTIFF'S CLAIMS

The leasehold property on which Plaintiff seeks the equitable remedy of foreclosure on Zuni tribal land and all of Major Market's actions complained of by the Plaintiff occurred, if at all, on Zuni Tribe's grant or reservations lands constituting a part of the Zuni Tribe's Indian Country. *See Garcia v. Gutierrez,* 147 N.M. 105, 217 P.3d 591, 594-598 and n.2 (N.M. 2009) (reaffirming that Pueblo of Pojoaque grant lands are Indian Country for civil jurisdiction purposes).

Likewise, the lease and leasehold mortgage as to which RCAC seeks relief involves Zuni trust land. Further, the Zuni Tribal Code clearly confers jurisdiction on its courts to hear and decide civil disputes arising from actions or inactions of non-Indians occurring in the Zuni Indian Country, and specifically gives those courts authority to adjudicate mortgage foreclosure actions filed by non-Indians involving leasehold mortgages overlaid upon Zuni tribal land. *See,* Chapter 2 – Jurisdiction of the Zuni Tribal Code included in **Exhibit 2** to the Motion and in particular Subsections 1-2-1, 1-2-2, 1-2-4 and 1-2-5 of that Code.

G.

In *Williams v. Lee,* 358 U.S. 217 (1959), the Court barred the exercise of state court jurisdiction over causes of action arising on Indian reservations in which non-Indians sought to sue Indians for such causes of action, ruling that tribal courts were the proper forum for hearing those cases. In this regard, the Court stated at pp. 220, 223:

> There can be no doubt that to allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over Reservation affairs

> and hence would infringe on the rights of the Indians to govern themselves. It is immaterial that respondent is not an Indian. He was on the Reservation and the transaction with an Indian took place there... The cases in this Court have consistently guarded the authority of Indian governments over their reservations. (Citations omitted).

Likewise, in *Santa Clara Pueblo v. Martinez,* 436 U.S. 49, 65-72 (1978), the Court ruled that "Tribal courts have repeatedly been recognized as appropriate forums for the exclusive adjudication of disputes affecting important personal and property interests of both Indians and non-Indians."

Under *Williams v. Lee,* where a cause of action arises on lands constituting a tribe's Indian country and involves a non-member plaintiff suing a tribal defendant, based on alleged civil wrongs committed by the Indian defendant on the reservation in derogation of the rights of the non-Indian plaintiff, the propriety of tribal court jurisdiction to adjudicate such claim under federal law is well-settled. *Navajo Nation v. Dalley, supra.* Those kind of claims do not require analysis of the more rigorous sort required under *Montana* when the tribal court plaintiff is Indian and the tribal court defendant is non-Indian as in *Bank One, supra; see, Montana v. United States,* 450 U.S. 544, 565-566 (1981) (listing *Williams v. Lee* as an example of a case where tribal jurisdiction was clearly appropriate under consensual relations exception to *Montana* Rule); *see, Strate v. A-1 Contractors,* 520 U.S. 438, 457 (1997) (construing *Montana's* reference to *Williams v. Lee* as "declaring tribal jurisdiction exclusive over a lawsuit arising out of an on-reservation sales transaction between non-member plaintiff and member defendants"). *Three Affiliated Tribes v. Wold Engineering*, 467 U.S. 138, 104

S.Ct. 2267 (1984) makes clear that the same rule applies to tribal entity defendants as to tribal members; *Dalley, supra*.

In *Nevada v. Hicks,* 533 U.S. 353, 357, n.2 (2001), the court noted that the typical case in which the court has addressed and upheld the exercise of tribal court jurisdiction "have involved claims brought against tribal defendants. *See, e.g., Williams v. Lee* ...," but also noting that:

> In *Strate v. A-1 Contractors,* 520 U.S. 438, 453, 117 S.Ct. 1404, 137 L.Ed.2d 661 (1997), however, we assumed that "where tribes possess authority to regulate the activities of nonmembers, civil jurisdiction over disputes arising out of such activities presumably lies in the tribal courts," without distinguishing between nonmember plaintiffs and nonmember defendants. *See also Iowa Mut. Ins. Co. v. LaPlante,* 480 U.S. 9, 18, 107 S.Ct. 971, 94 L.Ed.2d 10 (1987). Our holding in this case is limited to the question of tribal-court jurisdiction over state officers enforcing state law. We leave open the question of tribal-court jurisdiction over nonmember defendants in general.

Thus, while *Hicks* did rule that tribal courts could not adjudicate claims against state officers sounding in tort or arising under 42 U.S.C. § 1983 in cases filed by tribal members against those officers based on their on-reservation conduct carried out while on duty, the Court was careful to disclaim any holding on any broader issue respecting the scope of tribal court jurisdiction over non-Indian defendants in general; *Hicks, supra* at 358, fn.2 and 373; and, nothing in *Hicks* otherwise undermined the existence of tribal court jurisdiction to adjudicate civil claims filed by non-members against tribal defendants under *Williams v. Lee,* 358 U.S. 217 (1959) (which established the basic rule that state courts may not adjudicate civil claims filed by non-Indians against Indians on

causes of action arising on defendants' Indian reservation; proper forums for resolving such disputes are the tribal courts of those reservations).

Plains Commerce Bank v. Long Family Land & Cattle Company, Inc. 554 U.S. 316, 128 S.Ct. 2709 (2008) the rules requiring exhaustion of tribal remedies. There the Court held that the Cheyenne River Sioux Tribal Courts could not (under *Montana*) adjudicate claims seeking to stop a bank from reselling certain non-Indian fee lands located within the reservation which had come into the bank's possession as the result of various prior loan deals gone bad. The Court left the pre-*Plains Commerce* law of *Montana* and *Williams v. Lee* and their progeny (as to tribal court jurisdiction) and *National Farmers Union* and *Iowa Mutual* (as to exhaustion of tribal court remedies) unchanged as to cases involving non-Indian tribal court defendants; *Philip Morris USA, Inc. v. King Mountain Tobacco Company, Inc.,* 469 F.3d 932, 940 (9th Cir. 2009) (reiterating that *Plains Commerce* left intact the rule of *Williams v. Lee* under which "tribal courts have exclusive jurisdiction over suits against tribal members on claims arising on the reservation").

H.

Independent of the *Williams v. Lee* argument set out in Part A, *supra,* the parties' financing transactions which give rise to the parties' dispute, and the parties' commercial dealings involving those transactions all constitute consensual relationships taking place there which give rise to colorable Tribal Court jurisdiction under the *Montana* test. *Montana v. U.S., supra* at 565; *Strate v. A-1 Contractors, supra* at 445-447; *Atkinson Trading Co. v. Shirley, supra* at 655-666.

In these circumstances, the Zuni Tribal Court clearly has colorable jurisdiction to adjudicate Plaintiff's claims both under *Williams v. Lee* (because the non-Indian party here involved is the Plaintiff) and *Montana* (because even if the non-Indian party involved was a defendant, the *Montana* test is satisfied).

I.

As noted in Part A above, the basis for tribal court jurisdiction under *Montana* (and, more importantly, under *Williams v. Lee*) here is even stronger. Here it is a non-Indian Plaintiff who is seeking relief against a tribal member owned entity implicitly against the tribal members Land Assignees (and themselves) grounded in their on-reservation commercial dealings. Tribal court jurisdiction to adjudicate such claims is not just colorable, it is well-settled under *Williams v. Lee* and *Montana. Nevada v. Hicks,* 533 U.S. at 382 (Souter, J. concurring) ("It is the membership status of the unconsenting party … that counts as the primary jurisdictional fact."); *Philip Morris USA, Inc. v. King Mountain Tobacco Company,* 569 F.3d 932, 941, 945 and n.2 (9th Cir. 2009) after *Plains Commerce* " ... the *Montana* analysis is controlling in tribal jurisdiction cases, with party alignment in the tribal court action as the most important factor to be weighed in determining the application of *Montana's* rule and exceptions to the case at hand:

> Phillip Morris's complaint does not allege claims based on King Mountain's sales of its cigarettes on the Yakama Reservation, ... *Cf. Smith*, 434 F.3d at 1132 ("where the nonmembers are the *plaintiffs,* and the claims arise out of commercial activities within the reservation, the tribal courts may exercise civil jurisdiction").

CONCLUSION

Thus, under *National Farmers Union, supra, Iowa Mutual, supra,* the Plaintiff is required to pursue its claims in the Zuni Pueblo Trial and Appellate Courts, thereby exhausting its tribal remedies, and this Court is required to dismiss or stay Plaintiff's action in this Court. Dismissal is warranted and is here requested.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of September, 2025 a true and correct copy of the foregoing was filed electronically pursuant to CM/ECF procedures, which caused the parties or counsel to be served by electronic means, as more fully reflected in the Notice of Electronic Filing

s/ C. Bryant Rogers